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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.69 of 2012

Palanisamy

.. Appellant/Accused

Vs

State rep. By
Inspector of Police,
Kamanaickenpalayam Police Station,
Tiruppur District.
(Crime No.123 of 2009)

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment and order of conviction passed in S.C.No.312 of 2011 by order dated 30.12.2011 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.V, Coimbatore at Tiruppur) convicting the appellant for life imprisonment under Section 302 of I.P.C.

For Appellant : Mr.Kaveri Selvam
Legal - aid- counsel

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.312 of 2011 on the file of the learned Additional District and Sessions Judge, (Fast track Court No.V), Coimbatore at Tiruppur. He stood charged for offence under Section 302 I.P.C. By judgment dated 30.12.2011, the trial Court convicted him for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and no fine amount was imposed. Challenging the said conviction and sentence, the



accused/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Lakshmi. The appellant/ accused is her husband. According to the case of the prosecution, he had suspicion regarding the chastity of the deceased. On account of the same, it is stated that on 17.04.2009 at about 8.00 am, when the deceased was at her house, the accused poured kerosene and set fire.

3.The occurrence was not witnessed by anybody. P.Ws.1 to 3 are the father, mother and brother respectively of the deceased. They are the residents of Mandiripalayam Village. On receiving information, P.Ws.1 to 3 went to the house of the deceased and took her and admitted her in the Palladam Government Hospital. P.W.6 - Dr.Chandira examined the deceased at Palladam Government Hospital at 12.45 pm on 17.04.2009. The deceased told the Doctor (P.W.6) that her husband poured kerosene and set fire on her. P.W.6 admitted her in the hospital and gave treatment.

4.On getting intimation from the hospital, P.W.10, the then Inspector of Police, Kamanayakanpalayam Police Station, went to the hospital and recorded the statement of the deceased under Ex.P.4. At that time, P.W.6 - Dr.Chandira was present and she opined that the deceased was conscious.

5.On returning to the Police Station, on 17.04.2009 at 2.00 pm, P.W.10, registered a case in Crime No.123 of 2009 for offence under Section 307 I.P.C. He forwarded Ex.P.4 and the F.I.R., (Ex.P.5) to the Court and took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.Ws.8 & 9 and he also recovered certain burnt articles from the place of occurrence.

6.On 17.04.2009 at 7.00 pm, P.W.10 arrested the accused in the presence of P.Ws.8 and 9 and he forwarded him to Court for judicial remand. On 20.04.2009, at 7.15 pm, the deceased succumbed to the injuries in the hospital. Therefore, P.W.10 altered the case into one under Section 302 I.P.C., and he conducted inquest on the body of the deceased and sent the same for post mortem. P.W.10 also removed the dress materials on the body of the deceased and recovered the same under a mahazar.

7.P.W.7, conducted autopsy on the body of the deceased and found the following anti mortem injuries:-



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"Ante mortem Injuries:-

Dermo-epidermal burns with areas of infection seen over entire body from head to foot sparing patchy unburnt areas over scalp, forehead, area between breasts, lower abdomen & pubic region and upper inner aspect of both thighs. Peeling and blackening of skin noted over the burnt areas in a patchy manner. The base of the burnt is reddish in colour. Singeing of hair noted on marginal scalp, eyebrows, eyelashes and armpit region. Infected areas seen covered with yellowish pus. Degloving of skin noted in both hands. Surgical IV wounds seen in the inner aspect of both ankles."

8.P.W.7, opined that the death was due to the extensive burnt injuries found on the body of the deceased. Ex.P.2 is the post mortem certificate. P.W.10 continued the investigation; collected medical evidence; examined P.W.7 and the other witnesses and finally laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 13 documents were exhibited, besides 3 material objects.

10.Out of the prosecution witnesses, P.Ws.1 to 3 have spoken about the intimation received by them about the alleged occurrence; their arrival to the house of the deceased and admitting her in the hospital. P.Ws.4 & 5 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 is the Doctor who admitted the deceased in the hospital. According to P.W.6, at the time of admission, the deceased told her that her husband poured kerosene and set fire. She gave opinion to P.W.10 that the deceased was conscious when he recorded Ex.P.4. P.W.7 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.Ws.8 & 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 has spoken about recording of Ex.P.4 and the registration of the case and investigation done by him and the final report filed against the accused.

11.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, no witness was examined however a copy of



the police information book pertaining to the admission of the deceased into Government Palladam Hospital was marked as Ex.D.1. His defence was a total denial.

12. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

13. When this appeal was taken up for hearing, the learned counsel on record for the appellant/accused withdrew his appearance. Therefore, we appoint Mr. Kaveri Selvam, as a legal aid counsel appearing on behalf of the appellant/accused.

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

15. As we have already pointed out, the prosecution relies only on two circumstances in this case. The first circumstance is the motive as has been spoken by P.Ws.1 to 3. They have stated that the accused had suspicion regarding the chastity of the deceased. In our considered view, the said circumstance has been proved. But, from out of the motive, one cannot rush to the conclusion that the accused had committed the crime.

16. The next circumstance relied on by the prosecution is that the earliest statement made by the deceased to the Doctor (P.W.6) wherein, the deceased has stated that her husband poured kerosene and set fire on her. But, the fact remains that the deceased was taken by P.W.3, the brother of the deceased to the hospital. On receiving the said information, P.Ws.1 and 2 who are the father and mother respectively of the deceased went to the hospital. So at the time of making the said statement, the deceased was under the influence of P.Ws.1 to 3. Therefore, much weightage cannot be given to this statement, as there was likelihood of P.Ws.1 to 3 having tutored the deceased.

17. The next piece of evidence available against the accused is Ex.P.4, the statement made to P.W.10, the Investigating Officer. Ofcourse, in the said statement, which is a dying declaration, the deceased has stated that this accused poured kerosene and set fire on her, the question is "whether the same can be believed and acted upon?". Since, the deceased was under the influence of P.Ws.1 to 3, who had grudges against the accused, tutoring cannot be ruled out.

18. We fully agree with the said argument of the learned



counsel. There are materials collected during cross examination that these three witnesses viz., P.Ws.1 to 3 had grudges against the accused. Therefore, likelihood of tutoring cannot be ruled out.

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19.Above all, it is not explained to the Court as to why no judicial dying declaration was recorded in this matter, though the deceased was alive for a few days after the occurrence. This indiscrimination on the part of the Police to take the learned Judicial Magistrate to record the judicial dying declaration of the deceased creates every doubt about the genuineness of the statement said to have been made by the deceased to P.W.6.

20.Further, regarding a dying declaration, the Court has to consider "whether the deceased was in a fit state of mind to make a dying declaration". In this case, the Doctor (P.W.6) has opined that the deceased was only conscious at the time of making statement to P.W.10. Thus, it is doubtful whether the deceased was a fit state of mind to make dying declaration or not. Further, there is no corroboration to Ex.P.4. In our considered view, since Ex.P.4 is a doubtful document, the same cannot be acted upon more so, there is no other corroboration from any other source. In such view of the matter, in our considered view, the trial Court was not right in convicting the accused. We hold that the prosecution has failed to prove the case beyond reasonable doubt and therefore, the appellant/accused is entitled for acquittal.

21.The Criminal Appeal is allowed and the conviction and sentence for the offence u/s.302 IPC imposed on the appellant by the learned Additional District & Sessions Judge, Fast Tract Court No.5, Coimbatore in SC.No.312 of 2011 by the judgment dated 30.12.2011 are hereby set aside.

22.The appellant is acquitted of the charge levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

jbm



To

1. The Judicial Magistrate, Palladam.
2. -do-Thro'The chief Judicial Magistrate, Coimbatore.
- 3.The Additional District & Sessions Judge,
Fast Track Court No.5,
Coimbatore, Tiruppur.
4. -do-Thro'The Principal Sessions Judge, Coimbatore
5. The Inspector of Police, Kamanaickanpalayam Police Station,
Tiruppur Distr.
6. The Superintendent, Central Prison, Coimbatore.
7. The District Collector, Coimbatore.
8. The Director General of Police, Mylapore, Chennai 4.
- 9.The Public Prosecutor,
High Court, Madras.

Crl.A.No.69 of 2012

tej co
kra 09.03.2016