

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.640 of 2016
& Crl.M.P.No.8869 of 2016

Deiva Kumar Appellant/Single Accused

Vs.

The State rep. by
The Inspector of Police
Kadathur Police Station
Gobichettipalayam Circle
Erode District Respondent/Complainant

Prayer: CRIMINAL APPEAL filed under section 374(2) of Cr.P.C. against the judgment dated 28.7.2016 made in S.C.No.4 of 2016 by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

The conviction and sentence dated 28.7.2016 passed in Sessions Case No.4 of 2016 by the Magalir Fast Track Court, Erode are being challenged in the present Criminal Appeal.

2. The contraction of the case of the prosecution is that the accused Deivakumar and deceased Eswari have loved each other and prior to 8 years from the date of occurrence, their marriage has been performed and both of them have been blessed with a daughter by name Govarthini. At the time of the occurrence, the accused has served in a work shop situated at Kunnathur. For the past 2 years, the accused has used to suspect the fidelity of the deceased and very often, he made wrangling with her. On

24.10.2015, the deceased has gone to Kasiyoor for attending a condolence and on the same day at about 4 p.m., she returned home. At that time, the accused has asked the deceased as to with whom, she has had illicit intimacy and all of a sudden, the accused has poured kerosene on the body of the deceased and set fire on her. After such occurrence, she has been admitted in Government Hospital, Erode, where she succumbed to injuries on 25.10.2015 at about 1.45 a.m. The deceased herself has given a statement to the Sub Inspector of Police and the same has been registered in Crime No.316 of 2015 and marked as Ex.P.13.

3. On receipt of Ex.P.13, the investigating officer, (P.W.17) has taken up investigation, examined connected witnesses and after receipt of factum of death, he made arrangements for conducting necropsy on the body of the deceased and accordingly, P.W.11 has conducted same and he found the following external and internal injuries:

- i. External Examination :-
80 - 90% burns of second degree burns present in chest, abdomen whole back. Both lower limbs, medical aspect of two upper limbs are spared.
- ii. Internal Examination :-
Chest - Ribs normal not fracture. Heart 200gmss clotted blood + Lungs - right 500 gm. Left -460 gm. Hyroid-normal stomach- 250 ml of Undigested food particles present. Liver -1500 gms., pale, spleen - 120 gms pale, Kidney-100 gm each, pale. Intestines - normal, skull - no bony injury no fracture forum - pale 1400 gms., spinalord - normal.

The Postmortem Certificate has been marked as Ex.P.12.

4. After transfer of P.W.17, P.W.18 has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate No.2, Gobichettipalayam and the same has been taken on file in P.R.C.No.17 of 2015.

5. The Judicial Magistrate No.2, Gobichettipalayam, after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Erode Division and the same has been taken on file in Sessions Case No.4 of 2016 and subsequently made over to the trial court.

6. The trial court, after after hearing arguments of both sides and upon perusing the relevant materials on record, has framed a charge against the accused under Section under section 302 of the Indian Penal Code and the same has been read over and

explained to him. The accused has denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 18 have been examined and Exhibits P.1 to P.26 and Material Objects 1 to 4 have been marked.

8. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.

9. On the side of the accused, no documents have been marked. However, D.Ws.1 and 2 have been examined.

10. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo life Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused, as appellant.

11. The consistent case put forth on the side of the prosecution is that both the accused and deceased have loved each other, which culminated in their marriage prior to 8 years and both of them have been blessed with a daughter by name Govarthini. Prior to 2 years from the date of occurrence, the accused has used to suspect the fidelity of the deceased. On 24.10.2015, after attending a condolence, the deceased has taken bath and after seeing the same, the accused has asked her as to with whom she has had illicit intimacy and at that time, he poured kerosene on the body of the deceased and set fire and due to burn injuries, she has been admitted in Government Hospital, Erode, where she succumbed to injuries on 25.10.2015 at about 1.45 a.m.

12. The entire case of the prosecution hinges upon Ex.P.13, the statement alleged to have been given by the deceased to the Sub Inspector of Police, who has been examined as P.W.14. In Ex.P.13, it has been clearly stated about the conduct of the accused and the details of attack made by him on the person of the deceased. Apart from Ex.P.13, the Judicial Magistrate No.2 (P.W.9) has recorded a Dying Declaration from the then injured (deceased) and the same has been marked as Ex.P.5. The trial court, after considering Ex.P.5 and Ex.P.13, coupled with other available oral evidence, has found the accused guilty under section 302 of the Indian Penal Code and imposed the sentence as mentioned supra.

13. The learned counsel appearing for the appellant/ accused has vehemently contended that both P.W.1 and D.W.2 have stated in their evidence that the deceased herself poured kerosene and set fire on her and the same has been suppressed on the side of the prosecution. Further, in Ex.P.16, no mention has been made with regard to cause of injury sustained by the then injured-deceased. Likewise, in Ex.P.18 also, no reason has been mentioned. Ex.P.13 has been recorded at about 19.30 hours, but registered on the same day at about 11 p.m., and reached court next day. Further, the specific evidence given by D.W.2 is that after admitting the then injured (deceased) in Government Hospital, Erode, the then injured-deceased has been tutored to the effect that the accused has poured kerosene on her. Further, the accused has also sustained injuries in the course of attempting to save the then injured-deceased. Further, the specific evidence of P.W.4 is that he handed over a suicide note to the police. Further, the specific evidence given by P.W.5 is that both the accused and deceased have attended a condolence. The prosecution has schemingly suppressed the earlier statement made by the then injured-deceased and further in Ex.P.5, it has been clearly stated about the custody of the child. Under the said circumstances, after occurrence, the parents of the deceased and others have tutored her so as to implicate the appellant-accused in the present case and the trial court, without considering the infirmities/lapses found in the case of the prosecution, has erroneously invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

14. The learned Additional Public Prosecutor has meticulously contended that in the instant case, one of the brothers of the deceased has been examined as P.W.4 and his specific evidence even in the chief examination is that the then injured-deceased has stated to him that the accused has poured kerosene and set fire on her and apart from the evidence given by P.W.4, on the side of the prosecution, Exs.P.5 and P.13 have been marked and the same are nothing but Dying Declarations and the trial court, after considering the evidentiary value of Ex.P.5 and Ex.P.13, has rightly invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

15. As adverted to earlier, the entire occurrence has taken place inside the house, where both the accused and deceased have resided together on the date of the occurrence. It is an admitted fact that as per medical evidence, the deceased has passed away only due to burn injuries.

16. The only point that has to be decided in the present Criminal Appeal is as to whether the deceased has herself poured Kerosene on her body and set fire or the accused is responsible for the death of the deceased, as spoken by the prosecution.

17. The prosecution has set the law in motion only on the basis of Ex.P.13, statement given by the then injured-deceased to P.W.14 and the same has been registered in Crime No.316 of 2015. In Ex.P.13, it is not an adulation to say that then injured-deceased has narrated the entire ordeals meted out at the hands of the accused. Further in Ex.P.13, it has been clearly mentioned about the occurrence alleged to have taken place on 24.10.2015. Further in Ex.P.13 it has been specifically mentioned that on the date of the occurrence, the deceased has attended a condolence and returned home and after taking bath, the accused has asked her as to with whom she has had illicit intimacy. Further it has been clearly stated that the accused has poured kerosene and set fire on her.

18. The statement given by the then injured-deceased has been registered in Crime No.316 of 2015 on the side of the prosecution. Plethora of evidence is available for the purpose of proving that the death has occurred due to burn injuries.

19. At this juncture, it would be useful to look into Section 32(1) of the Indian Evidence Act, 1872, wherein it has been clearly stated that if a deponent of a statement has passed away after giving such statement, the same can be treated as a Dying Declaration. In the instant case, even in Ex.P.13 it has been clearly mentioned that the accused has poured kerosene on the body of the deceased and set fire on her. Further, the medical evidence would clearly go to show that the death has occurred due to burn injuries. Since the deponent of Ex.P.13 has passed away only due to burn injuries and only due to cause mentioned in Ex.P.13, the Court can very well treat Ex.P.13 as a Dying Declaration and since Ex.P.13 is a Dying Declaration, the same does not require any corroborative evidence.

20. Apart from Ex.P.13, on the side of the prosecution, Ex.P.5 has been marked. Ex.P.5 is nothing but another Dying Declaration alleged to have been given by the then injured-deceased and the same has been recorded by P.W.9, Judicial Magistrate. The specific evidence given by P.W.9 is that at the time of recording Ex.P.5, the then injured-deceased has possessed of consciousness and the same has been encrusted by way of marking Ex.P.4, Certificate given by the concerned Doctor. Therefore, as pointed out earlier, with the aidance of Section 32(1) of the Indian Evidence Act, 1872, Ex.P.5 can also be looked into and the same does not require any corroborative

evidence. Even in Ex.P.5, it has been clearly stated about the ordeals meted out by the then injured-deceased at the hands of the accused.

21. The specific defence put forth on the side of the appellant-accused is that with regard to custody of child, a longstanding misunderstanding has been in existence between the accused and deceased and due to that, the deceased herself has poured Kerosene on her person and set fire and the same has been spoken by P.W.1 and D.W.2 and further, the specific evidence of P.W.4, one of the brothers of the deceased is that he handed over a suicide note to the police, but the police have buried the same and further even in the Accident Register, viz., Ex.P.16 and Ex.P.18, no mention has been made with regard to cause of injuries. Under such circumstances, the Court can easily come to a conclusion that the prosecution has suppressed the real occurrence.

22. It is true that P.W.1 and D.W.2 have spoken about the alleged self-immolation of the then injured-deceased. Ex.P.16 is the first document, wherein no mention has been made that the then injured-deceased has herself poured kerosene and set fire on her. The author of Ex.P.16 has been examined as P.W.15 and he has not stated anything about the self-immolation. It is also true that P.W.4 during the course of cross-examination has admitted that he handed over a suicide note to the police, but to prove the same, no acceptable evidence is available. Merely because P.W.1 and D.W.2 has stated in their evidence to that effect and simply because P.W.4 in his evidence stated that he has handed over suicide note to the concerned police, the Court cannot come to a conclusion, without sufficient materials, to the effect that the then injured-deceased has herself poured Kerosene and set fire on her.

23. As adverted to earlier, the prosecution has set the law in motion only on the basis of Ex.P.13. At this juncture, an inert exercise has been made on the side of the appellant-accused to the effect that after occurrence, initially the then injured-deceased has been admitted in Government Hospital, Gobichettipalayam and subsequently she has been admitted in Government Hospital, Erode and during the interregnum period, she has been tutored by parents and others so as to implicate the appellant-accused in the present case, since a longstanding misunderstanding has been in existence with regard to custody of child. It is true that in Ex.P.5, Dying Declaration, it has been stated as to who has to take custody of the child after her demise and that itself would not go to show that a longstanding dispute has been in existence with regard to custody of child and further on the side of the defence, sufficient materials are not available for the purpose of coming to a conclusion that

only after getting advice from the parents of the then injured-deceased, she has given Ex.P.13 and also Ex.P.5. Since absolutely there is no evidence for coming to a conclusion that Ex.P.13 and Ex.P.5 have been given only on the basis of ill-advice given by certain persons, on the basis of surmises or conjectures, the Court cannot come to a conclusion that after tutoring, the said documents have become emerged. Therefore, the said contention put forth on the side of the appellant-accused cannot be accepted.

24. It is seen from the records that Ex.P.13 has been recorded at about 19.30 hours and registered on the same day at about 11 p.m., and reached Court next day. It is an everlasting principle of law that a mere delay in sending material documents to court would not affect the case of the prosecution, unless a specific contra evidence is available to that effect. Therefore, viewing from any angle, the contentions put forth on the side of the appellant-accused are of no use.

25. The trial court, after properly appreciating the available evidence on record, has rightly found the appellant-accused guilty under section 302 of the Indian Penal Code. In the light of the discussions made earlier, this Court has not found any subsisting force in the contentions put forth on the side of the appellant/accused and altogether the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The conviction and sentence passed against the appellant/accused in S.C.No.4 of 2016 by the trial court are confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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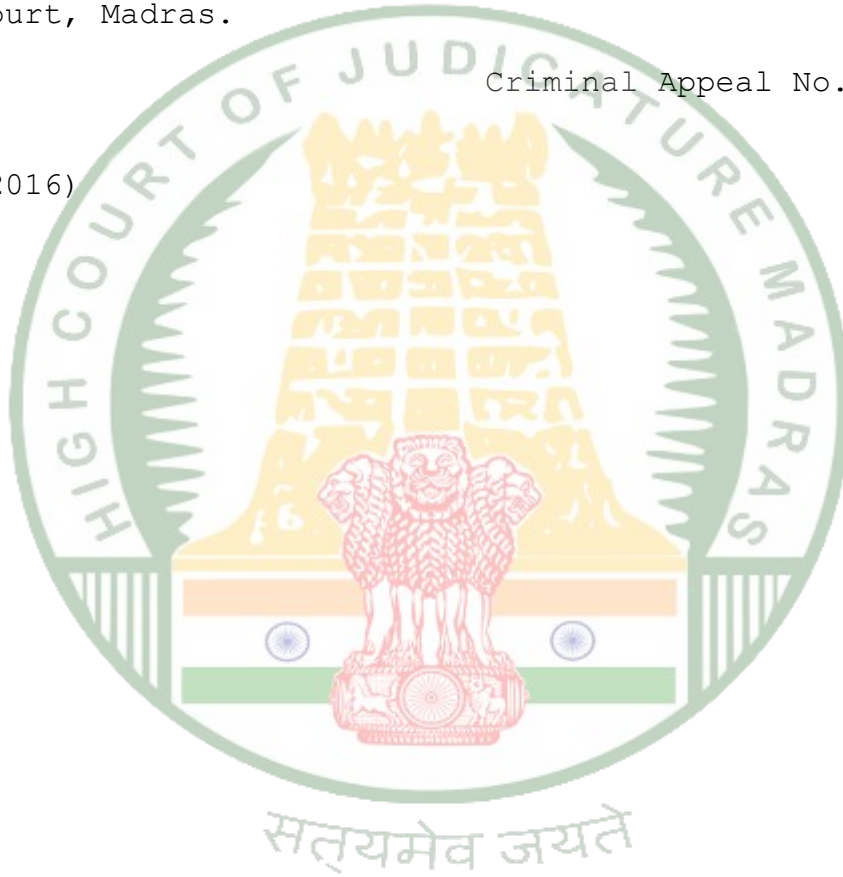
To

1. The Sessions Judge,
Magalir Needhi Mandram
(Fast Track Mahila Court), Erode.
2. The Inspector of Police
Kadathur Police Station
Gobichettipalayam Circle
Erode District

3. The Judicial Magistrate II,
Gobichettipalayam.
4. Do Through the Chief Judicial Magistrate,
Erode District.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Public Prosecutor
High Court, Madras.

Criminal Appeal No.640 of 2016

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