

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.676 of 2016

and

CrI.M.P.No.9491 of 2016

R.Senthil

.. Appellant / Sole Accused

Vs.

State rep.by Inspector of Police
N.2, Kasimedu Police Station
Kasimedu
Chennai 600 013

.. Respondent / Complainant

Prayer: CRIMINAL APPEAL filed under section 374(2) of Cr.P.C.
against the Judgment dated 27.8.2014 passed in S.C.No.349 of 2011
on the file of Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr.C.Jayaprakash

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

JUDGMENT

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

The conviction and sentence dated 27.8.2014 passed in Sessions
Case No.349 of 2011 by the Magalir Sessions Court, Chennai are
being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused by name,
Senthil, husband of the deceased, by name Nagarani, at the time of
the occurrence, worked in Kadamba Shed. He developed illicit

intimacy with one Meena. He failed to give salary to the deceased and due to that, the deceased herself has served in a Shed and on 18.2.2011, at about 4 p.m., the accused has demanded Rs.100/- for taking liquor. The deceased has refused to part with the same and due to that, a tussle has arisen between them and the deceased has come down from the house and after some time, the accused has taken her to his house, which situates in the upstairs and after some time, some of the prosecution witnesses have heard queer noise and some of them have broken the door of the house of the deceased and found that the deceased is in the state of swealing condition and the accused has come down from his house and due to occurrence, the deceased has passed away and thereafter, the mother of the deceased, by name Seniammal has given a complaint to the Inspector of Police and the same has been registered in Crime No.155 of 2011. The complaint given by the mother of the deceased has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.19 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly Dr.Anbu Selvan (P.W.16) has conducted postmortem and he found the following external and internal injuries:

" Injuries: Dermo-epidermal burns with denuded cuticle exposing the reddish area seen over the face, neck, chest, abdomen, front and back of all limb, and back of the trunk. No other external or internal injuries made out.
Scalp, bones, membranes: Intact. Brain: Normal
Hyoid bone: Intact. Larynx and Trachea: Normal
Heart: Normal in size. C/s: All chambers contained clotted blood
Coronary vessels: Patent. Lungs: Normal in size. c/s: congested
Stomach: 100 ml of bile stained fluid. No definite smell
Intestine: brown chyme present
Liver, spleen and kidneys: Normal in size. c/s congested
Bladder: Empty. Uterus: Normal in size. c/s: Empty
Pelvis and spinal column: Intact.

The Postmortem Certificate has been marked as Ex.P.11.

4. The Investigating Officer has continued investigation and after completing the same, laid a final report on the file of the 16th Metropolitan Magistrate, George Town, Chennai and the same has been taken on file in P.R.C.No.57 of 2011.

5. The 16th Metropolitan Magistrate, George Town, Chennai, 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 and the same has been taken on

file in Sessions Case No.349 of 2011 and subsequently made over to the trial court.

6. The trial court, after hearing the arguments of both sides and upon perusing relevant records, has framed a charge against the accused 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 19 have been examined and Exhibits P.1 to P.25 and Material Objects 1 to 8 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. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial court, after hearing arguments of both sides and also after perusing relevant evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo Imprisonment for life. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused, as appellant.

10. The consistent case of the prosecution is that the accused is the husband of the deceased Nagarani. Prior to occurrence, the accused has had illicit intimacy with one Meena and further he refused to give salary to the deceased. Under the said circumstances, the deceased herself worked in a Shed. Both of them have lived in a house bearing Door No.73, Singaravelan Nagar, 1st Street. On 18.2.2011 at about 4 p.m., the accused has demanded Rs.100/- from the deceased for taking liquor. The demand of the accused has not been conceded by the deceased and due to that, a tussle has arisen between them and the deceased has come down from her house and after some time, the accused has taken her to his house and subsequently, a queer noise has been heard by some neighbours and some of them have broken the door and found that the deceased has been in the stage of incinerating condition. Further, the accused has come out from the house.

11. On the side of the prosecution, for the purpose of proving the offence alleged to have been committed by the accused, P.Ws.1 to 7, 11 and 12 have been examined.

12. The trial court, after considering the evidence available on record, has found the accused guilty under section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

13. The learned counsel appearing for the appellant/accused has raised the following points so as to topsy-turvy the conviction and sentence passed against the appellant/accused:-

(i) The prosecution has set the law in motion only on the basis of Ex.P.1 and the same has been given after a lapse of three hours from the time of the occurrence.

(ii) No eye witnesses have been examined on the side of the prosecution.

(iii) P.Ws.5 and 6 have not seen the occurrence and their evidence cannot be believed in.

(iv) Likewise, P.Ws.3 and 4 have spoken about the wordy quarrel happened in between the accused and deceased and their evidence cannot be a sole basis for inviting conviction and sentence against the appellant/accused.

14. The learned Additional Public Prosecutor appearing for the respondent has contended that in the instant case for the purpose of proving the initial wordy quarrel, the mother of the deceased, by name Seniammal has been examined as P.W.1 and the sister of the deceased, by name, Poomagal, has been examined as P.W.2 and further P.Ws.3 to 7, 10 and 11 have spoken about the subsequent events and the trial court, after considering the plethora of evidence available on record, has rightly invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed against the appellant/accused do not call for any interference.

15. Before contemplating the rival submissions made on either side, the Court has to analyze as to whether the second occurrence has taken place outside the house of the accused and deceased or inside their house?

16. It is seen from the evidence available on record that the first occurrence has taken place outside the house of the accused and deceased. After some time, the accused has taken the deceased to his house, which situates in upstairs and after a lapse of few minutes, the neighbours have heard a queer noise and some of them have rushed to the house of the accused and broken the door and found the deceased in an incinerating condition and the accused has come out from his house. Therefore, it is quite clear that the occurrence has taken place inside the house of the deceased as well as accused.

17. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint, wherein it has been clearly stated that the author of Ex.P.1 is having suspicion over the deceased. It is an admitted fact that Ex.P.1 has been initially registered under

section 174 of Code of Criminal Procedure, 1973. The author of Ex.P.1 has been examined as P.W.1 and her another daughter by name Poomagal has been examined as P.W.2. Both of them have spoken about the initial occurrence, which has taken place outside the house of the accused on 18.2.2011. Likewise, the neighbours, viz., P.Ws.3 and 4 have also spoken about such occurrence.

18. The specific case of the prosecution is that on the date of occurrence, the accused has demanded a sum of Rs.100/- from the deceased for taking liquor and his demand has not been accepted by the deceased and due to that, a tussle has arisen and both of them have come out from their house and quarrelled with each other. From the evidence given by P.Ws.1 to 4, the Court can easily deduce that on the date of occurrence, a wordy quarrel has occurred betwixt the accused and deceased.

19. The prosecution has chosen to examine P.Ws 5, 6, 11 and 12 for the purpose of proving the second occurrence alleged to have taken place on the date of occurrence inside the house of both the accused and deceased.

20. In fact, both P.Ws. 5 and 6 have consistently stated about the queer noise heard by them and subsequently, they rushed to the house of the accused, opened the door and found that the deceased is in the stage of incinerating condition.

21. It is an admitted fact that both P.Ws.11 and 12 are the sons of the the deceased as well as accused and both of them have stated in their evidence that after occurrence, the accused has come down from their house. Therefore, from the evidence given by P.Ws.5, 6, 11 and 12, the Court can easily come to a conclusion that the accused has had connection with the occurrence, which has taken place inside his house.

22. It has already been pointed out that the second limb of occurrence has taken place inside the house of the accused as well as deceased. The specific defence taken on the side of the appellant/accused is that he has had no connection whatsoever with the occurrence and the deceased herself has doused kerosene and set ablaze.

23. At this juncture, the Court has to look into the answers given by the accused to the questions posed to him under section 313 of the Code of Criminal Procedure, 1973. In fact, this Court has analyzed the entire answers given by the appellant/accused and ultimately found that he has not given any explanation as to how such occurrence has taken place. Therefore, it is needless to say that the contention put forth on the side of the appellant/accused that the deceased herself has committed suicide, is nothing but a farce and the same cannot be accepted.

24. As adverted to earlier, the second limb of occurrence has taken place inside the house of both the accused and deceased. Under the said circumstances, at this stage, the Court has to look into Section 106 of the Indian Evidence Act, 1872 and the same reads as follows:

"106. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person, thje burden of proving that fact is upon him.

25. A mere reading of the said Section would clearly go to show that if a person is knowing personally any thing with regard to particular aspect, then he has to give proper reason/explanation. In the instant case, on the side of the appellant/accused, no such explanation has been given as to how the deceased has got fire. Therefore, it is very clear that the burden lies upon the accused, has not been discharged. Since the burden lies upon the accused has not been discharged, it is needless to say that the accused is the real culprit.

26. Apart from the legal position as enshrined in Section 106 of the Indian Evidence Act, 1872, on the side of the prosecution, replete evidence is available for the purpose of proving that immediately after the occurrence, the accused has come down from his house in an addled mood. Therefore, it is very clear that the accused has committed the crime.

27. The first and foremost contention put forth on the side of the appellant accused is that Ex.P.1 has been given after a lapse of three hours.

28. Considering the fact that Ex.P.1 is the Complaint and the author of Ex.P.1 is none other than the mother of the deceased, there is some delay in preferring Ex.P.1 and the same would not affect the case of the prosecution.

29. The second and third contentions put forth on the side of the appellant/accused is that the evidence given by P.Ws.5 and 6 cannot be relied upon and further on the side of the prosecution, no eye witnesses have been examined.

30. It has already been discussed in detail that the prosecution has really adduced replete and trustworthy evidence by way of examining the witnesses mentioned supra. Under the said circumstances, the second and third contentions put forth on the side of the appellant/accused are of no use.

31. The last contention put forth on the side of the appellant/accused is that P.Ws.3 and 4 have spoken only about the wordy quarrel and they have not spoken about the second occurrence.

32. Even assuming without conceding that P.Ws.3 and 4 have spoken about the wordy quarrel alleged to have taken place between the appellant/accused and deceased, the other witnesses have spoken about the subsequent occurrence and therefore, viewing from any angle, the entire contentions put forth on the side of the appellant/accused cannot be accepted.

33. The trial court, after considering the overwhelming evidence available on record, has rightly found the appellant/accused guilty under section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

34. In view of the foregoing elucidation of both factual and legal aspects, 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 Sessions Case No.349 of 2011 by the trial court are confirmed. Connected miscellaneous petition is dismissed.

ajr

Sd/-
Assistant Registrar (CS-)

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Sub-Assistant Registrar

To

1. Sessions Judge, Mahila Court, Chennai.
2. The Principal Sessions Judge, Chennai
3. The XVI Metropolitan Magistrate,
George Town, Chennai - 600 001.
4. The Chief Metropolitan Magistrate,
George Town, Chennai - 600 001.
5. Inspector of Police
N.2, Kasimedu Police Station
Kasimedu, Chennai 600 013
6. The Superintendant, Central Prison, Chennai
7. The District Collector, Chennai

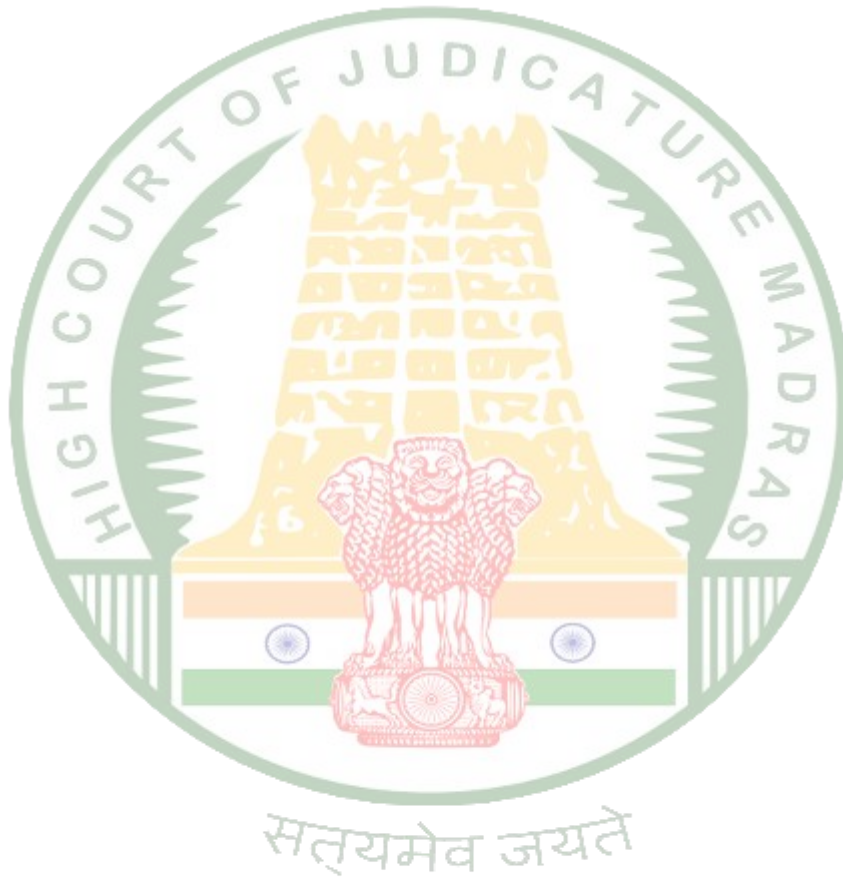
8. The Director General of Police, Mylopore, Chennai

9. The Public Prosecutor, High Court, Madras.

Criminal Appeal No.676 of 2016

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