

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.335/2016

Mrs.M. Kumari

.. Appellant

Vs

1. State by
The Inspector of Police,
Kanakamma Chatram Police Station,
Tirutani
(Ref.Cr.No.169/09)

2. Babu

.. Respondents

Appeal filed u/s.372 Cr.P.C., seeking to set aside the judgment of acquittal passed on 20.11.2013 by the I Additional Sessions Judge (FAC), Tiruvallur in S.C.No.139 of 2012.

For Appellant : Mr.S. Baskaran

For 1st Respondent: Mr.P. Govindarajan
Addl. Public Prosecutor

For 2nd respondent: Mr.R. Chandra Mohan

JUDGMENT

[Judgment of the court was delivered by **S.NAGAMUTHU, J.**]

The second respondent herein, Mr. Babu is the sole accused before the I Additional Sessions Court, Tiruvallur in S.C.No.139 of 2012. He stood charged for the offences under Sections 302 and 326 IPC. By Judgment dated 20.11.2013, the trial Court acquitted the accused from both the charges. Challenging the said acquittal, the appellant, who is the wife of the deceased, has come up with this appeal.

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

(a) The deceased in this case was one Mr. Manokaran. P.W.1 was running a cool drink shop at Pudhu Pannapakkam near Indian Overseas Bank. On 01.05.2009 at 12.30 p.m P.W.1 was in the Shop looking after the business. The deceased had just come to the shop. It is alleged that at that time, the accused poured petrol on the deceased and set fire by lighting a match stick. The deceased was engulfed by fire. P.W.1 who was on the side of the deceased also sustained burn

injuries. Both were immediately taken to the hospital.

(b) P.W.12 Dr.Baskar examined the deceased. At that point of time the deceased was conscious. He told P.W.12 that when he was in the shop of P.W.1., P.W.1 suddenly caught fire. He has further stated that when he went to rescue P.W.1, he also sustained injuries. Thus, he has not stated anything incriminating against the accused.

© P.W.13 Dr.Anjalin Selvaraj examined P.W.1 on 01.05.2009 at 2.15 p.m. P.W.1 told that the deceased came and purchased cigarette. He lighted the cigarette using match stick in the shop itself. At that time, a plastic can with petrol, which was in the shelf, accidentally fell down. When the deceased lighted the cigarette with match stick, the petrol which spilled on the floor got fire and in that P.W.1 sustained injuries. This statement was recorded by P.W.12 in the Accident Register.

(d) Therefore, on intimation from the hospital, P.W.11, the then Sub Inspector of Police went to the hospital and recorded the statement of P.W.1. On returning from police station at 8.00 p.m., on 01.05.2009, he registered a case in Cr.No.169 of 2009 for the offence

punishable under Sec.307 IPC against the accused.

(e) Ex.P.1 is the complaint and Ex.P.2 is the First Information Report. He forwarded both the documents to the Court, which was received by the Judicial Magistrate at 9.30 a.m on 02.05.2009.

(f) P.W.16 Inspector of Police took up the investigation. He went to the place of occurrence; prepared Observation Mahazar and a Rough Sketch in the present of witnesses. He recovered the burnt materials from the place of occurrence including the plastic can under a Mahazar. The deceased who was taking treatment in the hospital, died on 02.05.2009. Based on the same, he altered the case into one under Sec.302 IPC. Ex.P.11 is the altered report. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(g) P.W.15 Doctor Dekal conducted autopsy on the body of the deceased on 02.05.2009 at 11.10 p.m. He found the following injuries on the body of the deceased :

" *Injuries: Dermo-epidermal burns with*

charring of cuticle in patchy areas, exposing the underlying pink dermis, present on the neck, both upper limbs including the palm, upper half of right side of the chest, outer aspect of right and left side of the chest and abdomen, front of middle part of the abdomen, both buttock, both thighs, inner aspect and back of both legs, both feet except the sole, and in patchy areas on the genitalia and the back.

Heart: Normal in size; C/s: All the chambers contained clotted blood; Great Vessels: Normal; Coronaries: Patent. Lungs: Normal in size; C/s Congested; Larynx & Trachea: Empty. Hyoid Bone: Intact.

Stomach: Contained 280 ml of brown fluid; no definite smell; Mucosa: congested.

Intestines: Contained brown chyme.

Liver, Spleen and kidneys: Normal in size; C/s Congested. Bladder: Empty. Pelvis & Spinal column: Intact. Skull: Intact. Brain: Normal in size; surface vessels were congested.

Opinion as to cause of death: The deceased would appear to have died of

shock due to extensive burns.

He issued Post Mortem Certificate and opined that the deceased would have died due to burn injuries and shock.

3. Based on the above materials, the Trial Court framed charges under Secs.302 and 326 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 13 documents and 6 material objects were also marked.

4. Out of the said witnesses, P.W.1, is the injured eyewitness to the occurrence. She has stated that when the deceased was in her shop, the accused came and poured petrol on the deceased and set fire and in that process, she also sustained injuries. Further she has stated about the complaint made by her to the police.

5. P.W.2 is the wife of the deceased. She has not stated anything incriminating against the accused. She has spoken only on hearsay information. P.W.3 has stated that on 01.05.2009 when he

had gone to Indian bank at Kanakammachatram. While returning to his house, the deceased came from P.W.1 shop with burn injuries . P.W.4 was running a Shop near Indian Bank at Kankammachatram. At that time, it was stated that the accused came to the said shop. He told a few hours before the occurrence to P.W.4 that he would teach a lesson to the deceased. She further stated that on the date of occurrence on raising alarm, she went to the shop and found P.W.1 with burn injuries. P.W.6 has spoken about the hearsay information. P.W.6 has not stated anything incriminating against the accused. P.W.7 and P.W.8 have turned hostile and they have not supported the case of the prosecution. P.W.9 was also running a shop near the place of occurrence. He has stated that on the date of occurrence when he was in the shop, he found the accused pouring petrol on the deceased and set fire, Thus,he claims to be the witness of the entire occurrence. P.W.10 has spoken about the hear say information. P.W.11 has spoken about the registration of the case on the statement of P.W.1 P.W.12 Doctor Baskar has spoken about the submissions made by the deceased to him and the treatment given to the deceased. He found extensive burn injuries on the deceased. P.W.13 has spoken about the submissions made by P.W.1 to her when she was on duty at K.M.C.

Hospital. Further she has spoken about the treatment given to P.W.1. P.W.14 has spoken that he was the employee of the Electricity Board and that there was enough light during the time of the occurrence. P.W.15 has spoken about the post mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.16 has spoken about the investigation done by him and final report.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court acquitted the accused. Aggrieved over the same, P.W.2, who is the wife of the deceased, has come up with this appeal against the accused.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. There is no representation for the accused/second

respondent.

9. At the outset, we should state that initial presumption of innocence of the accused gets doubled by the acquittal recorded by the trial court. Unless the appellant is able to show perversity in the judgment of the trial court acquitting the accused and unless appellant is able to rebut such presumption by making out a very strong case, it is not possible for any scope to interfere with the acquittal of the accused. In other words, if there are two views which are equally possible, the view taken by the trial court cannot be disturbed so as to convict the accused by taking into account the other view, which is also equally possible. Keeping these principles in mind, let us go into the circumstances, projected by the prosecution.

10. P.W.1 is an injured eyewitness. Therefore her presence cannot be doubted. The occurrence had taken place just in her shop. According to her statement when the deceased was sitting in the shop, the accused came, poured petrol and in that process, she sustained burn injuries. But at the earliest point of time, when she was examined by P.W.13 Dr.Anjalin Selvaraj she told that when she was in

the shop, the deceased came, purchased cigarette, and when he was about to light it, the petrol can which was in the shelf, accidentally fell down and the petrol caught fire. In that occurrence, the accused and she sustained injuries. P.W.1 has not explained at all in respect of this totally contradictory statement made at the earliest point of time. The evidence of the doctor cannot be disbelieved as she is an independent witness and a responsible government servant. Thus, the evidence of P.W.1 cannot be believed.

11. Similarly, the evidence of P.W.9 cannot be relied on for the very same reason. Apart from that, when the deceased was taken to the hospital, P.W.12, Doctor Baskar examined him. According to the doctor, at that point of time the deceased was conscious and in a fit state of mind. The deceased told him that he went to the shop of P.W.1. Accidentally P.W.1 caught fire and when he attempted to extinguish the fire he sustained injuries. This statement of the deceased falls within the sweep of Sec.32 of the Indian Evidence Act.

12. In the said dying declaration, he has not at all stated anything about the accused. He has not implicated the accused stating

that the accused had set him on fire. Had it been true that the accused poured petrol on him, nothing would have prevented the deceased from making a statement to that effect. This dying declaration would go to show that there is no truth in the evidences of P.W.1 and P.W.9.

13. The trial court, on appreciating the dying declaration of the deceased and the contradictory submissions made by P.W.1 had rightly come to the conclusion that the prosecution has failed to prove the case. In this conclusion arrived at by the trial court, we do not find any perversity requiring interference.

14. We hold that the judgment of the trial court is a well considered one which does not require any interference. We hold that the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the trial court was right in acquitting the accused. In the result, the appeal fails and accordingly the same is dismissed. The acquittal of the accused is confirmed.

(S.N.J.,) (N.A.N.J.,)
07-12-2016

Index : Yes
Internet : Yes
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To

1. The Inspector of Police,
Sholinghur Police Station,
Vellore District
2. The II Additional District and Sessions Judge,
Vellore at Ranipet, Vellore District
3. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU,J.
And
N. AUTHINATHAN,J.,

sr

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