

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.30 of 2016

M.Lakshmanan ... Appellant

vs.

The State, by
The Inspector of Police,
Tirupur South Police Station,
Tirupur District.
(Crime No.890 of 2014) ... Respondent

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 07.07.2015 passed by the
learned II Additional District and Sessions Judge, Tiruppur,
in S.C.No.178 of 2014.

For Appellant : Mr.C.Sivakumar

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

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.178 of 2014, on the file of the learned II Additional District and Sessions Judge, Thiruppur. The appellant/accused stood charged for offence under Section 302 of IPC. The trial Court, after trial, by judgement dated 01.07.2015, convicted the appellant/accused for the offence under Section 302 IPC., and sentenced him to undergo life imprisonment and to pay a fine of Rs.15,000/- in default, to undergo rigorous imprisonment for four years. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case is one Banu @ Nasifsha. She has already married and having two children. The accused also already married one Sathiya and he is also having son and daughter through the said Sathiya. The wife of the accused died 10 years prior to the occurrence. Subsequently, the accused had an illicit intimacy with the deceased, hence, the husband of the deceased divorced her. Thereafter, both the accused and the deceased were living together as husband and wife at Tirupur. The accused was a crook and drunkard. The accused, suspecting the fidelity of the deceased, had frequent quarrel with her. On 16.05.2014, there was a quarrel between the accused and the deceased and during such quarrel, the deceased threw a stainless steel vessel on the head of the accused and caused injury. The next day, i.e., on 17.05.2014, at about 1.00 p.m., the deceased did not prepare lunch, the accused questioning her and once again a quarrel emanated between them and at that time, the accused poured kerosene and set fire on her.

(ii) P.W.1, a passer-by, hearing the noise from the house of the deceased, went inside the house and found the deceased with burn injuries and the accused standing in the corner of the house. At that time, the deceased told P.W.1, that the accused is her husband and he poured kerosene and set fire on her. Immediately, the accused ran away from the house. P.W.1 called 108 ambulance and sent the deceased to the Government Hospital, Tirupur. Then, P.W.1 went to the police station and lodged a complaint (Ex.P1).

(iii) P.W.9-Sub Inspector of Police attached to the respondent police, on receipt of the complaint, registered a case in Crime No.890 of 2014 under Section 307 IPC, and prepared first information report(Ex.P8), sent the same to the learned Judicial Magistrate No.II, Tirupur and copy of the same to the higher officials.

(iv) P.W.10-Inspector of Police attached to the respondent police, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar(Ex.P2), drew a Rough Sketch (Ex.P9). He recovered (M.O.1) Plastic can in the presence of witnesses and examined some witnesses and recorded their statements.

(v) P.W.5-Assistant Surgeon, working in the Government Hospital, Tirupur, admitted the deceased in the Hospital and found 100% burn injuries on her and he sent a memo to the Judicial Magistrate, Tirupur, for recording dying declaration.

(vi) On receipt of the memo, P.W.6, learned Judicial Magistrate No.I, Tirupur, visited the Government Hospital on 17.05.2014, at about 3.00 p.m., after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, and after obtained necessary certificate from the duty Doctor, he recorded the dying declaration. At that time, the deceased stated that her husband poured

kerosene and set fire on her. After completion of dying declaration, once again, the learned Judicial Magistrate obtained certificate from the duty Doctor. At the time of recording dying declaration, the learned Judicial Magistrate made sure that except the Doctor and his Assistant, no body was present there.

(vii) P.W.10 continued the investigation. On the same day, at about 7.00 p.m., he arrested the accused and on such arrest, he voluntarily given confession and he sent the accused to the Judicial Custody. Subsequently, at about 8.45. p.m., the deceased succumbed to the injuries in the Hospital. Hence, P.W.10, altered the case into one under Section 302 IPC, the alteration report is Ex.P8 and sent the same to the Judicial Magistrate Court. On 18.05.2014, between 6.00 a.m., and 8.00 am., he conducted inquest over the dead body of the deceased in the presence of panchayatdars and prepared inquest report Ex.P10. Then, he sent the dead body of the deceased for postmortem through P.W.8, Head Constable. He examined some witnesses and recorded their statements and handed over the investigation to P.W.11, his successor.

(viii) P.W.7-Doctor, working in the Government Hospital, Tirupur, conducted postmortem autopsy on the dead body of the deceased on 18.05.2014 and found the following injuries:-

Burns all over body. Eyelids-closed. Face-fully burnt. Tongue-kept sensible. Ribs-Intact. Heart-Congested-300 gm - clotted blood. Lungs - Cartend 150 cm 40cm. Sort particles present on Larynx, Trachea, Bronchi. Hyoid-Intact. Stomach-100 ml of partially liquid food particles. Liver-100gm, spleen-100 gm congested. Kidneys-congested each 100 gm. Blader - empty. Uterus-normal size. Skull - intact. Brain - congested 140 gm.

He was of the opinion that the deceased appeared to have died of shock and haemorrhage due to burn injuries. He issued postmortem certificate (Ex.P6).

(ix) P.W.12 is the Inspector of Police attached to the respondent police station. He examined the Doctor who conducted postmortem and recorded his statement and after completion of investigation, he laid the charge against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 11 witnesses, exhibited 10 documents, besides marking one material object.

4. Out of the witnesses examined, P.W.1 is the resident of Tirupur. According to him, while he was crossing the house of the deceased, he heard the noise from the house, then he went inside the house when found the deceased with burn injuries, and saw the accused standing inside the house, at that time, the deceased told him that the person standing inside the house was her husband and he poured kerosene and set fire on her. He further stated that immediately the accused ran away from the house, immediately he called the ambulance and sent the deceased to the Government Hospital, Tirupur, then he lodged a complaint(Ex.P1) before the respondent police. P.W.2 is the neighbour of the deceased. He has spoken about the quarrel between the deceased and the accused. According to him, on 16.05.2014, there was a quarrel between the accused and the deceased and during the quarrel, the accused got injury on his forehead. He further stated that on 17.05.2014, at about 12.30 p.m., he heard the noise from the house of the deceased, he went inside the house and found the deceased with burn injuries and the accused came out of the house. He further deposed that at the time of occurrence there was a quarrel between the deceased and the accused. P.W.3 is the resident of Velliangkadu. He is the witness to the arrest and confession of the accused. P.W.4 turned hostile. P.W.5 is the Doctor working in the Government Hospital, Tirupur. According to him, he admitted the deceased in the hospital and attested her signature in the dying declaration and he gave certificate to the effect that the deceased was conscious and in a fit state of mind to give dying declaration. P.W.6, learned Judicial Magistrate, Tirupur, recorded the dying declaration of the deceased. P.W.7-Assistant Surgeon, working in the Government Hospital, Tirupur. He conducted postmortem on the dead body of the deceased on 18.02.2014, and issued Postmortem Certificate. P.W.8 is the Head Constable attached to the respondent police, he identified the dead body for postmortem and after postmortem, handed over the dead body to the relatives of the deceased. P.W.9 is the Sub Inspector of Police attached to the respondent police. According to him, on receipt of the complaint from P.W.1, he registered the case and sent the first information report to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.10 is the Inspector of Police attached to the respondent police. In his evidence he has stated that on receipt of the FIR, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and seized the material objects and after completing the investigation, he laid the charge sheet.

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

6. Having considered all the above, the Trial Court

convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

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

8. It is a case of circumstantial evidence. The occurrence took place on 17.05.2014 at about 1.00 p.m., P.W.1 a stranger and he was crossing the house of the deceased at that time. He heard a noise from the house of the deceased and went inside where he found the deceased with burn injuries. He also saw the accused standing in the corner of the house. He further deposed that at that time, the deceased told him that her husband poured kerosene and set fire on her. Immediately, the accused went out side of the house. P.W.2 is the neighbour of the deceased. According to him, on the date of occurrence at about 12.30 p.m., he heard the noise from the house of the deceased, he went inside the house and found the deceased with burn injuries and the accused was also standing inside the house. Thereafter, the accused went out of the house. From the testimony of P.Ws.1 and 2, it is clear that the occurrence took place inside the house of the deceased and the accused was also present in the house at the time of occurrence. There is a presumption under Section 106 of the Evidence Act, which imposes a burden on the accused to explain the circumstances leading to the occurrence. But, the accused failed to give any explanation which are within his knowledge. Therefore, the act of the accused and his failure to discharge the initial burden placed upon him under Section 106 of the Evidence Act would only lead to draw an adverse inference against him and the accused failed to offer any reasonable explanation to discharge the burden placed on him.

9. The next circumstance relied upon by the prosecution is the dying declaration of the deceased. P.W.6, the learned Judicial Magistrate No.I, Tirupur, on receipt of the memo from the hospital, recorded the dying declaration of the deceased. Before recording the dying declaration, he satisfied himself about the mental consciousness of the deceased and put necessary questions to ascertain whether the deceased is in a fit state of mind to give dying declaration. After obtaining necessary certificate from the duty Doctor, he recorded the dying declaration. In the dying declaration, once again, the learned Judicial Magistrate obtained certificate from the duty Doctor. According to PW6, except the Doctor and his Assistant, nobody were present at the time of recording the dying declaration. In the dying declaration, the deceased categorically stated that her husband, suspecting her fidelity, poured kerosene and set fire on her. Since the above dying declaration was recorded by the learned Judicial

Magistrate after following the procedures, we have no reason to disbelieve the dying declaration. It is settled principle of law that dying declaration can be the sole basis for convicting the accused provided it is genuine, voluntary, credible and untutored, as held by the Honourable Supreme Court in the decision reported in RAMAKENT MISHARA LALU AND OTHERS Vs. STATE OF U.P. in [2015 (8) SCC 299]. Since we are fully satisfied that the dying declaration given by the deceased is voluntary and it is genuine. In the above circumstances, we are of the considered view that the prosecution has clearly proved the guilt of the accused beyond any reasonable doubt and it is this accused who poured kerosene and set fire on the deceased.

10. Now, the question is "what was the offence that was committed by the accused by the said act". According to P.W.2, there were a frequent quarrel between the deceased and the accused prior to the occurrence and during the quarrel on the previous day of the occurrence, the deceased threw the vessel on the head of the accused and caused injuries. On the date of occurrence at about 12.30 p.m., the deceased did not prepare lunch, again there was a quarrel between the deceased and the accused. During the quarrel, the accused, having been provoked by the words uttered by the deceased, lost his mental balance and poured kerosene and set fire on her. It is not a premeditated murder, hence, the act of the appellant/accused squarely falls within the 3rd limb of Section 300 IPC., and the act of the appellant/accused would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused/appellant is liable to be punished for the offence under Section 304(i) IPC.

11. Turning to the quantum of punishment, the accused is a poor man and he has no bad antecedence. There was a quarrel between the accused and the deceased prior to the occurrence and during the quarrel, the deceased threw the steel vessel on the head of the accused and caused injuries. On the date of occurrence, the deceased did not prepare lunch, again there was a quarrel between them and during the quarrel, the accused was provoked by the words of the deceased. On such provocation, the accused poured kerosene and set fire on her. Considering the mitigating as well as aggravating circumstance, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the accused/appellant in S.C.No.178 of 2014 dated 01.07.2015 on the file of the learned II Additional District and Sessions Judge, Thiruppur, is set aside and instead he is convicted for an offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of

Rs.1000/-, in default, to undergo four weeks rigorous imprisonment. It is directed that the period of sentence already undergone by the accused/appellant shall be given set off as required under Section 428 IPC. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The II Additional District and Sessions Judge,
Thiruppur.
- 2.The Judicial Magistrate No.II,Tiruppur
- 3.Inspector of Police,
Tirupur South Police Station,
Tirupur District.
- 4.The District Collector, Coimbatore.
- 5.The Superintendent Central Prison,
Coimbatore
- 6.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.C.Sivakumar, Advocate sr.42322&42636

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