

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.5 of 2016

Mohammed Rafiq
Appellant

...

vs.

State,by
The Inspector of Police,
All Women Police Station,
Avinashi.
(Crime No.15 of 2013)
Tiruppur District

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 22.12.2015 passed by the learned
Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila
Court), Tiruppur in S.C.No.83 of 2014.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.E.Raja, 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.83 of 2014, on the file of the learned Sessions
Judge, Magalir Neethi Mandram, (Fast Track Mahila Court),
Tiruppur. He stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	Sole Accused	U/s. 498-A and 302 IPC

2. The trial Court, by Judgment, dated 22.12.2015, convicted
the accused and sentenced him as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
Accused	U/s. 302 IPC U/s. 498-A IPC	Imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for one year. Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months.

The trial Court also directed the appellant to pay a compensation of Rs.1,00,000/- (Rupees one lakh only) to the minor child of the accused. The trial Court further directed that the compensation amount along with fine amount of Rs.1,15,000/- shall be deposited in any one of the Nationalized Bank in the name of minor child till she attain majority. P.W.1 was permitted to withdraw the accrued interest once in three months. The sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) The deceased, in this case, one Zahitha Banu, was the wife of the accused. The marriage between the accused and the deceased took place on 15.09.2011, and at the time of marriage, the deceased family has given 5 sovereign of gold jewels to the deceased, after the marriage, the accused harassed the deceased demanding more dowry and quarrelled with her frequently. On 06.09.2013 at about 10.30 a.m., the accused quarrelled with the deceased demanding seven sovereigns of gold jewels and during such quarrel, the accused poured kerosene and set fire on her and went away from the scene of occurrence. Hearing the noise of the deceased, neighbours came and attempted to douse the fire. Then, the accused came back and took the deceased to the Government Hospital, Tiruppur. P.W.4 is a Doctor working in the Government Hospital, Tiruppur where the deceased was admitted. PW4 on examination of the deceased sent a memo to the respondent police as well as the learned Judicial Magistrate for recording dying declaration.

(ii) P.W.9, Special Sub Inspector of Police attached to the respondent police station, on receipt of the memo from the Government Hospital, went to the Hospital, and he recorded the statement of the deceased, based on the statement, registered a case in Crime No.15 of 2013 for the offences under Sections

498(A) and 307 IPC, and prepared first information report [Ex.P12], sent the same to the learned Judicial Magistrate No.I, Avinasi and copies of the same were forwarded to the higher officials.

(iii) P.W.11, Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence and prepared an observation mahazar [Ex.P11], drew a rough sketch [Ex.P14] in the presence of witnesses. Then, he seized half burned nylon match sticks 2 nos., [M.O.2], white colour plastic bottle with kerosene [M.O.1], Orange colour nighty [M.O.3], half burned bra [M.O.4] and rose colour inskirt [M.O.5], in the presence of witnesses. He examined some witnesses and recorded their statements. On 07.09.2013, early morning, P.W.11 proceeded to the Government Hospital, Tiruppur, where, he recorded the statement of the deceased and on the same day at about 9.00 a.m., he arrested the accused and sent him to the Judicial custody.

(iv) In the meantime, P.W.7, learned Judicial Magistrate No.I, Tiruppur, on receipt of the memo from the Government Hospital, reached the Hospital at about 03.40 p.m., and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration recorded the dying declaration of the deceased. Before and after recording the dying declaration, he obtained necessary certificate from the duty Doctor to the effect that the deceased was conscious and in a fit state of mind to give dying declaration.

(v) Subsequently, on 11.09.2013 at about 5.45 a.m., the deceased succumbed to the injuries. After receipt of the death information from the Hospital, P.W.11, altered the case into under Sections 498-A and 302 IPC, and prepared alteration report [Ex.P15] and sent the same to the Judicial Magistrate Court. Since the deceased died within seven years of marriage, he sent intimation to the Revenue Divisional Officer and also to the Deputy Superintendent of Police, Avinashi. Based on the order passed by the Deputy Superintendent of Police, Avinashi, P.W.11 conducted inquest over the dead body in the presence of panchayatdars in the Hospital at Tiruppur between 10.30 a.m., and 1.00 pm., and prepared inquest report [Ex.P16]. Then, he sent a requisition letter to the Hospital for conducting postmortem on the dead body.

(vi) P.Ws.5 and 6, the Assistant Surgeons, working in the Government Hospital, Tiruppur, jointly conducted postmortem on the dead body of the deceased and they found the following injuries:-

External Injuries:

(1) 2nd degree burns present in right UL both front and back including hands. Right LL both front and back, Lt LL front and back. Lt UL front of back including hands. Few blutus

are present in left forearm - palmer surface bordered by red skin few blustus contains serous fluid. Blackish discolouration of the above mentioned parts seen. (2) 3rd degree burns present in anterior chest and anterior abdomen present. Whole thickening of the skin destroyed sooty blackening of the part few pus points seen. 4x6cm raw area seen in left lower abdomen. (3) 2nd degree burns seen in the face and posterior chest and posterior abdomen and perineal area face is swollen. Raw area seen in the face and neck. Scalp and hair in the head-intact. Eyelids-closed. Mouth closed, tongue kept inside the mouth. Abdomen uniform, On c/s Opening of thorax. ribs intact. Both lungs congested right 520 gms, left 420 gms. Heart weight 250 gm contains 20 ml of clotted blood seen in left ventricle. Thyroid bone-intact. Stomach-empty. Liver-congested weight-1500g, spleen -congested 140gm. Kidneys congested at 150 gm on c/s of uterus-copper T present on opening of the head. Bones and membranes intact. Brain congested at 1200 gm.

They opined that the deceased died of shock and multi organ dysfunction due to severe burns.

(vii) P.W.11, continued the investigation, examined the Doctor, who conducted postmortem autopsy on the dead body, and other witnesses and recorded their statements. Then, P.W.11, handed over the investigation to P.W.12. P.W.12, Assistant Commissioner of Police, Avinashi, conducted further investigation, examined some witnesses and recorded their statements and after completion of investigation, he laid charge sheet against the accused/appellant.

4. 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 the case of prosecution, as many as 12 witnesses were examined and 17 documents and 3 material objects were marked.

5. Out of the above said witnesses examined, P.W.1 is the sister of the deceased. According to her, at the time of marriage, the accused offered five sovereign of gold jewels to the deceased and after the marriage, the accused harassed the deceased and quarrelled with her frequently and sent her to parental house. At the time, the deceased was pregnant and she gave birth to a female child and after one year, the accused and another took her back to her matrimonial house with child. On 06.09.2013, the deceased informed P.W.1 that the accused is harassing and quarrelling with her frequently. Subsequently, on the same day, at about 10.30 a.m., P.W.2, informed her about the occurrence. P.W.2 is the neighbour of the deceased. She spoke

about the quarrel between the accused and the deceased. According to her, on the date of occurrence at about 11.00 a.m., the sister of the accused informed her about the occurrence. Thereafter, she along with P.W.1 went to the Hospital. P.W.3 is the husband of P.W.1. He spoke about the quarrel between the accused and the deceased. P.W.4 is Assistant Surgeon working in the Government Hospital, Tiruppur. According to him, on 06.09.2013 at about 1.00 p.m., the accused brought the deceased with burn injuries and he admitted her in the Hospital, at that time, the deceased told him that it is a self immolation and she poured kerosene on herself and set fire on her. He issued Accident Register [Ex.P3], and sent a memo to the respondent police and also to the jurisdictional Judicial Magistrate Court for recording dying declaration of the deceased. P.Ws.5 and 6 are Assistant Surgeons, working in the Government Hospital, Tiruppur, they jointly conducted postmortem autopsy on the dead body of the deceased and gave Postmortem Certificate [Ex.P7]. P.W.7, the learned Judicial Magistrate No.I, Tiruppur, recorded the dying declaration of the deceased. P.W.8, is the witness to the observation mahazar and also recovery of material objects. P.W.9 is the Special Sub Inspector of Police, working in the respondent police. According to him, on receipt of the complaint he proceeded to the Government Hospital, Tiruppur and based on the statement given by the deceased, registered a case and sent the first information Report to the Judicial Magistrate Court, and copies of the same forwarded to the higher officials. P.W.10 is the Scientific Officer, Forensic Laboratory, Chennai. He examined the material objects and gave report [Ex.13]. P.W.11 is the Inspector of Police attached to the respondent police who has stated that on receipt of the first information report, he commenced the investigation, examined the witnesses, recorded their statements, arrested the accused, recovered material objects and hand over the investigation to P.W.12. P.W.12, the Assistant Commissioner of Police, Avinashi conducted further investigation, examined the witnesses and recorded their statements and after completion of investigation, he filed charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused examined three witnesses on his side. D.W.1 is the neighbour of the accused and the deceased. D.W.2 is the sister of the accused and she is residing near the house of the accused. D.W.3 is the employer of the accused and he did not mark any document on his side.

7. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

8. We have heard Mr.N.Manoharan, learned counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. The learned counsel appearing for the appellant would submit that it is a case of self immolation. At the earliest point of time, when the deceased was admitted in the hospital, she has stated that she herself poured kerosene and set fire on her. Subsequently, she has changed the version and implicated the accused. D.W.1, is the neighbour and independent witness and also eye witness to the occurrence. She has categorically stated that it is only the deceased came out of the house and she herself poured kerosene on her nighty and set fire on her. D.W.2 is the sister of the accused. According to her, on the date of occurrence she was also present inside the house of the deceased. D.W.3 is the employer of the accused. According to him, at the time of occurrence, the accused was working in his company and after hearing the news through phone, he sent him to his house. From the above evidence, the Judicial dying declaration of the deceased cannot be believed. Hence, he prays for allowing this appeal.

10. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the deceased has given a Judicial dying declaration, where, she categorically implicated the accused, and her Judicial dying declaration cannot be disbelieved. He further contended that the prosecution has clearly established the guilt of the accused beyond any reasonable doubt and hence he sought for dismissal of this criminal appeal.

11. We have heard the rival submissions.

12. It is a case of multiple dying declarations. The first dying declaration was given by the deceased before P.W.4, the Doctor, working in the Government Hospital, Tiruppur, wherein, the deceased stated that she herself poured kerosene and set fire on her at about 10.30 am., Subsequently, the second dying declaration was given before P.W.9, the Special Sub Inspector of Police attached to the respondent police station, wherein the deceased changed her version and implicated the accused. In his evidence, P.W.9 stated that at the time of recording the dying declaration, P.W.1 was also present. Thereafter, the deceased given 3rd dying declaration before the learned Judicial Magistrate No.I, Tiruppur, wherein she stated that on the date of occurrence at about 9.00 a.m., there was a quarrel between the accused and the deceased and during such quarrel, the

accused poured kerosene and set fire on her and went away, again the accused came back to his house and he along with her sister took the deceased to the Hospital and admitted her. In the above three dying declarations there are material contradictions. In the first dying declaration given by the deceased before the Doctor(P.W.4), she has stated that it is a self immolation, subsequently, in the second dying declaration given before the Special Sub Inspector of Police(P.W.9) and the third dying declaration given before the learned Judicial Magistrate, she had changed her earlier version. It is the evidence of P.W.9, that at the time of recording the statement of the deceased in the hospital, the sister of the deceased was also present, hence, the possibility of tutoring cannot be ruled out.

13. So far as the Judicial dying declaration is concerned, it is settled principle law that the Judicial Magistrate recording the dying declaration has to personally satisfy himself that the patient was conscious enough and in a fit state of mind to give dying declaration. But in the instant case, the learned Judicial Magistrate has only obtained a certificate from the duty doctor. But, he did not record the personal satisfaction regarding the consciousness and fit state of mind to give dying declaration of the deceased.

14. Since the dying declarations are not consistence and there is a possibility of tutoring, it is highly unsafe to rely upon the dying declaration of the deceased to convict the accused. Apart from that the defence witness, namely, D.W.1, who is the neighbour of the accused and the deceased, residing near to their house also an eye witness to the occurrence has stated that at the time occurrence, she saw the deceased coming out of the house and she herself poured kerosene to her neighty and set fire on her and raised alarm. Immediately, P.W.2, the sister of the accused came out of the house and D.W.1 attempted to douse the fire. D.W.1 brought the bed sheet and in the meantime, P.W.2 poured the water and douse the fire and then took the deceased inside the house and removed the cloths and given first aid to her. D.W.1 further stated that, she called the 108 ambulance, since 108 ambulance did not come in time, she arranged another private ambulance and at that time the accused and his mother came, and they took the deceased to the Hospital. D.W.1 is an independent witness and is being a neighbour. Her evidence is natural and nothing was brought out in the cross examination, attributive any motive. D.W.2 is the sister of the accused and at the time of occurrence she was also present in the house and studying inside the house, at that time, hearing the noise she came out and saw the deceased with fire, she along with D.W.1 doused the fire and informed her brother/accused, and her mother. D.W.3 is the employer of the accused. According to him, at the time of occurrence, the

accused and his mother were working in his company and he received the phone call regarding the occurrence, therefore, he sent the accused to his house in his moped and then he followed him to his house. From the evidence of D.W.3, it is evident that at the time of occurrence, the accused was working in D.W.3's company. The evidence of above defence witnesses creates serious doubt regarding the case projected by the prosecution. Considering the above circumstances, we are of the considered opinion that it is highly unsafe to convict the accused based on the inconsistent dying declarations given by the deceased in absence of any other corroborating evidence.

15. So far as the conviction under Section 498(A) IPC is concerned, all the prosecution witnesses only spoke about the quarrel between the deceased and the accused, according to them, there was no dowry harassment. When there was no dowry demand, the conviction under Section 498(A) IPC, also cannot be sustained. In the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

16. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Tiruppur, in Sessions Case No.83 of 2014 dated 22.12.2015 is set aside and the appellant/accused is acquitted of all the charges levelled against him and bail bond, if any executed by him shall stand cancelled and the fine amount, if any, paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Sessions Judge,
(Fast Track Mahila Court),
Tiruppur.

2.The Inspector of Police,
All Women Police Station.
Avinashi, Tiruppur District.

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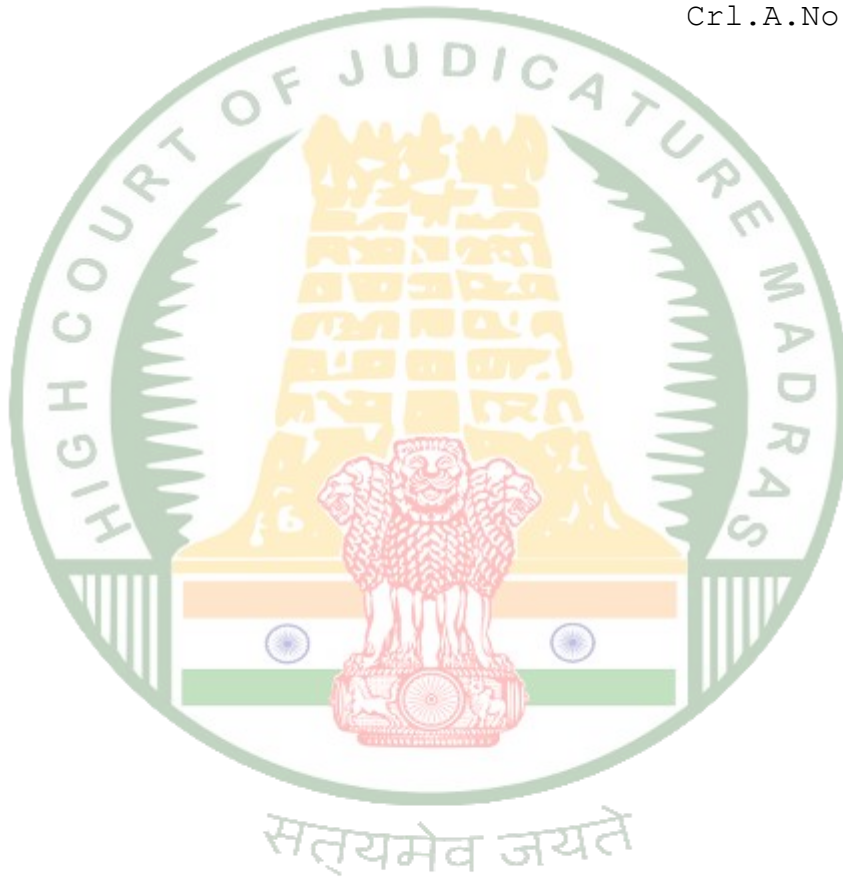
3.The Public Prosecutor,
High Court, Madras.

4 The Superintendent Central Prison, Coimbatore

+1cc to Mr.N. Manokaran, Advocate, S.R.No.46184

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md(24/01/2017)

Cr1.A.No.5 of 2016



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