



Bail Slip

The Appellants/Accused namely 1.Haridoss (2) Jaya were directed to be released on bail vide Court order dated 4/2/13 made in Crl.M.P.No.2/12 in Crl A. 11/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.11 of 2012

1.Haridoss
2.Jaya

..

Appellants/Accused

Vs

State rep. By the
Inspector of Police,
Thiruverkadu Police Station,
Nagapattinam District.
(Crime No.84 of 2008)

..

Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence made in S.C.No.58 of 2009 dated 10.12.2011 on the file of the learned Sessions Judge, Nagapattinam in convicting the appellants for the offence under Section 302 I.P.C., and sentencing them to undergo life imprisonment and to pay a fine of Rs.5,000/- each i/d to undergo simple imprisonment for three years.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor



JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

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The appellants are the accused 1 and 2 in S.C.No.58 of 2009 on the file of the learned Sessions Judge, Nagapattinam. They stood charged for offence under Section 302 I.P.C. By judgment dated 10.12.2011, the trial Court convicted them for offence under Section 302 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three years. Challenging the said conviction and sentence, the accused 1 and 2/appellants are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Amudha. The first appellant/A.1 is the husband of the deceased. The second appellant/A.2 is the brother's wife of A.1. They were all living together in the house at Yadava Street, Thiruvalli, Melapadhi Village. The marriage between A.1 and the deceased was solemnized few months before the occurrence. In the matrimonial home, the mother-in-law of the deceased used to extract extra work from the deceased. This was not to her liking. Further, on the instigation of her mother-in-law, A.1 wanted the deceased to get Rs.1,40,000/- from her house. Further, A.2 is a widow. The deceased had suspicion that A.1 had developed illicit intimacy with A.2. It is further alleged that on the day of occurrence, at 11.00 am, the deceased was sitting in the house. At that time, A.1 poured some combustible liquid on her. A.2 lighted the match stick and threw the same on the deceased. The deceased caught fire. Both the accused who were alone there in the house poured water on her and extinguished the fire. On hearing the alarm raised, the neighbours arrived at the scene of occurrence. Then the accused themselves rushed the deceased to the Government Hospital at Sirkali. In the hospital, when the Doctor enquired, the deceased told that, while cooking, by accident, she caught fire. The Doctor at the Sirkali Government Hospital gave intimation to the Police. The deceased was thereafter taken to the Raja Muthaiah Medical College and Hospital at Chidambaram.

3.P.W.7, the learned Judicial Magistrate No.2, Chidambaram, on receiving intimation from the hospital rushed to the said Hospital at 5.30 pm on 27.03.2008. One Dr.Siva Kannappan (P.W.6) was attending on the deceased. He gave a certificate

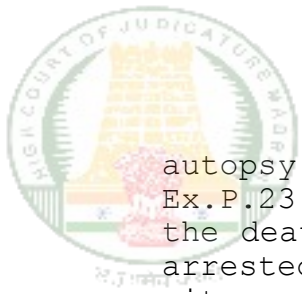


that the deceased was fully conscious. The learned Magistrate elicited certain answers from the deceased to her questions and finally, she came to the satisfaction that the deceased was in a fit state of mind to make a dying declaration. Thereafter, she recorded the dying declaration of the deceased. In the said dying declaration, the deceased told that A.1 poured kerosene and A.2 set fire on her and both of them thereafter, poured water and extinguished the fire and then they took her first to the Government Hospital at Sirkali and from where, she was taken to the Raja Muthaiah Medical College and Hospital at Chidambaram. She has further stated that her husband was having drinking habit.

4.P.W.12, the then Sub Inspector of Police at Thiruvankadu Police Station, went to the Government Hospital at Sirkali and after coming to know that the deceased had been taken to Raja Muthaiah Medical College and Hospital at Chidambaram, he reached there and recorded the statement of the deceased at 11.00 pm on 28.03.2008. Ex.P.15 is the said statement. One Police Head Constable No.555 recorded the said statement, in the presence of P.W.12. On returning to the Police Station, P.W.12, registered a case in Crime No.86 of 2008 for offence under Sections 498A, 307 of I.P.C., and Section 4 of the Tamil Nadu Women Harassment Act. Ex.P.16 is the F.I.R. He forwarded both the documents to the learned Magistrate and the same was received by the learned Magistrate at 10.00 am on 29.03.2008.

5.P.W.13, the then Inspector of Police took up the case for investigation on 29.03.2008. He went to the Raja Muthaiah Medical College and Hospital at Chidambaram and conducted inquest on the body of the deceased and forwarded the same for post mortem. On the same day at about 6.30 pm, he arrested A.1 at Mangai Madam Bus Stop, in the presence of witnesses. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden the kerosene can and the match box. In pursuance of the same, he took the Police to the place of hide out and produced M.O.1 kerosene can M.O.2 match box. P.W.13 recorded these material objects under a mahazar.

6.On returning to the police station, P.W.13 forwarded A.1 to Court and also handed over the Material Objects to the Court. Thereafter, P.W.17 took up the case for further investigation. On 14.04.2008 at 3.15 am, the deceased succumbed to the injuries. Therefore, P.W.17 altered the case into one under Section 302 I.P.C. On going to the hospital, he requested the then Revenue Divisional Officer, Chidambaram to held enquiry. P.W.15, the then Revenue Divisional Officer has held inquest on the body of the deceased and P.W.16 - Dr.R.Sugumar, conducted



autopsy on the body of the deceased at 5.10 pm on 14.04.2008. Ex.P.23 is the post mortem certificate. He gave opinion that the death was due to extensive burnt injuries. On 23.04.2008, he arrested A.2 at Thiruvalli Village Bus Stop, in the presence of witnesses. On such arrest, she gave voluntary confession, the same was recorded by P.W.17, in the presence of witnesses. Thereafter, P.W.18 took up the case for further investigation and he examined few more witnesses and recorded their statements and on completing investigation, P.W.18 laid charge sheet against these two accused.

7. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., against these accused. Both the accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined and 25 documents were exhibited, besides 2 material objects.

8. Out of the prosecution witnesses, P.Ws.1 to 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 - Dr.Rethinakumar, the Assistant Surgeon at Raja Muthaiah Medical College and Hospital at Chidambaram has stated that he gave opinion to the Sub Inspector of Police that the deceased was conscious at 11.45 am on 27.03.2008. P.W.6 - Dr.Sivakannappan, an Assistant Surgeon in the same hospital has stated that at 4.20 pm on 27.03.2008, when he examined the deceased, he found her unfit to give dying declaration. Ex.P.6 is the accident register. P.W.7, the learned Judicial Magistrate No.2, Chidambaram has spoken about the dying declaration recorded by her from the deceased. P.W.8 is the Forensic Expert who has stated about the chemical examination conducted on M.O.1. P.W.9 is the Constable who has taken the body of the deceased for post mortem. P.W.10 is the Head Clerk of the Court who has forwarded the Material Object to the Chemical Analyst. P.W.11 is the Constable who received intimation from the Raja Muthaiah Medical College and Hospital at Chidambaram. P.W.12 has spoken about the recording of Ex.15 statement from the deceased by the Police Constable No.555 and the registration of the case. P.W.13 has spoken about the initial investigation done when the deceased was alive. P.W.14 - Dr.Lakshmi has stated that when she was at Sirkali Government Hospital, the deceased was brought to her at 1.45 pm on 27.03.2008. She found the deceased with 80% to 90% of burnt injuries. She has further stated that she forwarded the deceased for treatment at Raja Muthaiah Medical College and Hospital at Chidambaram. She has further stated that on the same day she sent an intimation to the learned Judicial Magistrate, Chidambaram to record dying declaration from the deceased. She has further stated in her cross examination that the learned



Judicial Magistrate came there to record dying declaration but, the dying declaration could not be recorded as the condition of the deceased was not good. P.W.15, the Revenue Divisional Officer has spoken about the inquest held by him on the body of the deceased. P.W.16 has spoken about the autopsy conducted by him on the body of the deceased and his final opinion regarding the cause of the death. P.Ws.17 and 18 have spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, no witness was examined and no document was marked. Their defence was a total denial.

10. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced them to undergo imprisonment for life. Aggrieved over the same, the accused/appellants are before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor and also perused the records carefully.

12. As we have already pointed out, P.Ws.1 & 2 who are the father and mother of the deceased have turned hostile and they have not stated anything about the strained relationship between the deceased and the accused. P.Ws.3 and 4 have also turned hostile and they happened to be the Village Assistant and Village Menial and they are the witnesses to the observation mahazar and the confession said to have been given by A.1.

13. The case of the prosecution is based only on Exs.P.8 & P.15. Ex.P.8 is the dying declaration recorded by P.W.7. Ex.P.15 is the statement recorded by Police Constable No.555. In these two statements, ofcourse, the deceased has stated that A.1 poured kerosene and A.2 set fire on her, the learned counsel for the appellants would submit that at the earliest point of time, when the deceased was taken to the Government Hospital at Sirkali, she told the Doctor that while cooking, by accident, she caught fire and that is how she sustained burnt injuries. The learned counsel would further submit that Exs.P.8 and P.15 came into being after the arrival of the relatives of the deceased and there is enormous evidence to show that these two statements were made out of tutoring.



14.The learned Additional Public Prosecutor would vehemently oppose this Criminal Appeal. According to him, there is no reason to reject the judicial dying declaration recorded by P.W.7 under Ex.P.8. The dying declaration recorded by the Constable No.555 under Ex.P.15 is being corroborated by Ex.P.12.

15.We have considered the above submissions.

16.Admittedly, at the first instance, when the deceased was taken to the Government Hospital, Sirkali, the deceased told the Doctor that she caught fire while cooking in the kerosene stove by accident. In the subsequent dying declarations, the deceased has not given any explanation as to why she had made such a statement to the Doctor. This creates initial doubt in Exs.P.8 & P.15.

17.Further, P.W.14, the Doctor who treated the deceased at the Government Hospital, Sirkali has stated that on 27.03.2008 at 2.30 pm when the learned Judicial Magistrate No.2, Chidambaram came there to record the dying declaration from the deceased, the same could not be recorded as the deceased was not in a fit state of mind to give dying declaration. This again creates doubt about the fitness of the deceased subsequently to give dying declaration. P.W.6 Dr.Sivakannappan who treated the deceased at Raja Muthaiah Medical College and Hospital at Chidambaram has entered in Ex.P.6 at 4.29 pm on 27.03.2008 that she was not in a fit state of mind to give dying declaration. A reference to Ex.P.6 would go to prove the same. This would again create doubt in respect of the evidence of mental fitness of the deceased. Though, the learned Judicial Magistrate has stated that the deceased was in a fit state of mind to make dying declaration, it is difficult to attach any weightage for the said satisfaction recorded by the said Magistrate. Assuming that the deceased was in a fit state of mind to make a statement, the possibility of tutoring cannot be over-ruled because, these two statements namely, Exs.P.8 and P.15 were recorded after the arrival of the relatives of the deceased.

18.Above all, had it been true that these two accused had set fire on the deceased that too with the intention to kill her, they would not have extinguished the fire by pouring water on the deceased. Again they would not have taken the deceased to the Government Hospital, Sirkali and from there to Raja Muthaiah Medical College and Hospital at Chidambaram to save her. This conduct of these two accused is inconsistent with their alleged guilty mind. For all these reasons and in view of the foregoing discussions, we hold that the prosecution has



failed to prove the case beyond reasonable doubt and therefore, the appellants/accused 1 and 2 are entitled for acquittal.

19. The Criminal Appeal is allowed and the conviction and sentence for the offence u/s.302 IPC imposed on the appellants by the learned Sessions Judge, Nagapattinam in SC.No.58 of 2009 by the judgment dated 10.12.2011 are hereby set aside. The appellants are acquitted of the charge levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Sirkali.

2.-Do- Thro' The Chief Judicial Magistrate,
Nagapattinam.

3. The Inspector of Police,
Thiruverkadu Police Station,
Nagapattinam District.

4. The Session Judge,
Nagapattinam.

5. The Public Prosecutor,
High Court, Madras.

6. The Director General of Police,
Mylapore, Chennai-4.



7.The District Collector,
Nagapattinam.

8.The Superintendent,
Central Prison,
Cuddalore.

+1cc to M/S.d.Veerasekaran, Advocate Sr.13419

Crl.A.No.11 of 2012

rsi (CO)
srg (23/03/2016)