

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Cr1.A.No.324 of 2013

Gopal Appellant/ Accused 1

Vs.

State rep. by
The Inspector of Police
Sipcot Police Station,
Dharmapuri,
Crime No.6/2000.Respondent/ Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment passed in S.C.No.163/2003, dated 29.07.2004, by the learned I Additional District Sessions Judge, Krishnagiri.

For Appellant : Mr.M.G.Udayashankar for
Mrs.S.Shanthakumari

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court delivered by P.KALAIYARASAN, J)

This criminal appeal is against the Judgment, dated 29.07.2004 made in S.C.No.163 of 2003 on the file of the I Additional District and Sessions Judge, Dharmapuri.

2. The appellant is the Accused No.1 in S.C.No.163 of 2003. By Judgment, dated 29.07.2004, the trial Court, while acquitting the second accused for the charge under Section 302 r/w 109 IPC, convicted the appellant herein / first accused for the offence under Section 302 IPC and sentenced him to undergo Life Imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for one year. Challenging the said conviction and sentence, the first accused has come forward with this appeal.

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

(a) The deceased Chinnapappa was married to the first accused 20 years back and they got three children. The husband used to quarrel often with his wife and on the fateful day, i.e., on 06.01.2000 night, when the deceased was alone in the house, A1 in an inebriated condition, came at 9 p.m and asked her wife to give him Rs.1,500/-. She replied from her bed that she did not have any money. Immediately, A1 poured kerosene on her and set her on fire. Then he pushed her out of the house. P.W.1, Vijayamma, mother of the deceased and another neighbour took her to the Hospital.

(b) P.W.8, Dr.Naresh admitted her at 11.30 p.m on 06.01.2000 in the Government Hospital, Hosur and on examination, he found 60% of burn injuries and sent intimation to the Judicial Magistrate to record dying declaration. P.W.11, Judicial Magistrate No.2, Hosur, on receipt of intimation, Ex.P.6 from the Hospital, reached by 12.15 midnight and recorded the dying declaration of Chinnapappa, Ex.P.12 in the presence of the duty Doctor, P.W.8. Doctor has also made an endorsement, Ex.P.7 in the dying declaration that the patient was conscious throughout the recording of the dying declaration, which was marked as Ex.P.15.

(c) P.W.14, Mr.Thangavel, the Sub-Inspector of Police, on receipt of intimation from the Hospital, went there at 1 am, on 6/7.01.2000 and recorded the statement from the victim and then he went to the police station and registered FIR, Ex.P.16 for the offence under Section 307 IPC. He sent a copy of the FIR to the Inspector of Police at 6 am. P.W.15, Mr.Noorula Khan, Inspector of Police received the copy of the FIR at 6 am on 07.01.2000 and took up the case for investigation. He went to the Government Hospital at 6.15 am and recorded the statement of the victim, under Section 161 Cr.P.C., then at 7 am, he went to the scene of crime, prepared a rough sketch, Ex.P.17 and an observation mahazar, Ex.P.1, in the presence of P.W.5, Munusamy and another witness. He also recovered burnt blouse, M.O.1 under mahazar, Ex.P.2 in the presence of the same witnesses and recorded their statements.

(d) On 07.01.2000, P.W.10, Dr.D.V.Gandhi, referred the victim from Government Hospital, Hosur to Victoria Hospital, Kolar for further treatment. P.W.7, Dr.Santhakumari, working in Victoria Hospital, Kolar, admitted the victim Chinnapappa at 1 pm on 07.01.2000 with burn injuries. The victim was conscious and able to speak at that time and she told the Doctor that due to wordy altercation between her and her husband, her husband poured kerosene and lit fire on her. The copy of the Accident Register is marked as Ex.P.5. P.W.15, Inspector of Police received the death intimation through P.W.12, Head Constable,

Ramasamy on 10.01.2000 and altered the Section 307 into 302 IPC and sent Express Report, Ex.P.16 to the Judicial Magistrate.

(e) At 3.30 p.m, the Investigating Officer, had been to the Hospital, Kolar and held inquest in the presence of panchayatdars and prepared Inquest Report, Ex.P.18. On receipt of the request, Ex.P.19 from the Investigating Officer through the Head Constable, P.W.13, Dr.K.H.Manjunath, P.W.9, conducted autopsy between 10.50 and 11.50 a.m on 11.01.2000. He found the following injuries :

"Moderately fult, rigor mortis present all over the body infected burns over face, neck front sides and back of chest and abdomen. Both upper and lower limbs. Burnt area covered with unhealthy gromlation tissue and foul smelling odour. Skull and vertebrae : Skull intact."

(f) The Doctor opined that there were 82% burns and that the death was due to toxemia, as a result of burns sustained. After postmortem, the Head Constable handed over the body to the relatives of the deceased. The Investigating Officer examined the Doctors and the remaining witnesses and recorded their statements. On 12.01.2000 at 5 pm, he arrested the accused at Durgah Bus stop and recorded his voluntary confession statement in the presence of P.W.6, Mr.Narayanan and another witness. The admissible portion of the confession statement is marked as Ex.P.3. As per the confession statement, the accused took the Investigating Officer and the witnesses to his house and took out the kerosene can and match box, M.O.2 and M.O.3 and handed over the same to the Investigating Officer, who in turn recovered the same under Mahazar, Ex.P.4 in the presence of the above said witnesses.

(g) Dr.Chennaiyan, Government Hospital Hosur, examined the accused on 13.01.2000 for the burn injuries on him. Ex.P.8 is the copy of the Accident Register. As the Doctor, who issued certificate passed away, Ex.P8 has been provided through P.W.8. Then the Investigating Officer sent the accused to the Court for remand. He further examined the remaining witnesses. P.W.16, M.Krishnan, Inspector of Police took up further investigation and laid charge sheet in this case.

4. The trial court framed charges as detailed in paragraph No.2 of the Judgment. The accused denied the charges. To prove the case of the prosecution, 16 witnesses were examined and 19 Exhibits marked, besides 3 material objects. All the eye witnesses, P.W.1 to P.W.4, including the mother of the deceased turned hostile. Having considered all the above, the Trial Court convicted the accused as stated supra. Hence, the appellant / accused is before this Court with this appeal.

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

6. Learned counsel appearing for the appellant mainly contends that the conviction, based on dying declaration alone by the trial court is not sustainable.

7. We have heard the Additional Public Prosecutor on these aspects.

8. In this case, it is seen that Chinnapappa, who sustained burn injuries was taken to the Government Hospital, Hosur and then referred to Victoria Hospital, Kolar, where she succumbed to burn injuries. P.W.8 and P.W.10, Doctors of Government Hospital, Hosur, have deposed that the victim was brought to the Hospital at 11.30 pm on 06.01.2000 with burn injuries and she was referred to Victoria Hospital, Kolar. P.W.7, Doctor in Victoria Hospital, admitted the victim there and treated her. She has also deposed about severe burn injuries on the deceased. P.W.9, Doctor, who conducted autopsy opined that death was due to toxemia, as a result of burns sustained. Therefore, it is clear that the deceased died, as a result of burns sustained by her.

9. The case of the prosecution is that A1 poured kerosene and lit fire on the victim at 9 pm on 06.01.2000. The occurrence took place inside the house and therefore, there is absolutely no chance for the outsiders or any third person to witness the occurrence. According to the prosecution, she was pushed out of the house, after lighting fire. Neighbours including the mother of the deceased, who are also residing nearby, could have seen the deceased with fire and also the accused coming out from the house. But P.W.1 to P.W.4 have not spoken anything in support of the prosecution and turned hostile.

10. The evidence available to prove the case of the prosecution is the dying declaration of the deceased and also burn injuries on accused, establishing his presence with his wife at the time of occurrence. The evidence on the above aspects are to be weighed very carefully, to find out whether the conviction of the trial court is sustainable or not.

11. In this case, there is not only one dying declaration, but there are three statements given by the deceased, while she was in her death bed. The occurrence took place at 9 pm on 06.01.2000. She was taken to the Hospital at 11.30 pm and on the same day midnight at 12.15, Judicial Magistrate recorded the dying declaration Ex.P.12. Second statement was recorded by the Sub-Inspector of Police, P.W.14. He recorded the statement from the deceased at 1 am on the same day, i.e., 6/7-01-2000. The third statement of the deceased is one that was given to the Doctor, P.W.7 in Victoria Hospital, Kolar at 1 pm on 07.01.2000,

when she was referred to that Hospital for further treatment. P.W.7 has categorically deposed that the deceased was conscious and capable of speaking. She further says that the victim told her that due to altercation, her husband poured kerosene and lit fire on her on 06.01.2000. In the statement given to the Sub-Inspector also the deceased has stated that her husband poured kerosene and lit fire on her.

12. Learned counsel for the appellant attempted to focus the absence of medical certificate to the effect that the victim was in a fit state of mind at the time of making the declaration.

13. In *Koli Chunilal Savaji and another v. State of Gujarat*, reported in (1999) 9 SCC 562, it has been held that doctors' endorsement, as to the mental fitness of the deceased, to make the declaration is only a rule of prudence. The ultimate test is truthfulness and voluntary nature of the declaration. The Constitution Bench of the Supreme Court in *Laxman v. State of Maharashtra*, reported in AIR 2002 SC 2973, affirmed the law laid down by the Supreme Court in *Kohli chunilal savaji and another v. State of Gujarat*.

14. When coming to the dying declaration in this case, the Judicial Magistrate, recorded the dying declaration in the presence of the Doctor and the Doctor also made an endorsement in the dying declaration that the patient was sane and conscious throughout the recording and the statement was recorded in his presence. The Judicial Magistrate also initially put certain questions to the deceased; after she got satisfied herself that the deceased was in a fit state of mind to make the statement, she recorded the dying declaration. The Judicial Magistrate mentioned about her satisfaction as to the mental state of the deceased in the dying declaration itself.

15. We are conscious that the Court has to be on guard against the statement of the deceased, being a result of either tutoring, prompting or a product of imagination of the dying person. The Court must be satisfied that the deceased was in a fit state of mind to make the statement, after the deceased had a clear opportunity to observe and identify his assailant and that she was making the statement, without any influence or rancour.

16. We are of the considered view that in the instant case, the deceased had made the statement without any influence, for the reasons that she has not only stated once before the Judicial Magistrate alone, immediately after she was admitted in the Hospital, but also twice, subsequently, one before the Sub-Inspector of Police within an hour and another on the next day at 1 pm, before the Doctor of another Hospital, where she was

referred for further treatment. Therefore, the dying declaration made by the deceased before the Judicial Magistrate is true and voluntary.

17. Once this Court is satisfied that if the dying declaration is true and voluntary, the conviction can be based on such dying declaration, even without any further corroboration. But in this case, one corroborating factor is also available. The accused was arrested at 5 p.m on 12.01.2000 and examined by the Doctor and two burn injuries were found on him, one on the left forehead and another in the left dorsum of foot, as per Ex.P.8. P.W.8, Doctor also deposed about the issuance of the above AR copy by Doctor Chennaiyar, who is no more.

18. Had the accused not involved in the crime, he should have been with her wife, trying to save her and taking her to the Hospital etc. The fact that he had sustained burn injuries, establishes his presence at the time of occurrence. He fled away from the scene of crime and had been away from time of crime, i.e., on 06.01.2000, 9 p.m, till his arrest that is on 12.01.2000 at 5 p.m. The conduct of the accused also corroborates his involvement in the crime. Thus, we are of the considered view that the prosecution has proved its case beyond all reasonable doubt and the trial court was correct, in convicting the accused for the offence under Section 302 IPC. So far as the quantum of punishment is concerned, the trial Court has imposed only minimum punishment, which does not require any interference at the hands of this Court. Hence, we do not see any merit in the appeal and accordingly, the same is liable to be dismissed.

19. In the result, the criminal appeal is dismissed. The conviction and sentence imposed on the appellant, by the trial Court is hereby confirmed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

tsvn

To

1. The I Additional District and Sessions Judge,
Krishnagiri.

2. The Principal Sessions Judge
Krishnagiri

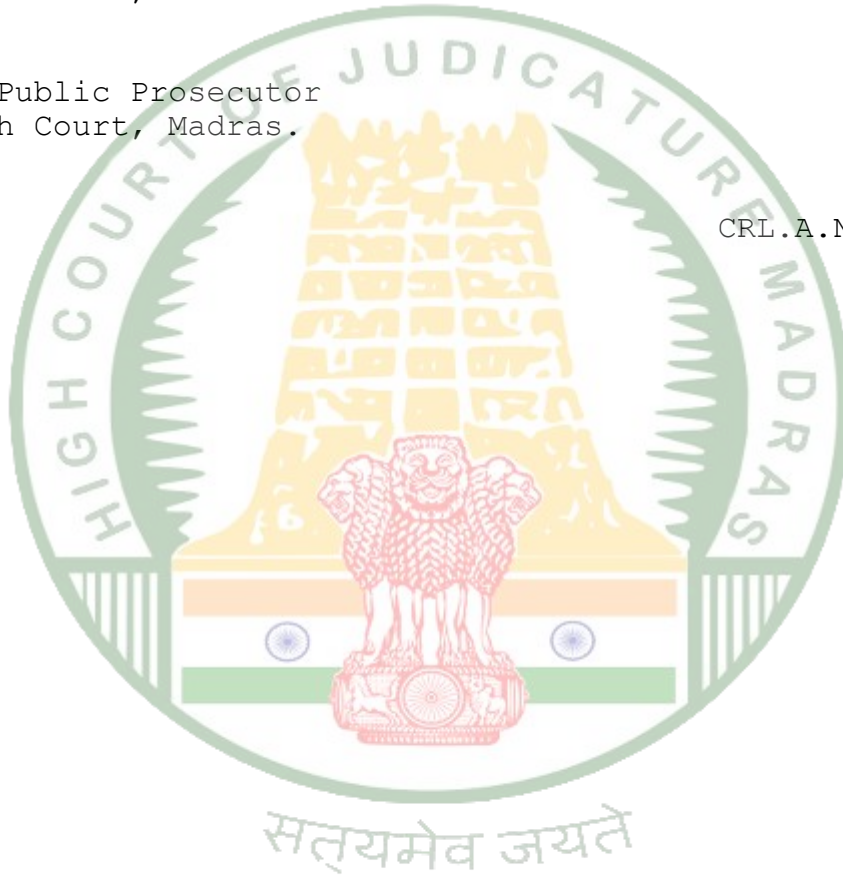
3. The Inspector of Police
Sipcot Police Station,
Dharmapuri.

4. The Superintendent
Central Prison,
Vellore

5. The Public Prosecutor
High Court, Madras.

CRL.A.No.324 of 2013

KK (CO)
kk 5/5



WEB COPY