



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

CORAM:

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

CRIMINAL APPEAL (MD).No. 274 of 2015

Gurunathan

: Appellant

Vs.

State represented by
The Inspector of Police
Mallankinaru Police Station
Aruppukottai
Virudhunagar District.
in Crime No.243/ 2012

: Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the Additional Sessions Judge, Virudhunagar, in S.C.No.203 of 2013 dated 09.07.2014.

For Appellant	: Mr.M.Jegadheesapandian
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.203 of 2013 on the file of the learned Additional District Judge, Virudhunagar. He stood charged for offences under Sections 498(A) and 302 IPC. By judgment dated 09.07.2014, the trial Court convicted him both under sections 498(A) and 302 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 498(A) IPC and to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.



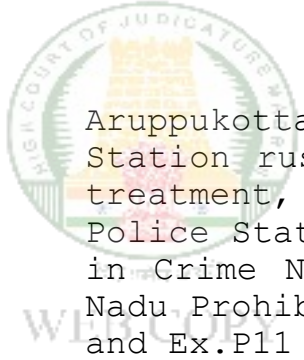
2. The case of the prosecution in brief is as follows:

The deceased in this case was one Mrs. Pandeewari. The accused is her husband. The marriage between them was celebrated four years before the occurrence. After the said marriage, they have a female child also. The accused is a Lorry Driver. Though initially for two months, the marital life was a smooth one, however, it turned to be horrible for the deceased. The accused became drunkard. He harassed her in drunken state. Therefore, once in two months or three months, the deceased unable to bear the torture, used to go and stay at her parental home. P.W.1 is her mother. After the birth of the child, the accused took the deceased and the child to his house. After sometime, again, the accused quarreled with her and attempted to kill her. The deceased escaped from the clutches of the accused and returned to her parental home. In connection with the said occurrence, a complaint was made to the police by the deceased at All Women Police Station, Aruppukottai. During the enquiry, the accused promised that he would keep the deceased in good state and he would not harass her. Believing the words, he has been warned by the police also, asked the parties to make a statement of compromise. Accordingly, the accused took the deceased to his house again. For about one month, thereafter, the marital life was smooth. Again, the accused started harassed the deceased and attacked her. Therefore, the deceased again returned to her parental home. The accused came once again to the house of P.W.1 and took the deceased back to his house. While things stood thus, it is alleged that on 26.10.2012, around 8 p.m., there was a quarrel between the accused and the deceased. The accused had suspicion over the fidelity of the deceased. He questioned her as to with whom did she go out. It has further aggravated the quarrel. At the end of the quarrel, it is stated that the accused took out a kerosene cane in the house, poured kerosene on her and set fire.

2.1. P.W.5, who is the mother of the accused, heard the alarm raised by the accused. She rushed to the house. She found the accused extinguishing the fire by using a blanket. At that time, according to P.W.5, the accused told that while letting fire to the kerosene stove, the deceased did not take care and as a result, it caught fire. Since the deceased was wearing a Nylon saree, the fire engulfed her so fast. Then, P.W.5 and the other neighbours, took her in an Auto to the hospital at Government Hospital at Aruppukottai.

2.2. P.W.10 - Dr. Nagaraja Gurumoorthy examined the deceased at 8 p.m., on 26.10.2012, at the Aruppukottai Government Hospital. At that time, she was fully conscious. She told the Doctor that while cooking, by accident, she caught fire. P.W.10 entered the same in the Accident Register (Vide Ex.P6). He found extensive burn injuries on the body of the deceased. Then, he forwarded the deceased to the Government Rajaji Hospital at Madurai.

2.3. On receiving intimation from the Government Hospital at



Aruppukottai, P.W.14 - Sub Inspector of Police, Mallanginaru Police Station rushed to the hospital. Since the deceased was undergoing treatment, she obtained a statement of P.W.1 and on returning to the Police Station at Aruppukottai on 29.10.2012., she registered a case in Crime No.243/2012 under Section 307 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Ex.P1 is the complaint and Ex.P11 is the FIR.

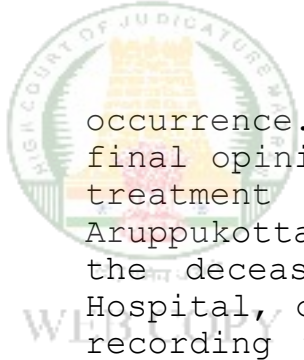
2.4. P.W.15 - the then Inspector of Police took up the case for investigation, on 29.10.2012, and visited the place of occurrence at 5.30 p.m., he prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered a plastic can from the place of occurrence under a mahazar. Then, he examined P.Ws.1 to 4 and few more witnesses and recorded their statement. On 30.10.2012, he arrested the accused at the bus stop at Thonukal Village and then forwarded him to judicial remand.

2.5. On 01.11.2012, the deceased succumbed to the injuries in the hospital. Therefore, he altered the case into one under Section 302 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6. P.W.9 - Dr.Sathasivam conducted autopsy on the body of the deceased on 02.11.2012. He found 50% of the burn injuries on the body of the deceased. He opined that the death of the deceased was due to the effect of born injuries. Ex.P5 is the postmortem certificate. The investigation was followed by the successor P.W.16. On completing the investigation, he laid charge sheet against the accused.

2.7. Based on the above materials, the trial Court framed charges under Sections 498(A) IPC and 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 24 documents and one material objects were marked.

2.8. Out of the said witnesses, P.W.1 is the mother of the deceased. P.W.2 is the co-brother of the accused. P.W.3 is a neighbour of the deceased, P.W.4 yet another neighbour of the deceased. They have stated about the previous frequent quarrels between the accused and the deceased. They have further stated that they heard about the occurrence and went to the hospital. P.W.5 - the mother of the accused had stated that on hearing the alarm raised by the accused, when she rushed into the house, the accused extinguished the fire. At that time, the accused told her that while cooking, the deceased by accident caught fire. P.W.6 has not stated anything incriminating about the occurrence. P.W.7 has also not stated anything incriminating. P.Ws.6 and 7 have stated that they heard about the occurrence later. P.W.8 has spoken about the preparation of observation mahazar and a rough sketch and the recovery of material object - a plastic can at the place of

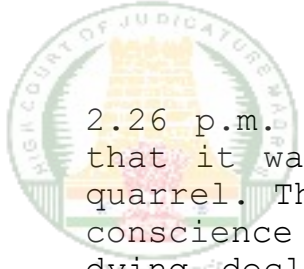


occurrence. P.W.9 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.10 has stated about the treatment given to the deceased at the Government Hospital at Aruppukottai. P.W.11 - the learned Magistrate has stated that when the deceased was undergoing treatment at the Government Rajaji Hospital, on 27.10.2012, at 2.10 p.m., he went to the hospital for recording the dying declaration of the deceased. He has further stated that at 2.26 p.m., he met the deceased in the hospital. At that time, the deceased was fully conscious and she was in a fit state of mind to make a dying declaration. Then he recorded the dying declaration. In the said dying declaration, the deceased told that it was this accused, who set fire. Ex.P8 is the judicial dying declaration. P.W.12 has stated that he handed over the dead body for postmortem as directed by the investigating officer. P.W.13 has spoken about the earlier complaint made by the deceased, talks between the accused and the deceased in the police station and the compromise reached between them. P.W.14 - the Sub Inspector of Police has stated about the complaint made by P.W.1 and the case registered by her on the same. P.Ws.15 and 16 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the accused, two witnesses were examined. D.W.1 - is the Village Administrative Officer of the occurrence village. He has stated that the deceased was working under the 100 days employment scheme. Ex.D4 is the record showing the work done by her. D.W.2 is a co-driver of the accused. He has stated that on an occasion, the deceased complained that the accused had pledged her jewels and the compromise between them, in which, the accused agreed to redeem the same and return to the deceased. Thus, the defence of the accused is a total denial. Having considered all the above, the trial Court convicted him under Section 302 IPC as well as 498(A) IPC. That is how, he is before this Court with this appeal.

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

5. As we have already narrated, this is a case based on circumstantial evidence. The family members of the deceased have spoken about the frequent quarrels between the deceased and the accused. It is in evidence that the accused not only was a drunkard, troubling the deceased a lot, he had also suspicion over the fidelity of the deceased. Thus, the marital life between the accused and the deceased was not as smooth as it should have been. To this extent, all the evidence of the family members of the deceased would be sufficient to prove. So far as the occurrence is concerned, it was not a premeditated one. In order to prove that it was this accused, who poured kerosene and set fire, the prosecution relies on the two dying declarations. The first one is the dying declaration made to the learned Magistrate - P.W.11 on 27.10.2012 at



2.26 p.m. In the said dying declaration, the deceased had stated that it was this accused, who poured kerosene and set fire in the quarrel. The learned Magistrate, after having satisfied his judicial conscience that the deceased was in a fit state of mind to make a dying declaration, recorded the said dying declaration. There is also no evidence even to infer that the deceased would have been tutored by somebody to make a false allegation against the accused. Thus, we do not find any reason to reject the said judicial dying declaration made by the deceased. However, the learned counsel for the appellant would make reliance on Ex.P6 - the Accident Register recorded by P.W.10 - Dr.Nagaraja Gurumoorthy. According to P.W.10, when the deceased was brought to him for treatment, she was conscious and she made a statement. She told that while she was cooking, she caught fire. Referring to this, the learned counsel for the appellant would submit that this, being the earliest dying declaration, should be given weightage. But, we find it difficult to make any reliance on this submission, because, it is in evidence that the accused was present at the house and his mother alone had taken the deceased to the hospital. Thus, this, earliest statement made by the deceased to the Doctor would have been due to tutoring made by the mother of the accused. Thus, we are not inclined to give any weightage for the said statement made by the deceased to the said Doctor, though it happened to be the earliest statement. Thus, from the judicial dying declaration made, the prosecution has clearly established that it was this accused, who poured kerosene and set fire to the deceased.

6. The argument of the learned counsel for the appellant that the Doctor, who treated the deceased at the Government Rajaji Hospital at Madurai and the Doctor, who certified to the learned Magistrate that the deceased was in a fit state of mind had not been examined does not carry much importance. In our considered view, it is immaterial.

7. So far as the evidences of D.Ws.1 and 2 are concerned, except stating that the deceased was working under the 100 days employment work, nothing favourable to the accused has been spoken by them. The learned counsel for the appellant would rely on the statement made by the deceased under Section 161 Cr.P.C. to the Investigating Officer on 29.10.2012. This statement only supports the case of the prosecution. In her statement, the deceased had stated, as to why she made different statement to P.W.10, when she was examined by him at the Government Hospital at Aruppukottai, she has stated that because the mother of the accused was with her, she made a different statement at that time. Thus, Ex.D2 instead of supporting the accused, as it was expected by the accused, has gone only in favour of the prosecution.

8. Having come to the conclusion that it was this accused, who caused the death of the deceased, now, we have to examine as to what was the offence that was committed by the accused. It is in the dying declaration itself that the accused questioned the deceased as



to her conduct. He asked her that with whom she had gone out indicating his suspicion over her fidelity. This had resulted in a quarrel. Certainly, the deceased would have used some words provoking in nature. But, for the said provocation, going by the natural human conduct, we are of the view that but for the utterances made by the deceased, the accused would not have taken kerosene, poured it and set fire. In our considered view, though the act of the accused would squarely fall within the 3rd limb of Section 300 IPC, it would fall under the first exception to Section 300 IPC. Therefore, he is liable to be punished only under Section 304(i) IPC.

9. So far as the offence under Section 498(A) IPC is concerned, absolutely, there is no evidence available on record. Therefore, he is liable to be acquitted from the said charge.

10. Now, turning to the quantum of punishment. The accused has got no bad antecedents; He is a young man; He has got a daughter to take care of. After the occurrence also, he has not shown any deviance from law. There are a lot of chances for his reformation. Having regard to these all mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

11. In the result, the criminal appeal is allowed in part, in the following terms:

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

(ii) So far as the conviction and sentence imposed on the appellant under Section 498(A) is concerned, he is acquitted.

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

(iv) The fine amount, if any paid already, shall be adjusted.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



To

1. The Additional Sessions Judge,
Virudhunagar
2. The Inspector of Police,
Mallankinaru Police Station,
Aruppukottai,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent,
Central Prison, Madurai.

+ 1 CC TO Mr.M.JEGADHEES PANDIAN, ADVOCATE IN SR No. 65772

RR

TE/KM/SAR-I : 16/12/2016 : 7P/6C

Judgment made in
Cr1.A.(MD).No.274 of 2015
03.11.2016