



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal(MD)No.192 of 2015

Dharmaraj ... Appellant/Accused No.1

Vs.

State,
rep. by Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District. .. Respondent/Complainant
(Crime No.200 of 2006)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction dated 06.09.2007 by the learned Additional Sessions Judge/Fast Track Court, Ramanathapuram in S.C.No.46 of 2007 and acquit the Appellant.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

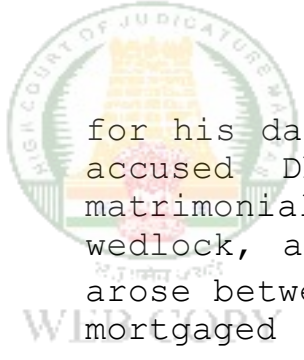
JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellant is the sole accused in S.C.No.46/2007 on the Additional Sessions Judge (Fast Track Court), Ramanathapuram. The trial court framed charges under Section 302 of I.P.C against this Appellant/Accused.

2.The Trial Court by Judgment dated 6.9.2007 convicted the appellant under Section 302 of I.P.C to undergo Life Imprisonment. Challenging the said conviction and sentence passed against him, the present appeal has been filed by the appellant/accused.

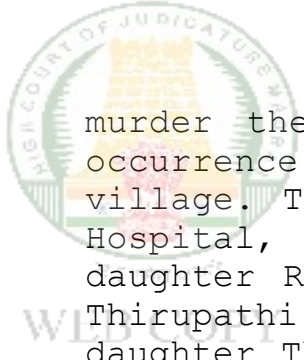
3.The case of the prosecution is that the deceased Ramalakshmi was given marriage with one Dharmaraj, who is the 1st accused. The PW-1 Karuppan is the father of the deceased Ramalakshmi. At the
<https://hdservices.ecourts.gov.in/hdservices>, the father of the deceased provided house hold articles worth about Rs.15,000/- and 19 Sovereign of gold jewels



for his daughter Ramalakshmi. The deceased Ramalakshmi and the 1st accused Dharmaraj were lived in a joint family and their matrimonial life was happy for about 6 months. Out of their wedlock, a female child was born to them. Thereafter the dispute arose between the 1st accused and the deceased that the 1st accused mortgaged the jewels of deceased Ramalakshmi for the purpose of the business of the 1st accused. On 9.11.2006 in the early morning of 6 A.M, the deceased Ramalakshmi's husband, the accused Dharmaraj poured Kerosene on her and set fire on her body due to the dispute regarding the sale of gold jewels of the deceased. The accused 2 to 4 conspired with the 1st accused with an intention to murder the deceased Ramalakshmi and set fire on her. The PW-1 who is the father of the deceased Ramalakshmi came to the Government Hospital, Paramakudi on hearing the news of the death of his daughter Ramalakshmi. Thereafter the PW-1 Karuppan went to the police station and gave Ex-P1 Complaint. On the basis of Ex-P1 Complaint, the respondent police has registered a case against the accused in Cr.No.200/2006 for the offences under sections 302, 120 (B) and 498-A of IPC.

4.After filing the charge sheet before the Learned Judicial Magistrate, Paramakudi in P.R.C.No. 5 of 2007, the case was committed to the Additional Sessions Judge (Fast Track Court), Ramanathapuram and came to be numbered as S.C.No.46/2007. In this case, 20 witnesses were examined as prosecution side witnesses and 27 Exhibits were marked on the side of prosecution and there are 15 material objects produced before the Trial court. There was one witness and one exhibit marked on the side of the 1st accused as defense witness and document.

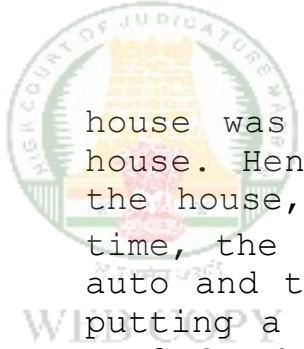
5.In this case, PW-1 Karuppan deposed that he is the father of the deceased Ramalakshmi. The deceased Ramalakshmi was given marriage with the 1st accused Dharmaraj. At the time of marriage, the PW-1 provided house hold articles worth about Rs.15,000/- and 19 Sovereign of gold jewels for his daughter Ramalakshmi. The deceased Ramalakshmi and the 1st accused Dharmaraj were lived in a joint family and their marital life was happy for about 6 months. Out of their wedlock, a female child was born to them. Thereafter the dispute arose between the 1st accused and the deceased that the 1st accused mortgaged the jewels of deceased Ramalakshmi for the purpose of the business of the 1st accused. The PW-1 further deposed that in that regard his daughter deceased Ramalakshmi got angry and come to his house. Thereafter, at the intervention of Panchayatars of both the village, the PW-1's daughter returned to her matrimonial home. On 9.11.2006 in the early morning at 6 A.M, the deceased Ramalakshmi's husband, the 1st accused Dharmaraj poured Kerosene on her and set ablaze fire on her body due to the dispute regarding the sale of gold jewels of the deceased. The accused 2 to 4 conspired with the 1st accused with an intention to



murder the deceased Ramalakshmi and set fire on her. The said occurrence was reported to PW-1 through STD Telephone booth of his village. The PW-1 further deposed that he went to the Government Hospital, Paramakudi on hearing the news of the death of his daughter Ramalakshmi. Prior to the arrival of PW-1, his daughter Thirupathi was in the hospital. It is informed to PW-1 by his daughter Thirupathi that her sister Ramalakshmi told prior to her death that the 1st accused set fire on her. Thereafter the PW-1 Karuppan went to the police station and gave Ex-P1 Complaint.

6. PW-2 Thirupathi deposed that she is residing at Kulavipatti and her husband was no more. The deceased Ramalakshmi is her sister. She knows all the accused. The PW-2's sister's marriage was solemnized with the 1st accused Dharmaraj and they had a female child. At the time of marriage, they provided house hold articles worth about Rs.15,000/- and 19 Sovereign of gold jewels to her sister Ramalakshmi. The business run by her sister's husband became loss and therefore the 1st accused mortgaged the gold jewels of her sister Ramalakshmi. Subsequently after redeeming the said mortgage, the 1st accused sold the same and gave the money to his brother Aathimoolam to go abroad. When her sister asked her gold jewel, she was threatened with dire consequences by all the accused. The accused and the sister of PW-2 were lived in a Joint family. The PW-2 further deposed that in that regard her sister deceased Ramalakshmi got angry and went to her father's house. Thereafter, at the intervention of Panchayatars of both the village, the PW-2's sister returned to her matrimonial home. On 9.11.2006 in the early morning at 6 A.M, the deceased Ramalakshmi's husband, the 1st accused Dharmaraj poured Kerosene on her and set ablaze fire on her body due to the dispute regarding the sale of gold jewels of the deceased. The accused 2 to 4 had conspired with the 1st accused with an intention to murder the deceased Ramalakshmi and set fire on her. The said occurrence was informed to PW-2 by PW-3 Kannan over phone. The PW-2 further deposed that she went to the Government Hospital, Paramakudi and in the hospital the deceased Ramalakshmi told to PW-2 that at 6.30 A.M in the early morning, the 1st accused poured kerosene and set fire on her. At that time, PW-2 was informed that the Judge was coming there and therefore she came out of the room. Thereafter, the PW-2's father Karuppan came to the hospital where he was informed about the death of his daughter by PW-2 and immediately the PW-1 went to the police station and gave Ex-P1 Complaint.

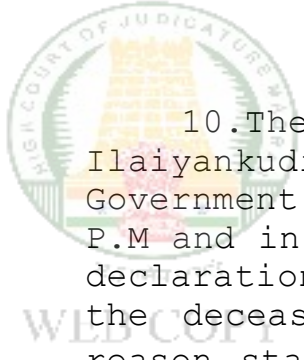
7. The PW-3 Kannan deposed that he is native of Kothangulam and he was working at Sivakasi. At the time of occurrence, he was in his native village and he knows all the accused. The deceased Ramalakshmi is his aunt's daughter. On 9.11.2006 while PW-3 was returned from his agriculture field and was in his house, he heard the sound from the 1st accused house. He rushed there and the



house was locked and he found the smoke was coming out of the house. Hence, PW-3 kicked the door and it was opened and inside the house, he found the deceased with fire on her body. At that time, the 1st accused came out of the house. The PW-3 went to take auto and the others attempted to rescue the deceased from fire by putting a gunny bag on the body of the deceased Ramalakshmi. The PW-3 further deposed that when he went to the Government Hospital, Paramakudi where his mother Karmegam and Ramalakshmi were in the hospital. When PW-3 asked about the details from Ramalakshmi, she told that her hands and legs were tied by her husband 1st accused Dharmaraj and she was set fire by her husband Dharmaraj.

8.The PW-4 Malaichamy deposed that he is residing at Kothangulam and he knows all the accused. The 1st accused Dharmaraj married the deceased Ramalakshmi and both of them were lived in a joint family. Since the 1st accused mortgaged the jewels of Ramalakshmi and due to that there was a quarrel between them and she went to her parent's house. The PW-4 along with Thanikodi and other important persons went to the parent's house of Ramalakshmi where negotiation was held and in that negotiation Ramalakshmi was returned to her matrimonial home for re-union. Thereafter the jewels of Ramalakshmi was sold for using the money to the brother of her husband namely Aathimoolam to go abroad and in that regard, there was a quarrel. The PW-4 further deposed that one day evening the deceased Ramalakshmi came to the house of PW-4 and told his wife that the accused were giving torture to her. While so, on 9.11.2006 after 7.00 A.M, the PW-4 was informed by his wife that there was smoke from the house of the 1st accused. When PW-4 reached the 1st accused house, where Kannan, Karmegam and others were standing in front of the house and PW-3 Kannan Kicked the door and it was opened. At that time, the 1st accused was running from the house. At that time, deceased Ramalakshmi was with fire on her body and shouted with a request to save her and she was covered with gunny bag. Thereafter the PW-4 called auto and sent the deceased to hospital where in the afternoon, she died.

9.The PW-7 Dr.Muniyarasu, the Assistant Medical Officer of Paramakudi Government Hospital has deposed that on 9.11.2006, the deceased was brought to the hospital with 100% burn injuries and further deposed that the deceased earlier was recommended to be taken to the Madurai Government Hospital for further treatment. He deposed that the deceased has stated that the reason for the burn injury over her was caused by the accused. Further, he deposed that the finger print was not secured as the deceased was found completely burn with 100% injury. However, there is no say as to why the deceased was treated and admitted in the Paramakudi Hospital, when already the deceased was forwarded for treatment to Madurai Government Hospital.



10.The PW-8 Abraham Lincoln, the Learned Judicial Magistrate, Ilaiyankudi deposed that on receipt of intimation from the Government Hospital at 11.45 P.M, went to the hospital at 11.55 P.M and in the presence of PW-7 has visited and recorded the Dying declaration of the deceased Ramalakshmi. He further deposed that the deceased was in a fit state of mind and deposed that the reason stated by the deceased for the burn injury was by the 1st accused. The fingerprint of the deceased was not received since it was found completely burnt.

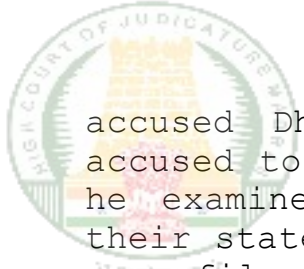
11.The PW-9 Dr.Ravikumar who conducted post mortem of the deceased and submitted the report Ex-P-11 deposed that the injury sustained may be incurred due to the pouring of kerosene over the deceased and setting up the fire. He further deposed that the said burn injury may also be acquired either due to an accident or due to a suicide.

12.The PW-10 Dr.Jeeva Rathinam, the Medical Officer of Manamadurai Government Hospital deposed that on 9.11.2006, the 1st accused was admitted in the hospital by his brother. The reason stated for the injuries sustained by the accused was that it happened when the 1st accused attempted to save his wife i.e., the deceased, while the deceased caught fired while she was cooking in kitchen. He further deposed that the 1st accused was recommended to Government Hospital, Madurai for further treatment.

13.The PW-11 Lakshmikaanthan, the RDO deposed that on 10.11.2006 at 7 A.M, on receipt of the First Information Report, forwarded the body of the deceased to conduct Post Mortem. He further deposed that on his enquiry, it was found that there was no dowry problem between the deceased and the family of the accused. He further stated that during his enquiry, no one from the family of the accused and the deceased stated that there existed any problem in their family.

14.The PW-12 Gopal, the Village Administrative Officer deposed that on 09.11.2006 at 6.00 A.M, he went to the place of occurrence, wherein the investigation officer was found present. The Material Objects M.O.1 to 8 was recovered from the place of occurrence in his presence. For the said recovery, PW-12 and one Thirumalaisamy signed as witness in the Mahazar Ex-P 24.

15.The PW-19 R.Balaji deposed that he is the investigation officer of Cr.No.200/2006. After taking investigation of the above said crime, on 9.11.2006 he visited the place of occurrence at 18.00 hours and prepared Rough Sketch Ex-P26 and he recovered 5 Litre Plastic Kerosene Cane, Match Box, burnt hairs, 5 Kg weighed Gunny Bag and Burnt Saree in the presence of witnesses. He further deposed that on 10.11.2006 at 18.30 hrs on secret information received by him, in front of the RDO, Office of Paramakudi, he arrested the accused 2 to 4 and taken them to the police station and thereafter they were sent to Judicial custody. Thereafter on 11.12.2006, on receiving secret information PW-19 arrested 1st



accused Dharmaraj in front of GRH, Madurai and he taken the accused to police station and sent him to Judicial custody. Then, he examined Doctor Muniyarasu and other witnesses and recorded their statements. Thereafter on 20.11.2006, he has handed over the case file to PW-20 Inspector of Police, since he returned to duty after completion of his leave. The PW-20 Inspector of Police after taking charge of the above said crime number, on 21.11.2006 conducted further enquiry and recorded the statements of the witnesses. He also examined the Learned Judicial Magistrate, however, no statement was obtained from him. PW-20 filed charge sheet.

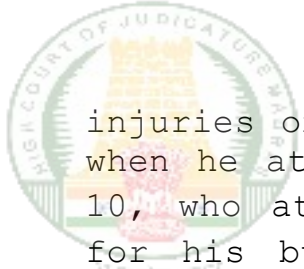
16.The DW-1 Dr.Ramesh deposed that on 11.11.2006 while he was working as Assistant Medical Officer at Central Prison, Madurai, the 1st accused Dharmaraj was remanded to judicial custody. He examined the 1st accused and on his examination it was found that the 1st accused taken two days treatment for his burn injuries at Government Rajaji Hospital, Madurai. On 12.11.2006, DW-1 again examined the 1st accused in the Jail Hospital and given continuous treatment. The 1st accused suffered 25% burn injuries on his two legs and hands. The 1st accused was in the jail hospital from 12.11.2006 to 27.11.2006. The 1st accused was sent to Government Rajaji Hospital, Madurai for further treatment and he taken treatment there from 27.11.2006 to 4.12.2006. The Ex-D1 serials are the details of medical treatment taken by the 1st accused.

17.On the evidence taken by the trial court namely Additional District and Sessions Judge, (Fast Track Court), Ramanathapuram came to the conclusion that the charges laid against the 1st accused were proved by the circumstantial evidence led by the prosecution and acquitted accused 2 to 4 from all the charges.

18.In the above circumstance that there is no direct eye witness, the learned Trial Judge convicted the 1st accused for the offences under section 302 of I.P.C holding that the prosecution case was proved the beyond reasonable doubt. Against the said conviction, the present appeal has been filed.

19.We have heard Mr.D.Rameshkumar, learned counsel for the appellant and Mr.C.Ramesh, learned Assistant Public Prosecutor for the respondent and we have also perused the records carefully.

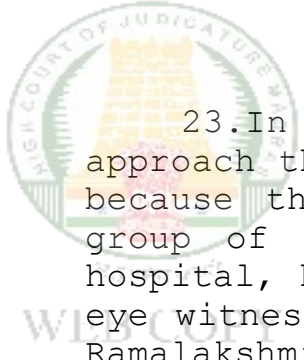
20.In this case, going through the evidences and documents produced by the prosecution and the defense witness, it is the admitted case of PW-1 that the 1st accused who is the husband of the deceased also sustained 20% burn injuries. When the PW-19, the Investigation officer was subjected for cross examination, he admitted the same. In addition to that the doctor who treated the 1st accused in Central Prison is examined as DW-1 whose evidence is subjected for analysis, it disclosed the injury sustained by the 1st accused is out of fire. Further the 1st accused sustained



injuries on his limbs. It discloses that he could sustain injury, when he attempted to save his wife. The Duty Medical Officer PW-10, who at the first instance gave treatment to the 1st accused for his burn injuries was examined and he stated that the 1st accused was admitted with 20% burn injuries and the reason for the burn injuries was noted in Ex-P13, Accident Register that on 9.11.2006, when the deceased Ramalakshmi was cooking, the stove burst and in that accident, the 1st accused wife suffered with burn injuries and when the 1st accused attempted to save his wife, he also suffered with burn injuries over left region, back of left forearm, left thigh and leg.

21. Further, it is the settled legal preposition that the prosecuting agency can't shut its eyes to probe into the injuries sustained by the 1st accused. The basic principles in criminal jurisprudence would be the injury of the accused must be explained by the prosecution, when this mandatory requirement is not complied with, it would create serious doubt over the case of the prosecution. In this regard, it is useful to refer the Judgment of the Hon'ble Apex Court reported in AIR 1976 SC 2263, wherein it is held that the prosecution ought to have explained the injuries sustained by the accused. The non-explanation of the injuries sustained by the 1st accused is a fatal to the case of the prosecution.

22. Further though the evidence of PW-2 to PW-4 would suggest that when PW-3 entered into the place of occurrence by opening the door which was locked inside, they found that the 1st accused ran away from the place of occurrence. As this factor is crucial, it is subjected for judicial scrutiny. Though it is the case of the prosecution that 1st accused set ablaze the deceased, if it is so, the person who is having head over shoulder would locked the door inside the room. So it is clear that the occurrence was out of bursting of stove or it could be an accident or some other mode. However, the categorical versions of PW-2, PW-3 & PW-4 as the PW-3 Kannan only break open the door which was locked inside, this court feels there is a considerable force on the arguments advanced on the side of the learned counsel for the appellant that if the appellant had really intended to set ablaze, he would not to have locked the door at the place of occurrence. At the same time, this court also appreciated the statement Ex-P18 given by Smt. Karmegam, it is found that the 1st accused found at the place of occurrence that too near by the deceased. The manner of injuries sustained by the appellant would falsify the case of the prosecution that the crime was not committed by the 1st accused. Further, the prosecution has failed to examine the witness Smt. Karmegam whose statement was recorded under Ex-P18 and PW-11 BDO also examined the said Smt. Karmegam and there is no explanation by the prosecution for the Non-examination of the witness Smt. Karmegam is a fatal to the case of the prosecution.

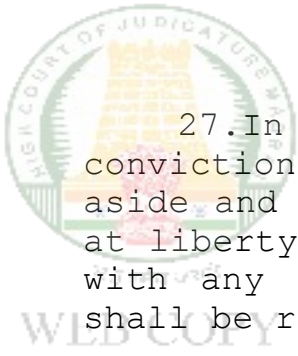


23. In view of the peculiar feature of this case, we have to approach the evidences of the PW-1 to PW-4 with very great caution because they are doubtfully being interested in implicating the group of accused. As per PW-1's version, when he came to the hospital, his daughter Ramalakshmi died and therefore he is not an eye witness. According to PW-2 who is the sister of the deceased Ramalakshmi, she met her sister Ramalakshmi in the hospital after hearing the news that her sister was set ablaze by the 1st accused with criminal conspiracy of his family members. The PW-2's sister Ramalakshmi stated to have been spoken to PW-2 that on 9.11.2006 at about 6.30 A.M, when the deceased came to the house, at that time the 1st accused tied her hands and legs and poured kerosene on her body and set ablaze on her body. On hearing the shouting from 1st accused house, PW-3 Kannan break open the door which was locked inside. But as discussed above, one Smt.Karmegam who is the neighbour of the deceased only secured the deceased and taken her to police station and from the police station, she admitted the deceased into the Government Hospital at Paramakudi. Whereas PW-18, the Inspector of Police deposed that on 9.11.2006, while he was working as Sub-Inspector of Police at Parthibanoor Police Station, PW-1 Karuppan came to the police station and gave Ex-P1 complaint and the same was registered in Cr.No.200/2006. Therefore, the evidence of PW-3 and PW-18 has not been corroborated with the statement of Smt.Karmegam who admitted the deceased into the Government hospital at Paramakudi. According to Smt.Karmegam, when she has taken the deceased to the police station on the way to the hospital, the police had obtained the statement from the deceased Ramalakshmi.

24. The motive alleged by the prosecution for the crime that as per PW-1's evidence, the 1st accused mortgaged the gold jewels of the deceased Ramalakshmi and subsequently sold the same by 1st accused. Whereas, as per the version of PW-6 who is the one of the Panchayatar stated that while conducting Panchayat for re-union, the 1st accused returned the jewels of Ramalakshmi. But the trial court comes to the conclusion that merely because of the above said discrepancies; the prosecution case cannot be rejected. We can't accept the said finding of the trial court; the prosecuting agency must prove all the factors for the crime.

25. The trial court has not considered the evidence of PW-10, PW-11 and Ex-P13, Ex-P18 statement of Smt.Karmegam given before the Revenue Divisional Officer.

26. Thus in view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical nature of the evidence and other circumstances pointed by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubt. Therefore the 1st accused/appellant is acquitted from all the charges by giving him the benefit of doubt.



27. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to him.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Sessions Judge/Fast Track Court,
Ramanathapuram.
2. The Principal Sessions Judge, Ramanathapuram
3. The Judicial Magistrate, Ramanathapuram
4. -do-thro The Chief Judicial Magistrate, Ramanathapuram
5. The Commissioner of Police,
Ramanathapuram
6. The District Collector
Ramanathapuram
7. The Superintendent of Central Prison, Madurai
8. The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.
9. The Section Officer,
Criminal Section
Madurai Bench of Madras High Court, Madurai.

vsa/skn

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