

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM:

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

Criminal Appeal No.839 of 2013

Sudhakar

... Appellant

-Vs-

State rep by
The Inspector of Police
Magarajakadai Police Station
Krishnagiri District.
(Crime No.50/2010)

... Respondent

This Criminal Appeal has been preferred to call for the entire records in connection with the S.C.No.127/2010 on the file of the learned Additional District & Sessions Judge, Krishnagiri, Krishnagiri District and set aside the judgment dated 30.08.2013.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.127 of 2010 on the file of the learned Additional District and Sessions Judge, Krishnagiri. He stood charged for offences under Sections 341 and 302 IPC. By judgment dated 30.08.2013, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months for the offence u/s 302 IPC. The trial Court had not imposed any sentence for the offence u/s 341 IPC. Challenging the said conviction and sentence, the accused/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.Kempammal. P.W.1 is her husband and P.W.2 is her brother. P.W.1 and the deceased were residing at Kollappatti Village in Krishnagiri District. The accused also belongs to the same village. For quite some time before the occurrence, the accused and the deceased had illicit intimacy. When this came to the knowledge of P.W.1-the husband of the deceased, he warned her not to have any such connection with the accused. The deceased apologised to P.W.1 for the same and assured that she would not have any connection with the accused. True to her words, she disconnected her relationship with the accused. But, this was not to the liking of the accused. Since the deceased was not co-operating with him, and since the deceased had disconnected her relationship with him, the accused decided to do away with the deceased. This is stated to be the motive for the occurrence.

[b] On 17.03.2010, P.W.1 had gone to his field for work. The deceased used to bring dinner for him. On the day of occurrence, since it was a festival day, P.W.1 decided to return to his house to have dinner with his wife. But, without knowing that, the deceased had already left for the field taking dinner to P.W.1. When she was on her way, at a place known as Vondiyur kuttai, the accused intercepted her. He shouted at her for having disconnected her relationship with him and poured kerosene and set fire to her. P.W.1 noticed the same from a distance, but he could not identify the features of the assailant. Similarly, P.Ws.2 and 4 also noticed the same. They also could not notice the identity of the assailant. P.Ws.1 to 4 rushed towards the place of occurrence. They found the deceased lying with extensive burn injuries. When enquired, she told them that the accused had poured kerosene and set fire to her. Immediately, they took the deceased to the hospital. P.W.6-Dr.Ranganathan examined the deceased at the Government Hospital, Krishnagiri at 8.40 p.m.. Then, the deceased was conscious. She told P.W.6 that when she was proceeding towards her field, at 7.00 p.m., on the same day, a known person poured kerosene on her and set fire. P.W.6 found 92% of burn injuries on the deceased. He admitted her as in-patient after making entries in the Accident Register. Ex.P5 is the said Accident Register. P.W.6 gave intimation to the police as well as to the learned Judicial Magistrate regarding the same.

[c] P.W.11 - the then Sub Inspector of Police, on receiving the said intimation, went to the hospital at 8.45 p.m. She found the deceased conscious. P.W.6-Dr.Ranganathan who was attending the deceased certified that the deceased was in a

conscious state to make a statement. Having ascertained the same, P.W.11 recorded the statement of the deceased. Ex.P15 is the said statement of the deceased. On returning to the police station, at 10.30 p.m., she registered a case in Cr.No.50/2010 u/s 307 IPC against the accused. Ex.P16 is the FIR. He forwarded Exs.P15 and 16 to the Court and handed over the case diary to the Inspector of Police for investigation.

[d] P.W.10 - the then Judicial Magistrate-I, Krishnagiri, on receiving intimation from the Government Hospital, Krishnagiri went to the Hospital at 9.30 p.m., on 17.03.2010. P.W.6-Dr.Ranganathan after having examined the deceased, gave a certificate that the deceased was conscious. P.W.10, from the answers elicited by her for the questions posed by him and from the Certificate of P.W.6, got satisfied that the deceased was in a fit state of mind to make dying declaration. Accordingly, he recorded the dying declaration of the deceased under Ex.P13. In that dying declaration, the deceased told him that it was this accused who intercepted her, poured kerosene and set fire to her.

[e] P.W.14 - the then Inspector of Police took up the case for investigation. In the meanwhile, the deceased succumbed to the injuries. Therefore, he altered the case into one under section 302 IPC. At 6.30 a.m., on 18.03.2010, he went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He recovered M.Os.3 to 11 from the place of occurrence. He arranged for a photographer to take photographs at the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased between 7.30 a.m. and 9.00 a.m. in the presence of the panchayatdars. Then, he forwarded the body for post-mortem. P.W.7 conducted autopsy on the body of the deceased on 18.03.2010 at 12.45 p.m. There were no external injuries on the body of the deceased:

[f] Ex.P7 is the Post-mortem Certificate. P.W.14 arrested the accused on 18.03.2010 at 2.00 p.m. at Chinnapalli bus stop in the presence of P.W.5 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a plastic can. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1- the plastic can. P.W.14 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court. The investigation was thereafter taken up by P.W.15. At his request, the material objects were sent for chemical examination. The report revealed that there were traces of kerosene in some of the items. On completing the investigation,

he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges u/s 302 and 341 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 22 documents were exhibited, besides 11 material objects.

4. Out of the said witnesses, P.Ws.1 to 4 have claimed that they found a person with smell of kerosene fleeing away from the scene of occurrence. Since it was dark, they could not notice the identifying features of the assailants. They found the deceased lying at the place of occurrence with burn injuries. She told them that it was this accused who poured kerosene and set fire. P.W.1 has further stated about the earlier motive. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.6 has stated that he examined the deceased at the hospital at 8.40 p.m. and he found 92% burn injuries. He further stated that the deceased was conscious and she told him that a known person poured kerosene and set fire when she was proceeding to her field in her village. P.W.7 has spoken about the post-mortem conducted and his Final Opinion regarding the cause of death. P.W.8 has spoken about the chemical analysis done on the material objects. P.W.9 has spoken about the chemical examination conducted on the visceral organs of the deceased. She has stated that there was no poison detected on any of the internal organs. P.W.10 has recorded the judicial dying declaration at 9.30 p.m. on the day of occurrence. P.W.11 has spoken about the statement of the deceased recorded at 8.45 p.m. and the registration of the case by her. P.W.12, the Head Clerk of the Court has stated that she forwarded the material objects for the chemical examination on the orders of the learned Judicial Magistrate. P.W.13 has spoken about the photographs taken at the place of occurrence. P.Ws.14 and 15 have spoken about the investigation done and the Final Report filed.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor he did mark any documents in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused u/s 302 and 341 IPC. Aggrieved over the same, the appellant/accused is before this Court with this appeal.

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

8. This is a case based on circumstantial evidence as there is no eye witness to the occurrence. P.W.1 has spoken about the motive. He has stated that for quite some time before the occurrence, the deceased had illicit intimacy with the accused. He warned her and wanted her to disconnect her relationship with the accused. She promised to disconnect and accordingly, she disconnected. He has further stated that the accused was enraged over the same. This has been spoken in the judicial dying declaration. Thus, from these two evidences, the prosecution has clearly established the motive.

9. P.Ws.1 to 4 though not the eye witnesses, have spoken about the place of occurrence and the time of occurrence. They have stated that on hearing the alarm raised by the deceased, when they rushed towards the place of occurrence, they found a male with the smell of kerosene running away from the scene of occurrence. But, since it was dark, they could not identify the features of the said person. When they rushed towards the place of occurrence, they found the deceased lying with the burn injuries. It was around 7.30 p.m. From these evidences, the prosecution has clearly established the time and the place of occurrence.

10. P.W.1 immediately rushed the deceased to the hospital. At 8.40 p.m., when she was examined by P.W.6, the deceased was conscious. As we have already pointed out, she told P.W.6 that a known person, poured kerosene and set fire to her at 7.30 p.m. on the same day at her village when she was proceeding to her field. This is certainly the dying declaration, though the doctor had not recorded that the assailant was this accused. This dying declaration would certainly go to corroborate the subsequent judicial dying declaration recorded as well as yet another dying declaration recorded by P.W.11.

11. P.W.11, the Sub Inspector of Police had gone to the hospital at 8.45 p.m. and recorded the statement of the deceased under Ex.P15. P.W.6-the doctor who was present at that time had certified that the deceased was in a conscious state. The learned counsel for the appellant would submit that the evidence of P.W.11 deserves to be rejected, because she had not ascertained the mental fitness of the deceased and also failed to ascertain whether the deceased was tutored by anyone. We find no force at all in this argument. P.W.11 had taken care to

get the opinion of P.W.6 about the mental condition of the deceased. It was only after having ascertained the same, she recorded the dying declaration. There is no evidence that the deceased had been tutored. Therefore, this dying declaration, wherein the deceased had stated that it was this accused who had poured kerosene and set fire would certainly go to prove that it was this accused who had caused the death of the deceased.

12. Next comes the judicial dying declaration recorded at 9.30 p.m. by P.W.10. P.W.10 had obtained a Certificate from P.W.6 that the deceased was in a conscious state. P.W.10, from the answers elicited from the accused for the queries raised by him; from the Certificate issued by P.W.6 and from the other circumstances, having satisfied with the judicial conscious that the deceased was in a fit state of mind to make dying declaration, had recorded the judicial dying declaration, in which the deceased had told vividly about the motive and about the entire occurrence. We do not find any reason to reject this judicial dying declaration, which would clearly go to establish that it was this accused who caused the death of the deceased by setting fire. The recovery of the material objects at the instance of the accused would further strengthen the case of the prosecution.

13. Having come to the above conclusion, now we have to now examine as to "what was the offence that was committed by the accused by the said act?" It is crystal clear that having noticed that the deceased was proceeding to her field alone, the accused had chosen to utilise the opportunity to take revenge on her. He had gone to that lonely place with M.O.1-can with kerosene, poured the same on her and set fire. This would clearly go to establish the intention of the accused. We are sure that from the evidences let in by the prosecution, more particularly, the circumstances that the accused had taken M.O.1 to a lonely place and poured the same and set fire to her, his intention was only to cause the death of the deceased. The acts of the accused would squarely fall within the first limb of Section 300 IPC. There is no evidence to prove that the act of the accused would fall under any one of the exceptions to Section 300 IPC. Therefore, the appellant is liable to be punished only u/s 302 IPC. Since the accused had wrongfully restrained the deceased, he is liable to be punished u/s 341 IPC also. The trial Court has rightly dealt so.

14. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which calls for no interference at the hands of this Court.

In the result, the appeal fails and the same is accordingly

dismissed. The conviction and sentence imposed on the appellant by the trial Court are hereby confirmed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Inspector of Police
Magarajakadai Police Station
Krishnagiri District.
 2. The Additional District & Sessions Judge,
Krishnagiri, Krishnagiri District.
 3. -do-Thro'The Principal Sessions Judge, Krishnagiri.
 - 4.The Public Prosecutor,
High Court, Chennai.
 - 5.The Superintendent,
Central Prison, Vellore.
- 1 cc to Mr.E.Kannadasan, Advocate, sr.25167

Cr1.A.No.839 of 2013

ksj co
kra 03.06.2016.

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