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Bail Slip

The Appellant/Accused Devi W/O Sivappan was directed to be released on bail as per the Order of this Court dated 13/09/13 in MP 1/13 in CrI.A.No.57 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.57/2013

Devi .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Solur Mattam Police Station,
The Nilgiris District. .. Respondent/Complainant
Crime No.144/09)

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, The Nilgiris District at Ooty, dated 05.11.2012, made in S.C.No.41 of 2011.

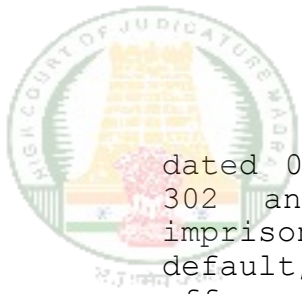
For Appellant : Mr.V.Rajmohan,
Legal Aid Counsel

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.41 of 2011 on the file of the learned Sessions Judge, The Nilgiris District at Ooty. He stood charged for offences under Sections 302 and 506 (ii) of IPC and Section 3(2) (v) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act. By judgment



dated 05.11.2012, the trial court convicted him under Sections 302 and 506 (ii) of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 3 months for the offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for 3 months for the offence under Section 506(ii) of IPC. The trial court acquitted him for the offence under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Challenging the said conviction and sentence, the appellant/sole 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 Bannari. The accused was residing at Door No.4/58, Thengumarahada Village, Kothagiri Taluk. The deceased used to visit the house of the accused frequently and to have sexual intercourse with her. For every such instance, it was the practice of the deceased to pay Rs.100/- to the accused. On 25.11.2009 at about 09.15 p.m., the accused was in her house. At that time, it is alleged that the deceased came to the house of the accused with an intention to have sexual intercourse with her. Since on the earlier occasion, after taking sex, the deceased did not pay Rs.100/-, this time the accused did not allow him to enter into her house. But the accused did not stop with that. He made an attempt to enter into the house so as to have sex with her. Enraged over the same, it is alleged that the accused came out from the house with a wooden log (Poori Kattai). She attacked the deceased on his head. He fell down. The accused went into her house, came back with kerosene, poured the same on the body of the deceased and set fire. It was witnessed by P.W.3. On seeing the deceased burning in front of the house of the accused, one Mr.Dhandapani (P.W.2) informed P.W.1 over telephone about the same.

(b) P.W.1 was the then Panchayat President of the said village. Immediately, he rushed to the place of occurrence. When he reached the place of occurrence, the deceased was in flames. P.W.2, 4 and 5 were also there. All of them extinguished the fire and found the deceased dead. Only thereafter, P.W.1 came to know the person who was burnt was the deceased. The accused was then inside her house. Thereafter, P.W.1 informed the police over phone. Then, on the next day morning that was on 26.11.2009 at 8.00 a.m., he went to the police station and made a complaint.

(c) P.W.9, the then Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Cr.No.144 of 2009 under Section 302 of IPC against the accused. Ex.P.12 is the First Information Report. He forwarded both the documents to court.



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(d) The investigation was then taken up by P.W.10. He proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.8 Doctor conducted autopsy on the dead body of the deceased on 27.11.2009 at 10.45 p.m. He found the following injuries:

'Moderately nourished male body lying on its back at GH Mortuary, Sathy, generalized burnt injury from head to foot present sparing patchy unburnt areas over feet and above ankle in left leg present. Both eyes closed. No bleeding from nose, mouth and ears. Mouth partially opened. Tongue inside mouth. Peeling and blackening of skin noted over burnt areas in a patchy manner. Teeth complete. On cut section of larynx and trachea contains soot particles.

I) Opening of Thorax: 1. No fracture ribs. (2) No blood in thoracic cavity (3) Lungs: 42 grams congested on cut section and lung 375 grams congested (4) Heart 250 grams contains 100ml of blood (5) Hyoid bone preserved.

II. Opening of Abdomen: Stomach contains empty (2) Intestine mucosa congested (3) Liver: 1000 grams congested (4) Spleen 90 grams congested (5) Both kidney each 110 grams congested (6) Bladder : Empty

III. Opening of Skull : 1) No fracture skull bones (2) Margins normal (3) Brain:1000 mgs solid (4) No fracture base of skull.

Following preserved for Chemical Analysis:

Stomach & its Contents (2) Intestine and its contents (3) Sample of Liver (4) Kidney (One) (5) Preservative used sodium chloride (6) Hyoid bone preserved in formalin.'

(f) P.W.7 conducted chemical examination on the internal organs and found that there was neither poison nor alcohol. Based on the above, P.W.8 gave opinion that the death of the deceased was due to the burn injuries under Ex.P.10 Postmortem Report. Ex.P.11 is his final opinion.

(g) P.W.10 recovered the wooden log (Poori Kattai) on the same day at 04.00 p.m. P.W.10 arrested the accused in the presence of P.W.1 and P.W.7. On such arrest, she disclosed the place at where she had hidden the wooden log M.O.1. In pursuance of the same, she produced M.O.1 wooden log from the place of hide out and that was recovered. Similarly, she produced



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M.O.2 Plastic Bottle also. That was also recovered from the place of hide out. She also produced a match stick. They were all recovered under a Mahazar. Then, he sent the accused to court for judicial remand and also handed over the material objects to court. Since the deceased belonged to Scheduled Caste, he altered the case into one under Section 302 and 506 of IPC and Section 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

(h) The investigation was thereafter taken over by P.W.11. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges 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 11 witnesses were examined and 16 documents and 7 material objects were also marked.

4. Out of the said witnesses, P.W.3 claims to have witnessed the entire occurrence. P.Ws.1, 2, 4 and 5 have stated that they found the deceased in flames in front of the house of the accused. P.W.1 has stated that he informed the police about the same and on the next day, he preferred the complaint to police under Ex.P.1. P.Ws.1 and 4 have also spoken about the arrest of the accused and the consequential recovery of M.Os.1 to 4. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.6 has spoken about the Community Certificate issued by her in the capacity of Tahsildar, Kothagiri. According to her, the deceased belongs to Scheduled Caste and the accused does not belong to Scheduled Caste or Scheduled Tribe. P.W.8 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.7 has spoken about the chemical examination conducted on the internal organs of the deceased. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.10 and 11 have spoken about the investigation done by them and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., she denied the same as false. Her defence was a total denial. However, she did not choose to examine any witness nor mark any document on her side.



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6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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

8. In this case, the deceased was found in flames just in front of the house of the accused i.e. at the place of occurrence itself. P.W.2 has stated that at the time, when he was passing through the place of occurrence, he found the deceased in flames. At that time, he was not even aware of the identity of the person who was in flames. He informed P.W.1 over phone and immediately, he came to the place of occurrence. Similarly, P.W.2, 4 and 5 also rushed to the place of occurrence. They extinguished the fire and after that only, they came to know that it was the deceased. P.W.1 thereafter informed the police over phone and on the next day at 8.00 a.m., he made a complaint to the police. Though it is stated by the prosecution that P.W.3 had witnessed the entire occurrence, we find it difficult to believe him for the simple reason that, had it been true that he had witnessed the entire occurrence, the said fact would have been mentioned even in Ex.P.1, which was preferred at 08.00 a.m. on 26.11.2009. P.W.2 would not have missed to notice the presence of P.W.3, when he saw the deceased in flames for the first time. P.W.3 did not say anything about the occurrence either to P.W.1 or to P.W.2. He was not even seen there, when P.W.1 rushed to the place of occurrence. Thus, it is crystal clear that P.W.3 has been introduced later by the police as an eye-witness. Thus, we find it difficult to believe P.W.3. Once the evidence of P.W.3 is disbelieved, we find no other evidence against the accused. The only evidence available would be that the deceased was found in flames just in front of the house of the accused. Unless it is clinchingly proved that it was this accused who set fire on the deceased, simply because the deceased was found in flames in front of the house of the accused, it cannot be safely concluded that it was this accused who set him ablaze.

9. The prosecution also relies on the recovery of wooden log (Poorikattai), the plastic can, Match Box and burnt match sticks M.Os.1 to 4 series on the disclosure statement made by the accused. However, the link between M.Os.1 to 4 Series and the crime has not been established. Thus, the recovery of M.Os.1 to 4 Series at the instance of the accused was not in any manner go to help the prosecution. Thus, the prosecution, in our considered view, has failed to prove that it was this accused, who caused the death of the deceased.



10. Article 21 of the Constitution of India guarantees the life and personal liberty of an individual only by following the procedure established by law. It is not possible to deprive of the life and personal liberty of the individual on mere conjectures or surmises. In this case, in our considered opinion, the trial court had convicted the accused based on surmises. Therefore, we are bound to interfere with the conviction and sentence imposed by the trial court on the accused. We hold that the appellant is entitled for acquittal.

11. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.

12. While parting with the case, we appreciate the services rendered by Mr. Raj Mohan, the learned Counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Solur Mattam Police Station,
The Nilgiris District.
2. The Judicial Magistrate,
Coonnur.
3. The Sessions Judge,
The Nilgiris District at Ooty.
4. The District Collector,
The Nilgiris District.
5. The Superintendent of Police,
The Nilgiris District.



6. The Superintendent,
Central Prison,
Vellore.

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7. The Public Prosecutor,
High Court, Chennai.

Copy to:

The Member Secretary,
TamilNadu Legal Services Authority,
High Court, Chennai.

+1cc to M/S.N.Mohideen Basha, Advocate Sr.19429

Cr1.A.No.57/2013

ad(CO)
srg(20/04/2016)