

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 2.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.No.777 of 2012

Anup ... Appellant/Accused

vs.

The State,
rep.by its Inspector of Police,
J1 Saidapet Police Station,
Chennai ... Respondent
(Crime No.6522 of 2010)

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 11.10.2012 passed by the
Mahalir Sessions Court, Chennai, in S.C.No.302 of 2011.

For Appellant : Mr.N.Selvakumaraswami

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.302 of 2011, on the file of the Mahalir Sessions Court, Chennai. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 11.10.2012, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellant 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 Mrs.Kalpana. She was already married to one Mr.Nagaraj. Through Mr.Nagaraj, she had two children by name Swetha and Rohith. After the birth of these two children, Mr.Nagaraj deserted Mrs.Kalpana, married some other woman and left the village. Thereafter, the accused developed intimacy with the deceased

Mrs.Kalpana and he was living with her. The children of Mrs.Kalpana were also residing with them. Both lived for three years together as husband and wife. The deceased did not inform the accused that she had already undergone sterilization surgery, after the birth of the second child. The accused was all along under the impression that he could have had a child through her. When he came to know, after three years of living, that she had undergone the said sterilization surgery and therefore she could not beget a child, the accused started insisting to go for another marriage for him with some other woman. This was objected to by the deceased. Further, the accused had suspicion over the fidelity of the deceased. These instances are stated to be the motive for the accused doing the murder of the deceased.

(b) On the night intervening 19.6.2010 and 20.06.2010, the accused, the deceased and the children of the deceased were in the house. At that time, the accused was fully drunk. On the same day, some time before the occurrence, elsewhere there was a quarrel, in which, someone had attacked the accused, in the presence of the brother of the deceased. The brother of the deceased did not intervene in support of the accused. On returning home, the accused told about the said instance to the deceased, developed quarrel as to why her brother did not intervene in his support. Thereafter, by around 12.00 midnight, it is alleged that the accused poured kerosene on the body of the deceased and set fire. He had already sent out the children from the house. Thus, the occurrence was not witnessed by anyone. After setting fire to the deceased, the accused ran away.

(c) Having sustained burn injuries, the deceased ran out of her house in flames and cried for help. P.W.1, a neighbour, on hearing the said alarm raised, rushed to the house of the deceased. At that time, he found the deceased with burn injuries. P.Ws.2, 3 and 4, who were the neighbours, also rushed to the place of occurrence. When P.Ws.1 and 3 asked her as to what had happened, the deceased told them that her husband poured kerosene and set fire to her. P.W.1 and other neighbours arranged for a vehicle and immediately took her to the hospital. P.W.13, Dr.Baskaran, while in the Government Royapettah Hospital, at Chennai, examined the deceased on 20.06.2010 at about 1.30 a.m. At that time, the deceased was conscious. She told the Doctor that her husband set fire to her at 12.30 a.m. at her residence. P.W.13 entered the same in the accident register. He found extensive burn injuries on her body. He admitted her for treatment. P.W.6 is the accident register. He gave intimation to the police and also to the Metropolitan Magistrate. P.W.17, the then IX Metropolitan Magistrate, on receiving the intimation, rushed to the Royapettah Government Hospital at 5.35 a.m. P.W.14 was attending on her. P.W.17 obtained opinion from

P.W.14 about the fitness of the deceased to make the dying declaration. The Doctor opined that the deceased was conscious to give statement. The learned Magistrate asked few questions to the deceased, elicited answers and finally based on the opinion of the Doctor and the answers elicited from her and from the other circumstances, was satisfied that the deceased was conscious and in a fit state of mind to make a dying declaration. Thereafter, the deceased gave a dying declaration, in which, she has stated that at midnight, 12.00 O'clock, the accused, in drunken stage, poured kerosene and set fire to her. Ex.P18 is the judicial dying declaration.

(d) P.W.16, the then Inspector of Police, Saidapet Police Station, on receipt of information from the Government Royapettah Hospital, rushed to the said hospital. He found the deceased in the burns ward of the said hospital. She was identified by the Doctor. The Doctor (P.W.14), gave opinion that the deceased was conscious. Thereafter P.W.16, after having ascertained that the deceased was conscious, recorded the statement of the deceased. P.W.14, the Doctor, has made an endorsement on the said statement to the effect that the deceased was conscious. On returning to the police station, at 4.00 a.m., on 20.06.2010, he registered a case, in Crime No.652 of 2010, under Section 307 of the Indian Penal Code. He forwarded the statement of the deceased and the First Information Report to the Court, which were received by the learned Judicial Magistrate at 5.00 p.m., on 20.06.2010. Then, he proceeded to the place of occurrence and prepared an observation mahazar and also a rough sketch, showing the place of occurrence. From the place of occurrence, he recovered a kerosene cane, a match box, match sticks, a half burnt mat and another mat with kerosene smell and a half burnt cloth. He recovered all these material objects under Ex.P.12 mahazar. Then he examined many witnesses and recorded their statements. On 21.06.2010, despite treatment given, the deceased succumbed to the injuries in the hospital. Therefore, he altered the case into one under Section 302 of the Indian Penal Code and forwarded the alteration report under Ex.P14. Then he conducted inquest on the body of the deceased between 7.30 to 9.00 a.m. on 21.06.2010 and forwarded the dead body for post-mortem. P.W.15 conducted autopsy on the body of the deceased on 21.06.2010 and gave opinion that the death was due to the extensive burn injuries found on the dead body of the deceased.

(e) In the course of investigation, on 21.06.2010, at 10.00 a.m. P.W.16 arrested the accused, in the presence of P.W.9 and another witness and forwarded him to the Court for judicial remand. Then, he collected the medical records. At his request, the material objects recovered from the place of occurrence were sent for medical examination. The report revealed that kerosene was detected on all the material

objects. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 of the Indian Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 17 witnesses were examined, 18 documents and 15 materials objects were marked. Out of the said witnesses, P.Ws.2, 3 and 4, who are the neighbours of the deceased, have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.1 and 7 are also the neighbours of the deceased, who have stated that on hearing the alarm raised by the deceased, they reached the house of the deceased and found the deceased in flames, in front of her house, crying for help. They further stated that they extinguished the fire, by pouring water on her and then took her to the hospital. P.W.1 has further stated that at the earliest point of time, the deceased told him that the accused poured kerosene and set fire. P.W.7 has not stated anything so. P.Ws.5 and 6 are the mother and brother respectively of the deceased. According to them, they heard about the occurrence and rushed to the hospital. In the hospital, when they enquired the deceased, the deceased told them that the accused poured kerosene and set fire to her. They have also stated about the motive for the occurrence. P.W.8 has also turned hostile and he has not supported the case of the prosecution in any manner. He has spoken about the arrest of the accused. P.Ws.10 and 11 have not stated anything incriminating, as they have spoken only about the hear say information. P.W.12 has spoken to the fact that he carried the dead body to the hospital for post-mortem. P.W.13 has spoken about the admission of the deceased at the Government Royapettah Hospital at Chennai and the statement made by her to him. P.W.14 has stated about the treatment given to the deceased. She has further stated that when the learned Magistrate came to the hospital, she certified to the Magistrate about the mental fitness of the deceased. P.W.15 has spoken about the post-mortem conducted and the final opinion regarding the cause of death. P.W.17 has spoken about the judicial dying declaration recorded by him and P.W.16 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he examined himself as D.W.1, wherein, he has stated that when he was at his house at the crucial time, along with his wife, there was some quarrel between them, in which he had beaten the deceased. After that, the deceased slept in one portion of the house and he was sleeping in the same house in a different place. By about 12.00 midnight, he heard about the

cry of the deceased and found her in flames. He further stated that the deceased set fire to herself. He has also stated that he arranged for her being taken to the hospital by the neighbours and then went to the police station, but in the police station he was detained. Thus, according to him, it was a case of suicide.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. Admittedly there is no eyewitness to the occurrence in this case. The prosecution relies on the multiple dying declarations made by the deceased. The earliest dying declaration was the oral dying declaration made by the deceased to P.W.1. The learned counsel for the appellant would submit that the evidence of P.W.1 cannot be believed because, P.W.1, during cross-examination has admitted that the deceased did not tell anything to him at all about the injuries.

8. We have gone through the cross-examination of P.W.1 and we find force in the argument of learned counsel for the appellant. Though in chief examination P.W.1 has stated that the deceased told her that her husband had set fire to her, in cross-examination, he has stated that the deceased did not say anything at all to him. Thus, the evidence of P.W.1 does not help the prosecution.

9. After the deceased was taken to the hospital, P.W.13, Dr. Baskaran admitted her at the hospital, at 1.30 a.m. At that time, the relatives or the parents of the deceased had not come. There was no chance for any tutoring. At that time, the deceased told the Doctor that her husband set fire to her, after pouring kerosene on her. We do not find any reason to reject this dying declaration as it has been duly recorded in the accident register by P.W.13. Thereafter, on receiving due intimation, P.W.17, the learned Metropolitan Magistrate had gone to the hospital and recorded the dying declaration at 5.35 a.m. It is in evidence that during such time, neither the parents of the deceased nor any relative had come so as to doubt that the deceased would have been tutored. The learned Magistrate had recorded the dying declaration, after following the procedure established. The Doctor had given opinion that the patient was conscious. The learned Magistrate, after having elicited certain answers to the questions put by him to the deceased, was satisfied that

the deceased was conscious and mentally fit enough to make a dying declaration. Thus, only after having his judicial conscience satisfied about the mental fitness of the deceased, the learned Magistrate had proceeded to record the dying declaration. In the procedure adopted by the learned Magistrate and in the satisfaction recorded by him we do not find any shortcoming, so as to doubt the same. In the dying declaration, the deceased has categorically stated that it was this accused, who poured kerosene and set fire to her. We do not find any reason to reject this judicial dying declaration. As we have already pointed out, at the time when this judicial dying declaration was made, the relatives of the deceased were not at all there and thus, there was no chance for any tutoring.

10. Thereafter, P.W.16-the Inspector of Police had gone to the hospital and recorded the statement of the deceased. P.W.14, Dr.Thangamani, had certified that the deceased was in a fit state of mind to make a dying declaration. Only after that he had recorded the statement and based on the same, he registered the case. This statement of the deceased is yet another dying declaration, which is precisely in tune with the earlier judicial dying declaration and other dying declarations. We do not find any reason to reject this dying declaration also. Thus, from these dying declarations, we are of the view that the prosecution has proved that it was this accused, who poured kerosene on the deceased and set fire to her.

11. The learned counsel for the appellant would submit that the evidence of D.W.1 would clearly go to prove that the deceased had committed only suicide. The accused, who has examined himself as D.W.1 has admitted even in chief examination that at the time of occurrence, he was very much available in his house where the deceased was also available. He has further stated that there was a quarrel, in which he had beaten the deceased and thereafter, the deceased had gone for sleep and he was sleeping in a different portion of the house. To this extent the evidence of the accused is in tune with the prosecution case.

12. By 12.00 midnight, according to the accused, he heard the alarm raised by the deceased and he found the deceased in flames. He has further stated that he extinguished the fire and then he requested the neighbours to take her to the hospital for treatment. But the neighbours, who have been examined as prosecution witnesses, have not stated that he was present at the time of occurrence. Their evidence would indicate that the accused was not at all present at the time when the deceased came out of the house crying for help. Therefore, this part of the evidence of the accused is highly unbelievable.

13. Then comes the conduct of the accused. Had it been true that he was innocent and he had no guilty mind, going by natural human conduct, he would have taken the deceased to the hospital. But, admittedly, he did not do so. His explanation is that he had requested the neighbours to take the deceased to the hospital. But the neighbours have not stated that it was on his request that they took the deceased to the hospital. He has not even present when this neighbour rushed to the house of the accused. Thus, this explanation offered by the accused is falsified by the evidence of the neighbours. Therefore, this explanation is rejected. If this explanation is rejected, then it stands proved that after the occurrence, the accused had absconded from the place of occurrence, even before the neighbours could rush to the place of occurrence, on hearing the alarm raised by the deceased. This conduct of the accused is in tune with his guilty mind.

14. It is his further evidence that he then went to the police station where he was detained. This is also something unbelievable. Instead of taking the deceased to the hospital to save her, the accused claimed that he had gone to the police station to make a complaint. This is also not expected of from a man with normal human conduct. Therefore, this is also liable to be rejected. Thus, the defence taken by the accused that the deceased had committed suicide is nothing but a false defence, which itself is an added strength to the case of the prosecution. In view of the foregoing discussion, we are of the firm view that the prosecution has proved the case beyond reasonable doubt and thus, the appellant is liable to be punished for offence under Section 302 of the Indian Penal Code. The trial Court was thus right in convicting him under Section 302 of the Indian Penal Code.

15. So far as the quantum of punishment is concerned, the trial Court has imposed only the minimum punishment provided under Section 302 of the Indian Penal Code and therefore, the same also does not require any interference. In nutshell, we do not find any merit at all in this appeal. The appeal is, therefore, liable to be dismissed.

16. In the result, the appeal is dismissed. The conviction and sentence imposed on the appellant, by the trial Court is hereby confirmed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

msk

To

1. Inspector of Police,
J1 Saidapet Police Station,
Chennai

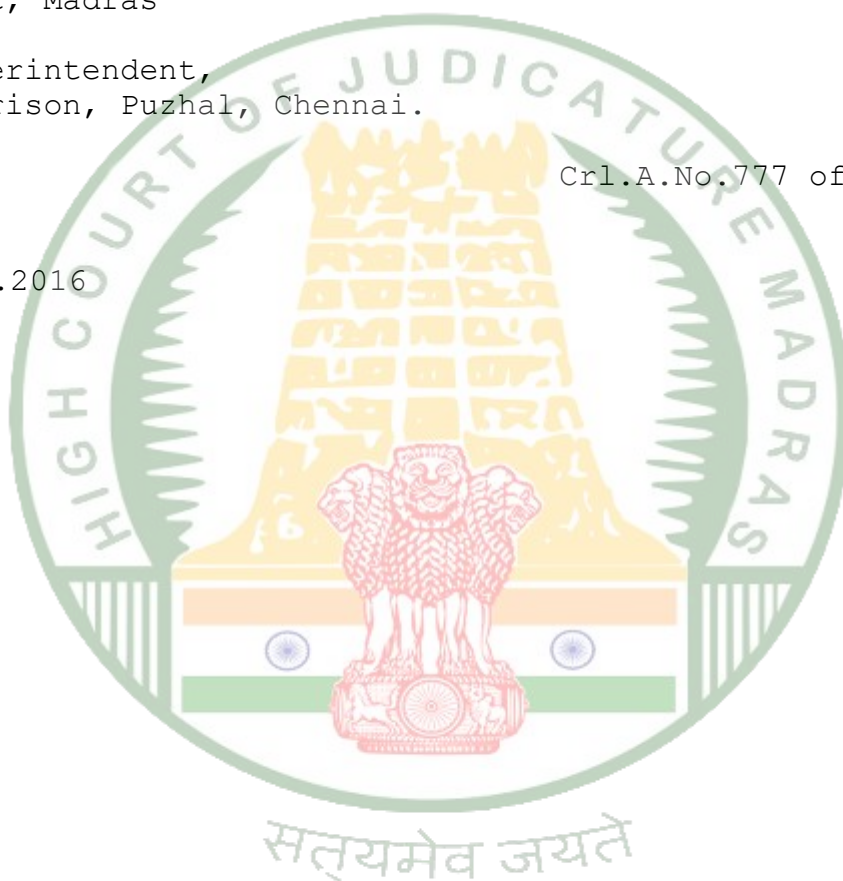
2. The Mahalir Sessions Court, Chennai

3. The Public Prosecutor,
High Court, Madras

4. The Superintendent,
Central Prison, Puzhal, Chennai.

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