

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.276/2013

Selvaraj ... Appellant/Sole accused

Versus

The State represented by
The Inspector of Police
Shevapet Police Station
Salem City, Salem.

... Respondent

Appeal filed under section 374 Cr.P.C., against the judgment dated 21.03.2013 passed in SC.No.156/2011 by the learned Principal Sessions Judge, Salem.

For Appellant : Mr.C.D.Sugumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in SC.No.156/2011 on the file of the learned Principal Sessions Judge, Salem. He stood charged for the offence u/s.302 IPC. By the judgment dated 21.03.2013, the Trial Court convicted the appellant herein for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- [no default sentence was imposed]. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

[a] The deceased in this case was one Yesodha @ Prabha. She was residing at Door No.75/56 at Shevapet Angalamman Koil Street in Salem District. The accused had

developed illicit intimacy with her. He used to visit her house frequently. In due course of time, the deceased insisted that the accused should marry her. But the accused was not willing to marry her and instead, he was making arrangements to marry somebody else. Since the deceased was found to be a hindrance for his proposed marriage, he decided to do away with the deceased. This is stated to be the motive for the occurrence.

[b] On 11.12.2010, at about 16.00 hours, when the deceased was alone at her house, the accused came to the house, developed quarrel with her, poured kerosene on her and set fire to her. Thereafter, he fled away from the scene of occurrence. The deceased sustained 90% of burn injuries on her body. She managed to speak to P.W.1, who is her sister, who is also residing in Shevapet at Jegannathan Street. Over phone, the deceased told P.W.1 that the accused had poured kerosene and set fire to her. Immediately, P.W.1 rushed to the house of the deceased and found her with extensive burn injuries. Then, with the help of others, P.W.1 made arrangement for 108 Ambulance service and took her to the Government Mohan Kumaramangalam Medical College and Hospital, Salem.

[c] P.W.9-Dr.Anurekha, who was then working in the Casualty in the said hospital, had examined the deceased on 11.12.2010 at 17.10 hours. The deceased was conscious. She told the doctor that on 11.12.2010 at 16.00 hours, at her house, a known person had poured kerosene and set fire on her. P.W.9 recorded the said narration of the deceased in the Accident Register [Ex.P.4]. Then, she gave intimation to the police as well as to the local Judicial Magistrate in respect of the same.

[d] On receipt of such intimation, P.W.17, the then Sub Inspector of Police attached to Shevapet Police Station, at the relevant point of time, rushed to the hospital and at 17.30 hours, he found the deceased in the Trauma Care, in a conscious state. P.W.17 recorded the statement of the deceased and on returning to the police station, he registered a case in Cr.No.2199/2010 for the offence u/s.307 IPC at 19.00 hours on 11.12.2010 against the accused. Ex.P.14 is the printed First Information Report and Ex.P.13 is the statement of the deceased recorded by P.W.17. He forwarded both the documents to the Court and to his higher officials. The said documents were received by the learned Judicial Magistrate No.3, Salem at 21.00 hours on the same day. Then the case was taken up for investigation by P.W.18.

[e] Meanwhile, on receiving intimation from the hospital, P.W.14, the then learned Judicial Magistrate No.4, Salem, rushed to the hospital at 19.35 hours. At that time, the deceased was fully conscious. P.W.15-Dr.Sumathy, who was attending on the deceased, gave opinion that the deceased was

fully conscious and was in a fit state of mind to make a Dying Declaration. P.W.14, from the answers elicited from the deceased on certain queries made by her and from out of the opinion of the doctor, got her judicial conscience satisfied that the deceased was conscious and in a fit state of mind to make a Dying Declaration. Thereafter, she recorded the Dying Declaration of the deceased and completed the same at 19.47 hours. In the said Dying Declaration, the deceased narrated the entire event and in crux, she told that it was this accused who poured kerosene and set fire on her. Ex.P.11 is the Judicial Dying Declaration.

[f] Taking up the case for investigation, P.W.18, the then Inspector of Police attached to Salem City Police Station and also the in-charge of Shevapet Police Station at the relevant point of time, went to the place of occurrence and prepared the Observation Mahazar [Ex.P.1] and a Rough Sketch [Ex.P.15] in the presence of P.W.5 and another witness. Then he recovered the material objects, viz., a plastic can [M.O.1] ; Match box [M.O.2] ; a burnt match stick [M.O.5] ; a half burnt saree [M.O.3] and a half burnt petty coat [M.O.4] in the presence of the same witnesses, under a cover of Mahazar Ex.P.2. On 12.12.2010, he handed over the investigation to his successor.

[g] P.W.19, the then Inspector of Police attached to the Shevapet Police Station, took up the case for further investigation on 12.12.2010. He went to the hospital and examined the deceased and recorded her statement. He examined P.W.1 and other witnesses, who were present there. On 14.12.2010, the deceased died due to the burn injuries. Thereafter, P.W.19 altered the case into one under section 302 IPC. Ex.P.19 is the altered FIR. On 14.12.2010, between 09.00 hours and 11.30 hours, he held inquest on the dead body of the deceased in the presence of the panchayatdars and other witnesses. Ex.P.17 is the Inquest Report. He then, forwarded the dead body of the deceased for postmortem.

[h] P.W.16-Dr.Panneerselvam, the then Associate Professor of the Government Mohan Kumaramangalam Medical College and Hospital, Salem, conducted the autopsy on the body of the deceased on 16.12.2010 at 12.12 hours. He found the following injuries:-

"External Injuries:-

Derma-epidermal burns with reddish zone of inflammation with foul-smelling greenish yellow discharge noted on the front sides and back of the neck, front and back of the chest and abdomen, both upper limbs including palms,

both lower limbs including foot, both gluteal region. Axillary, pubic and scalp hairs singed.

Other findings:-

Snagical cut down seen on the right medial malleolus.

O/D Head: Scalp - normal and intact, cranial vault and dural membranes-intact. Brain c/s congested. Base of the skull intact.

O/D Neck:- All neck structures are normal. Hyoid Bone-intact.

O/D Thorax:- No rib fracture. Heart-normal in size. Chambers contained fluid blood. Valves, coronaries and great vessels-patent. Lungs c/s congested.

O/D Abdomen:- Stomach contains about 60 ml of brown coloured fluid with no specific odour. Mucosa c/s congested. Liver, spleen and kidneys c/s congested. Bladder empty. External genitalia-no injuries made out. Uterus-normal in size. Uterine cavity-empty. Pelvis and Spinal column-intact.

Multiple superficial incisions made all over the body. No underlying contusion noted anywhere."

Ex.P.12 is the Postmortem Certificate. He gave the opinion that the death of the deceased was due to shock and hemorrhage due to extensive burn injuries.

[i] Continuing the investigation, P.W.19 arrested the accused on 14.12.2010 at 15.00 hours at Shevapet Shanmuga Nagar Bus stop in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession statement and on returning to the police station, he forwarded the accused for judicial remand and the material objects to the Court for Chemical examination. P.W.11, Tmt Kalarani, the then Assistant Chemical Examiner, Forensic Sciences Department, conducted chemical analysis on the material objects and found the traces of kerosene on the same. On completion of the investigation, P.W.19 laid the charge-sheet against the accused.

[j] Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 19 witnesses were examined, 19 documents and 5 material objects were also marked.

[k] Out of the said witnesses, P.Ws.1 and 2, are the sister and daughter respectively of the deceased. P.W.1 has stated that at 16.00 hours on 11.12.2010, the deceased had spoken to her over phone and informed that the accused had poured kerosene and set fire on her. P.W.2, the daughter of the deceased, has stated that at the time of occurrence, she was at the house of P.W.1 and she came along with P.W.1 to the house of the deceased and found her mother with burn injuries. P.Ws.3 and 4 are the neighbours and they have stated that the deceased was with burn injuries. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence and also the recovery of the material objects from the scene. P.W.6 is the mother of the deceased and she has stated about the motive for the occurrence. P.W.7 has spoken about the arrest of the accused on 14.12.2010. P.W.8 is the police constable who took the dead body for postmortem. P.W.9, Dr.Anurekha, has spoken about the fact that she examined the deceased on 11.12.2010 at the Government Hospital, Salem on 17.10 hours and admitted her. She has further stated that at that time, the deceased told her that a known person had poured kerosene and set fire on her. P.W.10 is the doctor who treated the deceased and stated that on 14.12.2010, the deceased died. P.W.11 is the Assistant Chemical Examiner who has stated that on examination of the material objects, she found the traces of kerosene on the said objects. P.W.12 is the Head Clerk of the Court who forwarded the material objects for examination on the orders of the learned Magistrate. P.W.13 is the police constable who took the material objects to the forensic lab for examination. P.W.14, the learned Judicial Magistrate, has spoken about the Dying Declaration recorded by her on 11.12.2010 at 19.35 hours. P.W.15-Dr.Sumathy, has stated that she gave opinion to P.W.14 that the deceased was in a conscious state and also in a fit state of mind to make a Dying Declaration. P.W.16 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.17 has spoken about the statement of the deceased recorded at 17.30 hours on 11.12.2010 under Ex.P.13 and the registration of the case subsequently. P.Ws.18 and 19, have spoken about the investigation done by them and filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document on his side.

4 Having considered all the above, the Trial Court convicted the appellant herein for the charge u/s.302 IPC and sentenced him as stated in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

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

6 Learned counsel for the appellant would submit that absolutely there is no evidence to prove the motive. He would further submit that it is highly improbable that the deceased would have spoken to P.W.1 over phone and informed her that the accused had poured kerosene and set fire on her. He would also submit that the deceased was taken to the hospital along with P.W.1 and other relatives and thus, the possibility of tutoring of the deceased to make such statement against the accused, cannot be ruled out. He would further submit that P.W.1 had grudges against the accused and therefore, she would have tutored the deceased to make a statement. Thus, according to him, the so-called Dying Declaration, made by the deceased, cannot be relied on, that too, because there is no corroboration from any other independent source. He also adds that there is no evidence that the accused was found leaving the house of the deceased at any point of time. For all these reasons, the learned Counsel for the appellant prays that the appellant is entitled for acquittal.

7 The learned Additional Public Prosecutor would however, oppose to this appeal stoutly. He would submit that there are multiple Dying Declarations wherein the deceased had, consistently, told that it was this accused who poured kerosene and set fire on her. There is no delay in any of the Dying Declarations recorded. He further submitted that there is no possibility for tutoring because at the earliest opportunity, the deceased had told P.W.1 that it was this accused who had poured kerosene and set fire on her. Therefore, according to him, the Trial Court was right in convicting the accused and hence, prays that the appeal be dismissed.

8 We have considered the rival submissions.

9 There is no denial of the fact that the accused had developed illicit intimacy with the deceased. The motive for the occurrence has been spoken by the mother of the deceased who has been examined as P.W.6. Now turning to the occurrence, the prosecution places reliance on four Dying Declarations. The earliest one was around 16.00 hours by the deceased to P.W.1. It was the statement made orally by the deceased over phone to

P.W.1 that it was this accused who poured kerosene and set fire on her. Though it is contended by the learned Counsel for the appellant that the deceased would not have been in a position to speak to P.W.1 over phone, we do not find any substance in the said argument because even at the time when the deceased was taken to the hospital, she was conscious and she was in a position to make a Dying Declaration. It is not uncommon for a person who has sustained burn injuries to walk for a short distance and to speak for a long time and therefore, this argument is rejected.

10 The next Dying Declaration was the one which was made to P.W.9-Dr.Anurekha, at the Government Hospital, Salem. P.W.1 had taken the deceased to the said hospital at 17.10 hours. P.W.9 examined the deceased and at that time, the deceased had again told P.W.9 that known person had poured kerosene and set fire on her at her residence. The doctor has, of course, not recorded the name of the assailant as the doctor is expected not to record the name of the assailant. In the second Dying Declaration, the deceased has clearly mentioned about the manner in which she was set on fire by a known person at the place of occurrence and also the time of occurrence. This is in consonance with the case projected by the prosecution.

11 The third Dying Declaration was the one recorded by P.W.17, the Sub Inspector of Police at 17.30 hours. P.W.17 has stated that on getting the intimation from the hospital, when he visited the hospital, he found the deceased in the Trauma Care, in a conscious state. The deceased gave a long statement. This has been recorded as Ex.P.13. We do not find any reason to reject Ex.P.13 also. In Ex.P.13 also, the deceased has stated about the quarrel developed by the accused and ultimately, it was only this accused who poured kerosene and set fire on her.

12 The last Dying Declaration is the judicial Dying Declaration recorded by the learned Judicial Magistrate [P.W.14] at 19.35 hours on 11.12.2010. P.W.15-Dr.Sumathy, had given opinion that the deceased was fully conscious and she was in a position to speak and she was in a fit state of mind. By eliciting certain answers for the questions put by her and from out of the opinion of the doctor [P.W.15], the learned Magistrate was fully satisfied that the deceased was in a fit state of mind to make a Dying Declaration. The assessment made by the learned Judicial Magistrate, cannot be found fault with because nothing has been elicited in the cross-examination of the learned Magistrate to doubt the said assessment made by the learned Magistrate in respect of the mental fitness of the deceased. Learned Magistrate has perfectly followed the procedure established to satisfy the judicial conscience about the mental fitness and then, has truly recorded what was stated

by the deceased. The sanctity attached to the said Dying Declaration cannot be, in any manner, doubted. In the judicial Dying Declaration, the deceased has clearly stated that it was this accused who had poured kerosene and set fire on her.

13 The learned Counsel for the appellant would submit that the possibility of tutoring cannot be ruled out. In this regard, we have to state that simply because some relatives were by the side of the deceased, the Court cannot rush to the conclusion that the Dying Declaration would have been prompted by tutoring by the relatives. It is quite natural for the relatives alone to attend on the deceased when she was in the hospital. One cannot expect the relatives to keep away from the deceased when she was struggling for life. Therefore, though it is true that it was P.W.1 who took the deceased to the hospital, on that score, we cannot rush to the conclusion that the deceased had been tutored by P.W.1 and other relatives. Therefore, this argument is also rejected.

14 From the foregoing discussions, it is crystal clear that the prosecution has proved that it was this accused who had poured kerosene and set fire on the deceased, which resulted in her death. Thus, it is this accused who had caused the death of the deceased.

15 Now, the question is what is the offence, the accused had committed by the said act?

16 The learned counsel for the appellant would submit that there was a quarrel and only at the end of the quarrel, the accused had poured kerosene and set fire on her. In essence, the argument of the learned counsel for the appellant is that the act of the accused would fall under, either exception [1] or [4] to Section 300 IPC. But, we are not persuaded by the said argument. From the Dying Declarations as well as from the motive, it is clear that the accused had gone to the house of the deceased only with the intention to do away with the deceased. The very fact that he had chosen to take kerosene and pour the same, took the match stick and set fire on her, would clearly go to indicate his intention. This act of the accused would, undoubtedly, fall under Limb I of section 300 IPC. Since there is no material to prove the act of the accused within fall within the exception [1] or [4] to section 300 IPC, the argument of the learned counsel that the offence committed by the accused would not fall u/s.302 IPC, is rejected. We hold that the act of the accused would amount to an offence u/s.302 IPC and therefore, the Trial Court was right in convicting him u/s.302 IPC. Insofar as the quantum of punishment, the Trial Court has imposed only a minimum punishment, which does not require any interference at the hands of this Court. We do not find any merit at all in the appeal.

17 In the result, the criminal appeal is dismissed. The conviction and sentence imposed on the appellant by the Trial Court for the offence u/s.302 IPC in SC.No.156/2011 vide judgment dated 21.03.2013, are hereby confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Salem.
- 2.The Inspector of Police
Shevapet Police Station
Salem City, Salem.
- 3.The Judicial Magistrate No.3,
Salem.
- 4.The Public Prosecutor
High Court, Chennai.
- 5.The Superintendent of Police,
Central Prison,
Coimbatore.

+1cc to Mr.C.D.Sugumar, Advocate sr.17333

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Judgment in Cr1.A.No.276/2013

ca(CO)
srg(25/04/2016)

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