

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.796 of 2010

Velavan Appellant/ Accused

vs.

State,rep.by
The Inspector of Police,
Thirumullaivoil Police Station,
Chennai ... Respondent / Complainant
(Crime No.44 of 2005)

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 16.11.2006 passed by the Additional
Sessions Judge (Fast Track Court No.III), Poonamallee, in
S.C.No.222 of 2006.

For Appellant : Mr.S.Paneerselvan

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

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.222 of 2006, on the file of the Additional Sessions Judge(Fast Track Court No.III, Poonamallee). He stood charged for the offence under Sections 498-A and 302 of the Indian Penal Code. By judgement dated 16.11.2006, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default, to undergo rigorous imprisonment for five years. The trial Court acquitted him for the charge under Section 498-A of the Indian Penal Code. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Deepa. The accused is her husband. P.W.1 is her father. The marriage between the deceased and accused was celebrated on 10.11.1999. After the marriage, the accused and deceased were living together happily. Then, in due course of time, the accused had developed drinking habit. This resulted in frequent quarrels

between them. The accused used to demand money from the deceased for the drinking purpose.

(b) It is further alleged that on 18.1.2005 at 12.30 a.m. when the deceased was at her house, the accused demanded money from her for the drinking purpose. Since the deceased did not pay money, there arose quarrel between them. At the end of the quarrel, it is alleged that the accused poured kerosene and set fire to her. The deceased raised hue and cry. The father-in-law of the deceased went and informed P.W.1 about the same. At 1.00 a.m. on 18.1.2005, P.W.1 rushed to the house of the deceased. He found the deceased with burn injuries all over her body. However, she was able to speak. When P.W.1 enquired her, she told that since she did not part away with money to the accused, the accused poured kerosene and set fire to her. Then, P.W.1 and others took the deceased to Kilpauk Medical College and Hospital for treatment. P.W.2, Dr. Neela Catherin, examined the deceased at 3.00 a.m. on 18.1.2005. At that time, she was told that at around 12.00 midnight, the husband of the deceased set fire to her, after pouring kerosene on her body. She gave intimation to the police.

(c) P.W.1, after having admitted the deceased at the hospital, rushed to Thirumullaivoil Police station and made complaint at 3.00 a.m. on 18.1.2005, under Ex.P1. On receipt of the same, P.W.9 registered a case, in Crime No.44 of 2005, under Sections 498-A and 307 of the Indian Penal Code. Ex.P14 is the First Information Report. Immediately, he forwarded both the documents to the Court and rushed to the Kilpauk Medical College and Hospital. Between 3.20 a.m. to 3.30 a.m. on 18.1.2005, P.W.9 recorded the statement of the deceased. P.W.2 was attending on the deceased and she certified that the deceased was conscious. The said statement is Ex.P.15. In the said statement also, the deceased told that her husband poured kerosene and set fire to her.

(d) On returning to the police station, P.W.9 took up the case for investigation, proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses and recovered the material objects found at the place of occurrence. The deceased, in the meanwhile, at 4.00 a.m. died. Therefore, P.W.9 altered the case into one under Sections 302 and 498-A of the Indian Penal Code and forwarded the alteration report to the Court. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.8, Dr. Manohar, conducted autopsy on the body of the deceased on 19.1.2005 at 11.30 a.m. He found 100% burn injuries on the body of the deceased. He gave opinion that the death was due to extensive burn injuries. Ex.P11 is the postmortem certificate. P.W.9, in the course of investigation, came to know that the accused had surrendered before the learned Judicial Magistrate, No.VI, Egmore, Chennai. He took custody of the accused on 24.1.2005, on the orders of the jurisdictional Magistrate. Between 6.00 p.m. to 8.00 p.m.,

on 24.1.2005, the accused, in the presence of witnesses, gave voluntary confession. At that time, it was found that the accused also had burn injuries on his body. He was taken to the Avadi Government Hospital for treatment. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above incriminating materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined, 19 documents and 6 material objects were marked. Out of the said witnesses, P.W.1, the father of the deceased, has spoken about the strained relationship between the accused and the deceased. He has further stated that he was informed by the father-in-law of the deceased at 1.00 a.m. on 18.1.2005 that the deceased had been set on fire. He has further stated that when he enquired, on reaching her house, the deceased told him that it was the accused, who set fire to her. P.W.2, the Doctor, has stated that at 3.00 a.m., when the deceased was admitted, he was told that the deceased was set on fire by her husband. P.W.3 has spoken about the statement recorded by her under Section 164 Cr.P.C., from the witnesses. P.W.4 has stated about the treatment given at the Royapettah Government Hospital. According to him, on 18.1.2005, it was told that the deceased was set on fire by her husband. P.W.5, a neighbour has stated that when he rushed to the house of the deceased, on hearing the alarm raised and when he enquired, the deceased told him that the accused set fire to her. P.Ws.6 and 7 have stated about the observation mahazar prepared at the place of occurrence and the rough sketch and about the recovery of material objects. P.W.8 has spoken about the postmortem conducted. P.W.9 has spoken about the case registered by him, the statement recorded from the deceased under Ex.P.15 and the further investigation done by him.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine anyone on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused as detailed in first paragraph of this judgement that is how the accused is before this Court.

6. We have heard the learned counsel for the appellant and also the learned Additional Public Prosecutor appearing for the State and we have also perused the records.

7. In this case, the prosecution relies on the oral dying declaration allegedly given by the deceased to P.Ws.1, 4, 5 and 9. The question is as to whether these so called dying declarations could be believed or not. It is in evidence that the accused sustained burn injuries. P.W.9 has stated that he forwarded him to the Government Hospital at Avadi. But, neither

the medical records pertaining to the treatment given to him have been produced nor the Doctor, who examined him about the extent of burn injuries, has been examined. This would only go to show that the prosecution has not come forward with all the material facts involved in the case and some important parts of the evidences have been suppressed by the prosecution, for the reasons best known to them.

8. The learned Additional Public Prosecution makes reliance mainly on Ex.P15, the statement recorded from the deceased by P.W.9, between 3.20 a.m. to 3.30 a.m. on 18.1.2005. The deceased is stated to have died at 4.00 a.m., on the same day i.e. within half an hour. What was the condition of the deceased, when she allegedly made the statement between 3.20 to 3.30 a.m. could be seen only from the medical records. But unfortunately, no medical records pertaining to the treatment given to the deceased and her condition have been placed before the Court. Though it is true that the Doctor has made an endorsement that the patient was conscious, that is not a material and what is material is whether the deceased was in a fit state of mind to make a dying declaration. Ex.P2 is stated to have been reduced to writing in the handwriting of P.W.9. But, a reading of the same would go to show that there are lot of clerical mistakes in the same. An officer in the cadre of Inspector of Police would not have committed those mistakes. Therefore, it is clear that Ex.P15 would not have been reduced to writing by P.W.9 at all. This is again fortified by Ex.P14. Ex.P14 is the First Information Report, which is in the handwriting of P.W.9, which contains no mistake at all. A cursory comparison, even by naked eye, of Ex.P15 and Ex.P14 would clearly go to show that the handwriting in both the documents are totally in variance. The person whose handwriting as found in Ex.P14 would not have written Ex.P15 at all. Ex.P15 appears to have been written by some one, who is not a fully literate person. In Ex.P15 there are also lot of corrections in respect of time and date. The Doctor had originally examined the deceased on 18.1.2005 at 3.30 p.m. The same has been subsequently corrected as a.m. Similarly, timing of the recording of the said statement has also been corrected. There is no explanation for the same at all. Therefore, we firmly believe that Ex.P15 would not have been recorded at the time as it is alleged by P.W.9 at all and the same is not in his handwriting. The very fact that the deceased died at 4.00 O'clock would go to show that between 3.00 p.m. and 3.30 p.m. she would not have been in a position to make a statement at all. Therefore, we hold that Ex.P15 is a doubtful document and therefore, no weightage could be given to the same.

9. Then comes the evidence of P.W.4. P.W.4 is a Doctor, who admitted the deceased at Kilpauk Medical College and Hospital. He has stated in his evidence that on 18.1.2005 when he examined the deceased, the deceased told him that at 12.30 a.m. on 18.1.2005, her husband set fire to her. But a perusal of Ex.P7, the accident register, would go to show that there is not even

any mention that the deceased was conscious. It contains the statement that the deceased was brought by P.W.1, the father of the deceased. It also contains the statement that the deceased had 90% of burn injuries. In the absence of any such record that the deceased was conscious and in the absence of production of the other medical records, it is difficult to believe the evidence of P.W.4 that the statement 'the accused had set fire to the deceased' was made only by the deceased.

10. P.W.2 has stated that at 3.00 a.m. on 18.1.2005 when she examined the deceased at the Kilpauk Medical College and Hospital, she was disoriented and she was also highly depressed. This is found in Ex.P5. This evidence of P.W.2 would go to show that the deceased would not have been in a position to make such a dying declaration at all in a fit state of mind. So far as the evidences of P.Ws.1 and 5 are concerned, P.W.5 is a friend of P.W.1 and P.W.1 was not happy with the accused. Therefore, we cannot attach much importance to the evidences of these two witnesses. Above all, the injury sustained by the accused has not been explained. It is not explained as to why the medical records, pertaining to the treatment given, have not been produced and why the Doctor, who treated him, has not been examined. This would also create enormous doubt in the case of the prosecution. In view of these anomalies found in the case of prosecution, which create enormous doubt, we are unable to sustain the conviction and we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

11. In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Fine amount, if any, paid by him shall be refund to him forthwith.

सत्यमेव जयते
Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. The Additional Sessions Judge
(Fast Track Court No.III), Poonamallee.

2. do thro the Principal Sessions Judge
Thiruvallur

3.The Inspector of Police,
Thirumullaivoil Police Station,
Chennai.

4. The Superintendent
Central Prison, Puzhal, Chennai

5. The District Collector
Thiruvallur

6. The Director General of Police
Mylapore, Chennai-75

7. The Public Prosecutor,
High Court, Madras

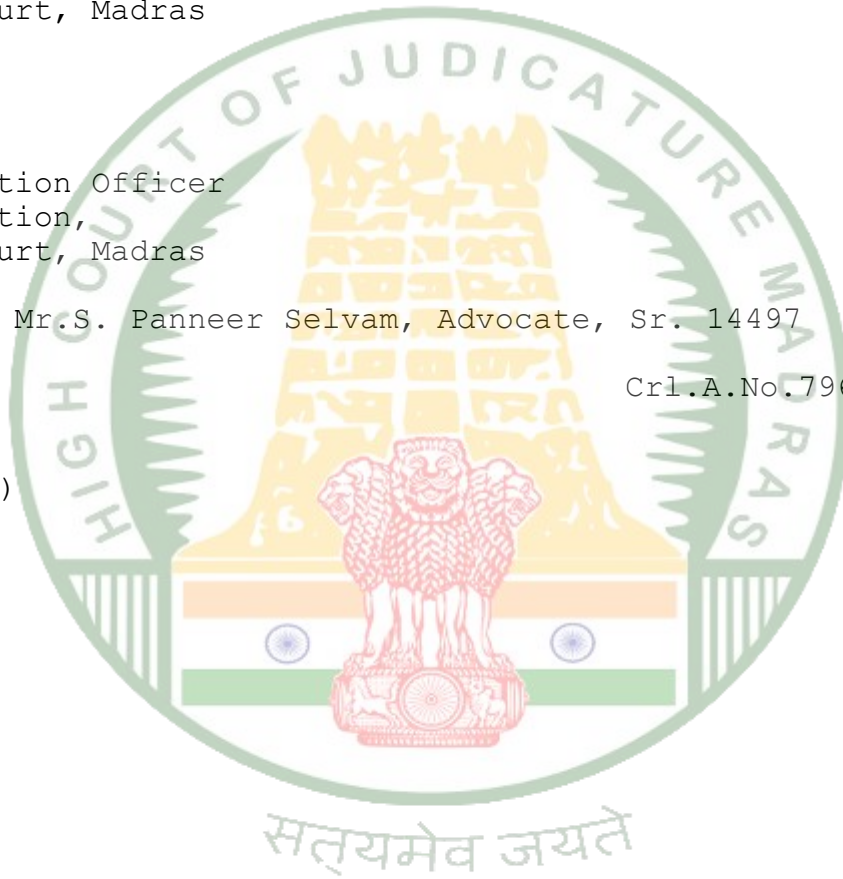
Copy to

The Section Officer
Crl.Section,
High Court, Madras

1 cc to Mr.S. Panner Selvam, Advocate, Sr. 14497

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RSY (CO)
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