

Bail Slip:-

Crl.A.No.776 of 2015:- The Appellants/ Accused 1 & 2 namely Murugesan (A1) Karur Balan @ Pargavan (A2) were directed to be released on bail as per order of this Court dated 5.2.2016 made in Crl.M.P.No.1/2015 oin Crl.A.NO.776 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.776 of 2015

1.Murugesan
2.Karur Balan @ Pargavan ...Appellants/ Accused 1 & 2

vs.

State,by
The Inspector of Police,
B-1, Podhanur Police Station,
Coimbatore City,
Coimbatore.
(Crime No.116 of 2013) Respondent / Complainant

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 23.11.2015 passed by the
learned III Additional District and Sessions Judge,
Coimbatore, in S.C.No.120 of 2014.

For Appellants : Mr.R.Karthikeyan

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellants in this appeal are the accused in Sessions Case No.120 of 2014, on the file of the learned III Additional District and Sessions Judge, Coimbatore. They stood charged for the offence punishable under Sections 294(b) and 302 of IPC. The trial Court, after trial, by judgement dated 23.11.2015, convicted the appellants/accused for the offence under Section 302 of IPC, and sentenced them to undergo life imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo simple imprisonment for two months and acquitted the appellants/accused for the offence under Section 294(b)

IPC. Challenging the above said conviction and sentence, the appellant/accused are before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) The deceased in this case one Rangarajan was the resident of Gandhi Nagar, Sugunapuram East, Coimbatore. The appellants/accused also belongs to the same village. The accused have collected money from the general public, due to the same, there was a wordy quarrel between the accused and the deceased at about 8.15 p.m., on 22.01.2013. Continuing the same, at about 11.00 p.m., while the deceased was smoking cigaret near his house, both the accused came there and poured kerosene, and set fire on him. Immediately, he was taken to the Government Hospital, Coimbatore at about 12.15 p.m. P.W.15-Doctor, working in casualty ward attached to the Government Hospital, Coimbatore, admitted the deceased in the hospital and issued Accident Register (Ex.P19). At the time of admitting the deceased, the deceased told the Doctor that it was a self immolation, and he himself poured kerosene and set fire to himself, the Doctor found 70% to 80% burn injuries.

(ii) Subsequently, P.W.6-Doctor, then working in the Government Hospital, Coimbatore, has examined the deceased and found 90% to 95% burn injuries, and she sent a memo to the learned Judicial Magistrate No.I, Coimbatore for recording his dying declaration. On the same day, at about 1.25 a.m., the learned Judicial Magistrate No.I, Coimbatore reached the Hospital, since the condition of the deceased was very serious and the deceased was not in a position to give dying declaration, the learned Judicial Magistrate did not record the dying declaration.

(iii) Subsequently, on 23.01.2013 at about 11.00 am., P.W.7, another Doctor in the Government Hospital, Coimbatore sent another memo (Ex.P4), to the learned Judicial Magistrate No.I, Coimbatore for recording dying declaration, on receipt of the same P.W.11, the learned Judicial Magistrate No.I, Coimbatore went to the Government Hospital at about 11.20 am., and after being satisfied that the deceased was conscious in a fit state of mind to give dying declaration, after obtaining necessary certificate from the duty doctor. He recorded the dying declaration (Ex.P14), where, the deceased told the Doctor that two persons, have demanded money from him, subsequently the above two persons poured kerosene and set fire on him, and they are A1 and A2.

(iv) P.W.10, then Sub Inspector of Police attached to the respondent police station, on receipt of the information from the Government Hospital, went to the Hospital and found the deceased unconscious and not in a position to give statement, thereafter the deceased became conscious, and gave statement (Ex.P1), based on the statement, he registered a case in Crime No.116 of 2013, for the offence under Section 307, IPC, and prepared FIR (Ex.P12), sent the first information

report to the Judicial Magistrate Court and copy of the same to the higher officials.

(v) P.W.16, Inspector of Police then attached to the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P20), drew a Rough Sketch (Ex.P21), and recovered a plastic can (M.O.1) in the presence of witnesses. He arrested the accused at about 11.30 p.m., on 23.01.2013, and sent the accused for judicial custody. Subsequently, on 25.01.2013 at about 3.45 a.m., the deceased succumbed to the injuries, hence he altered the case into one under Section 302 IPC, the alteration report (Ex.P23). Then, P.W.16 proceeded to the Government Hospital, Coimbatore and conducted inquest over the dead body of the deceased in the presence of panchayatdars and prepared inquest report (Ex.P24) and sent the dead body for postmortem. He examined some witnesses and recorded their statements.

(vi) P.W.14 then Doctor in the Government Hospital, Coimbatore, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

Injuries:

Infected dermo epidermal burns involving lower part of face, entire neck, front and back of chest and abdomen and pubic region, both upper limbs, front and back of upper half of both thighs, back of lower 2/3rd of left thigh, back of lower 1/3rd of right thigh, front and back of left leg and lower half and back of right thigh, sparing front of lower 2/3rd of both thigh and upper part of face and scalp, front of upper half of right leg. Degloving of skin noted over both parts and soles. Total singeing noted over both axillary and pubic hairs. The base of burnt area of reddish in colour. Infected areas covered with yellow colour slough materials.

He was of the opinion that the deceased appeared to have died of burn injuries. He has given Postmortem Certificate (Ex.P16). P.W.16, continued the investigation, examined the postmortem Doctor and some other witnesses and recorded their statements and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above but the accused denied the same as false. In order to prove the case of prosecution, as many as 16 witnesses were examined and 24 documents were exhibited and 1 material objects was marked.

4. Out of the above witnesses examined, P.W.1 is the mother of the deceased. She turned hostile, P.Ws.2 to 5 turned hostile. P.W.6-Doctor working in the Government Hospital, Coimbatore, who has given treatment to the deceased after he was admitted in the Hospital. According to her, the

deceased was conscious and she sent a memo to the learned Judicial Magistrate No.I, Coimbatore for recording dying declaration. But the learned Judicial Magistrate found the deceased was not in a position to give dying declaration, the learned Judicial Magistrate did not record the dying declaration. P.W.6 has given a certificate (Ex.P3). P.W.7-another Doctor working in the Government Hospital, Coimbatore, has treated the deceased and sent a memo to the learned Judicial Magistrate, Coimbatore for recording dying declaration and at the time of recording the dying declaration the deceased was conscious and in a fit state of mind and she has given a certificate to that effect(Ex.P5). P.Ws.8 and 9 have turned hostile. P.W.10-Sub Inspector of Police, working in the respondent police, received the information from the Hospital, proceeded to the Government Hospital, recorded the statement of the deceased and based on the statement, registered a case, prepared first information report, and sent the same to the Judicial Magistrate Court, and to the higher officials. P.W.11-the learned Judicial Magistrate No.I, Coimbatore recorded the dying declaration of the deceased. According to him, on 23.01.2013 at about 1.25 a.m., he went to the Government Hospital, Coimbatore and found that the deceased was not in a position to give dying declaration hence he did not record the dying declaration. Subsequently, at about 11.20 a.m., second time, he went to the Hospital and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration he recorded the dying declaration. P.Ws.12 and 13 have turned hostile. P.W.14-Doctor working in the Government Hospital, Coimbatore, conducted Postmortem on the dead body of the deceased and gave Postmortem Certificate (Ex.P16). P.W.15-Doctor working in casualty ward attached to the Government Hospital, Coimbatore, admitted the deceased in the hospital at about 12.15 p.m., and issued Accident Register (Ex.P19). At the time of admission, the deceased told him that it was a self immolation, he himself poured kerosene and set fire on him. P.W.16- Inspector of Police attached to the respondent police, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the materials objects and after completion of investigation, he laid the charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence were total denial. The accused did not examine any witnesses and no document was marked on their side.

6. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.R.Karthikeyan, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In the instant case, all the material witnesses have turned hostile including the mother of the deceased. The prosecution mainly relied upon the judicial dying declaration given by the deceased on 23.01.2013 at about 11.20 a.m., before the learned Judicial Magistrate No.I, Coimbatore. On 23.01.2013 at about 0.15 a.m., P.W.15-Doctor working in the casualty ward in the Government Hospital, Coimbatore, admitted the deceased and at that time the deceased told him that he himself poured kerosene and set fire, and, it is a self immolation, P.W.15 has issued Accident Register Ex.P19. Subsequently, P.W.6-Doctor working in the casualty ward, Government Hospital, Coimbatore, examined the deceased and found 90% to 95% burn injuries on the deceased and sent the memo to the learned Judicial Magistrate for recording dying declaration. When the learned Judicial Magistrate No.I, Coimbatore reached the Hospital, he found that the deceased was not in a position to give dying declaration hence, he did not record the dying declaration. Once again at about 11.00 a.m., P.W.7-another Doctor working in the casualty ward, sent a memo to the learned Judicial Magistrate for recording dying declaration. On the same day, at about 11.20 a.m., the learned Judicial Magistrate No.I, Coimbatore came to the hospital and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, recorded the dying declaration after obtaining necessary certificate from the duty Doctor. In the dying declaration, the deceased told him that at about 8.30 p.m., two persons demanded money from him, but he refused, due to which, he was beaten by them and subsequently, they left from his house. The deceased further stated that at about 11.00 p.m., when he was smoking cigaret out side his house, the above said two persons poured kerosene and set fire on him and on seeing the same, the villagers came and doused the fire and took him to hospital. The above two persons stated by the deceased are A1 and A2. P.W.10-Sub Inspector of Police attached to the respondent police, recorded the statement of the deceased. According to him, he went to the hospital and found the deceased was unconscious and not in a position to give statement. Thereafter, when the deceased became conscious, he recorded the statement of the deceased and based on the statement , he registered a case.

9. We have carefully considered the dying declarations, and there are inconsistencies in the above dying declarations. P.W.15-Doctor working in the casualty ward admitted the deceased in the Government Hospital at about 0.15 a.m. At the time of admission, the deceased told the Doctor that it is a self immolation and he himself poured kerosene and set fire on him. It is the first dying declaration. Then,

P.W.6-Doctor sent a memo to the learned Judicial Magistrate for recording dying declaration and the learned Judicial Magistrate also came to the Hospital at about 1.25 a.m, where he found the deceased unconscious and not in a position to give dying declaration, hence, the learned Judicial Magistrate could not record his dying declaration. Subsequently, on a second memo from the Government Hospital by P.W.7, the learned Judicial Magistrate went to the Hospital at about 11.25 a.m., and recorded the dying declaration of the deceased. At that time, the deceased did not definitely state anything about the accused, but only stated that two persons beaten him, subsequently they poured kerosene and set fire on him, finally he mentioned the name of A1 and A2. P.W.10-Inspector working in the respondent police, in his evidence has stated that the deceased was totally unconscious and he could not record his statement, thereafter, when the deceased became conscious he recorded the statement of the deceased where he implicated A1 and A2. P.W.15, also stated that he admitted the deceased in the hospital and at that time the deceased was conscious but he was highly disoriented. In his evidence, P.W.6-Doctor stated that she found 90% to 95% burn injuries on the deceased and he has also given certificate (Ex.P3) to the effect that the deceased was not in a fit state of mind to give dying declaration. Subsequently at about 11.25 a.m., once again the dying declaration was recorded by the learned Judicial Magistrate, in which also the deceased did not definitely implicated the accused. Only thereafter, in Ex.P11, the statement given by the deceased before P.W.10 the Sub Inspector of Police, the deceased has implicated the accused.

10. Taking into consideration of the burn injuries and also the evidence of P.Ws.6 and 15, it is highly unsafe to rely upon the dying declaration of the deceased. Apart from that all the material witnesses including the mother of the deceased who turned hostile, and no other evidence was available to corroborate the prosecution version and in view of the above, we are of the considered view that the appellants are entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellants in S.C.No.120 of 2014 dated 23.11.2015 on the file of the learned III Additional Sessions Judge, Coimbatore is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate No.7
Coimbatore

2. The Chief Judicial Magistrate
Coimbatore

3.The III Additional Sessions Judge,
Coimbatore.

4.The Inspector of Police,
B-1, Podhanur Police Station,
Coimbatore City,
Coimbatore.

5. The Superintendent
Central Prison,
Coimbatore

6.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R. Karthikeyan, Advocate, Sr. 41800

CrI.A.No.776 of 2015

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