



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. 196 of 2015

Shanmugavel : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police
Thoothukudi south Police Station
Thoothukudi, Thoothukudi District.
in Crime No.413 of 2013

:Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, in S.C.No.212 of 2013 dated 16.06.2015.

For Appellant : Mr.A.Thiruvadikumar

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

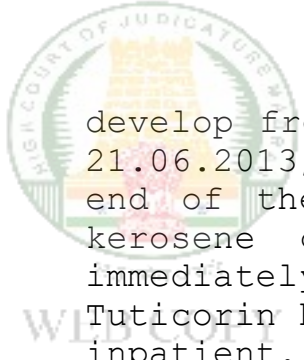
JUDGMENT

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

The appellant is the sole accused in S.C.No.212/2013 on the file of the learned Sessions Judge Mahalir Neethimandram (Fast Track Court) Tuticorin. He stood charged for the offence under Section 302 IPC. By judgment dated 16.06.2015, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 6 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:

<https://hcservices.ehcs.gov.in/hcservices/> The accused in this case was one Mrs.Sivanammal. The accused is her husband. They were residing at Vallinayagapuram in Tuticorin District. The accused was a drunkard. He used to



develop frequent quarrel with the deceased. It is stated that on 21.06.2013, there was domestic quarrel around 12.30 p.m. At the end of the said quarrel, it is stated that the accused poured kerosene on the deceased and set fire. The deceased was immediately taken to the Government Medical College Hospital at Tuticorin by one Veeraputhiran. At 2.00 p.m., she was admitted as inpatient. At that time, she told that her husband, around 12.40 p.m., at her house, on 21.06.2013, poured kerosene and set fire. Then, she was conscious. Intimation was given to the police. The learned Judicial Magistrate, Fast Track Court, Tuticorin, on receiving the said intimation, at 11.20 a.m. On 22.06.2013, went to the hospital. She found the deceased conscious. The Doctor attending on her also gave opinion that she was conscious. Then, P.W.20 recorded the dying declaration of the deceased by following the procedures. In the said dying declaration, the deceased told that the accused demanded money from her. This resulted in a quarrel. In the said quarrel, the accused set fire and then extinguished the fire by pouring water on her. She further told that her husband should be hanged.

2.1. The Sub Inspector of Police, Tuticorin South Police Station, went to the hospital on 22.06.2013 at 5.30 a.m. and recorded the statement of the deceased. In the said statement also, the deceased told that in the quarrel, the accused set fire and then ran away.

2.2. Based on the said statement of the deceased, P.W.19, the then Sub Inspector of Police, registered a case in Crime No.413/2013 under Section 307 IPC against the accused. The case was taken up for investigation by P.W.21, the then Inspector of Police.

2.3. P.W.21 went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered the burnt materials found at the place of occurrence under a mahazar. On 24.06.2013, at 12 noon, he arrested the accused. On such arrest, he gave a voluntary confession, in which, he disclosed the place, where he had hidden a can. In pursuance of the same, he took the police to the place of hide out and produced M.O.4 a can. On 25.06.2013, at 10.15 a.m., the deceased died in the hospital succumbing to the injuries. Therefore, P.W.21 altered the case into one under Section 302 IPC.

2.4. P.W.21 - Dr.Manoharan conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.16 - Dr.Manoharan conducted autopsy on the body of the deceased on 26.06.2013 at 12 noon. He found the following injuries:

"Superficial infected burns seen in the back of chest, face, neck, chest, upper limbs, upper half of both knees. Singeing of frontal hair, eyebrows, eyelashes noted. Pus materials seen over the lesions. On removal of pus, base of wound red in

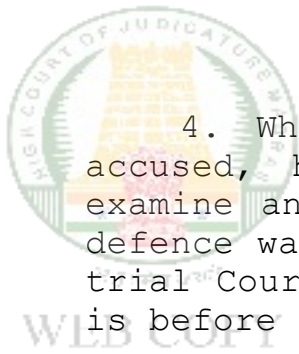
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Opinion: the deceased would appear to have died of complications of superficial burns. Death would have occurred 12 - 24 hrs prior to the autopsy. However, the final opinion is reserved due to pending chemical examiner's report."

He gave opinion that the death was due to the burn injuries. Ex.P11 is the postmortem certificate. Ex.P12 is the final opinion.

2.5. P.W.21 recovered the bloodstained cloth from the body of the deceased. He forwarded the material objects to the Court. On completing the investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. He denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 26 documents and 5 material objects were marked. Out of the said witnesses, P.W.1 is the son of the deceased. He has turned hostile and he has not supported the case of the prosecution. P.Ws.2,3,4 and 5 have also turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.6 and 7 have stated that they heard the occurrence later. P.W.8 - Dr.Srilatha has stated that the deceased was brought to the Government Medical College Hospital, Tuticorin, on 21.06.2013 at 2.20 p.m. At that time, she was conscious. She told that her husband poured kerosene and set fire. Ex.P2 is the Accident Register. P.W.9 has stated that he gave treatment to the deceased. But, she succumbed to the injuries on 25.06.2013 at 10.15 a.m. P.Ws.10,11,12 and 13 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.14 - Head Constable has stated that he took the deadbody and handed over the same to the Doctor for postmortem. P.W.15 has stated that on receiving intimation from the hospital, he went to the hospital at 11.35 a.m. on 22.06.2013. P.W.15 - Dr.Lakshmi Bai has stated that she gave certificate to the Judicial Magistrate about the mental fitness of the deceased on 22.06.2013. According to her, the deceased was in a fit state of mind to make a dying declaration. P.W.16 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.17 - Head Constable has stated that he received the death intimation from the hospital. P.W.18 has stated that he handed over the alteration report to the learned Magistrate on 26.06.2013. P.W.19 has stated that on 26.06.2013 at 2.30 p.m., on receiving the intimation from the hospital, he went to the hospital and recorded the statement of the deceased, returned to the police station and registered a case. P.W.20 - the learned Judicial Magistrate has spoken about the judicial dying declaration recorded by her. P.W.21 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. However, he did not choose to examine any witnesses nor marked any documents on his side. His defence was a total denial. Having considered all the above, the trial Court convicted him under Section 302 IPC. That is how, he is before this Court with this appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

6. As we have already pointed out, in this case, all the vital witnesses have turned hostile and thus, the prosecution has left with the three statements made by the deceased at three different times as dying declarations. The earliest was the one made by the deceased to P.W.8 - Dr. Srilatha. On 21.06.2013 at 2.20 p.m., when the deceased was brought to her, the deceased told P.W.8 that at 12.30 p.m., her husband set fire to her by pouring kerosene. We find no reason to reject this earliest statement made by the deceased, which is a dying declaration. There is no evidence available on record to infer tutoring. Then, comes the evidence of P.W.19 - the Sub Inspector of Police. According to her, on receiving intimation from the hospital, she went to the hospital and recorded the statement of the deceased at 12 noon on 26.06.2013. In the said statement, the deceased has again stated that her husband poured kerosene and set fire. There is no reason to reject this dying declaration also.

7. The third dying declaration is the judicial dying declaration recorded by P.W.20. In that declaration also, the deceased has stated that the accused poured kerosene and set fire. Absolutely, there is no evidence to doubt these three dying declarations, after all, these dying declarations have been spoken by the three independent responsible officers. Therefore, we give credence to the evidences of these three officers and thus, we have got sufficient reasons to believe three dying declarations. From the third dying declaration, it has been clearly established that it was this accused, who poured kerosene and set fire. Thus, caused the death of the deceased. Having come to the said conclusion, we have to now examine as to what was the offence committed by the accused. It is in evidence that there were frequent domestic quarrels between the accused and the deceased. In the dying declaration made to the police as well as to the learned Magistrate, the deceased had told that the accused wanted money from her. This resulted in a quarrel. It was only in the said quarrel, it is stated that the accused took out kerosene and poured the same and set fire. From the facts and circumstances of the case, we are able to infer that in the said dying declaration, the deceased could have provoked the accused. In our considered view, on account of the provocation made by the deceased, which in our considered view, was grave and sudden, the



accused would have lost his self control and would have poured kerosene. Thus, the act of the accused, in our considered view, squarely falls within the first exception to Section 300 IPC. Therefore, the appellant is liable to be punished under Section 304(i) IPC.

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8. Now, turning to the quantum of punishment. The accused was aged about 53 years at the time of occurrence; has got children to take care of; is a poor man. He has got no bad antecedents and after this occurrence, he has not involved in any other crime.

9. Having considered all these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

10. In the result, the appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the trial Court under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and he is sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks.

(ii) It is directed that the period of sentence already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(cs II)

/True Copy/

Sub Assistant Registrar

RR

To

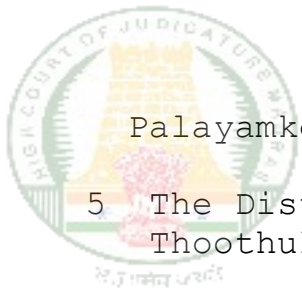
1.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahila Court
Tuticorin.

2 The Judicial Magistrate No.i
Thoothukudi.

3 Do Through The Chief Judicial Magistrate,
Thoothukudi

<https://hcservices.ecourts.gov.in/hcservices/>

4 The Superintendent,
Central Prison,



Palayamkottai

5 The District Collector,
Thoothukudi.

6 The Commissioner of Police
Thoothukudi

7 The Director General of Police,
Chennai

8. The Inspector of Police
Thoothukudi south Police Station
Thoothukudi, Thoothukudi District.

9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

THE SECTION OFFICER,
THE CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1cc to Mr.A.THIRUVADIKUMAR, Advocate Sr.No. 55820

JAM/06.10.16/SKS-RR/SAR II/6P-12C

JUDGMENT MADE
CRIMINAL APPEAL No. (MD).No.196 of 2015

23.09.2016