



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:-19.09.2016

Coram:-

The Hon'ble Mr. Justice M.V.MURALIDARAN
&
The Hon'ble Mr. Justice B.GOKULDAS

Criminal Appeal (MD) No.301 of 2015 &
M.P.(MD).No.1 of 2015

Johnson @ Jesu Jhonson ... Appellant /Sole Accused

vs.

State rep by
The Inspector of Police,
Tuticorin North Police Station,
In Cr.No.53/13.
Tuticorin District.

... Respondent/Complainant

Appeal filed under Section 374(2) Cr.P.C. to call for the records relating to the order passed in S.C.No.128 of 2014, dated 20.07.2015, on the on the file of the Principal Session Judge, Tuticorin and set aside the same and acquit the appellant/accused from all the charges levelled against the petitioner.

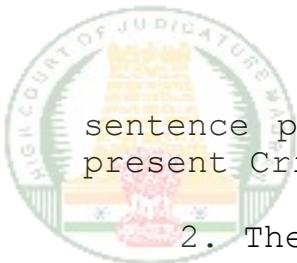
For Appellant : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel for
Mr.R.Venkateswaran

For Respondent : Mr.A.Ramar
Additional Public Prosecutor

Orders Reserved on	18.05.2016
Judgment Pronounced on	19.09.2016

J U D G M E N T

The appellant herein was tried by the learned Principal Sessions Judge, Tuticorin, in S.C.No.128 of 2014, for charges under Section 302 and 302 r/w 201 IPC. The learned Trial Judge found that the appellant/accused guilty of the charges under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- with default sentence of six months rigorous imprisonment; and 7 years rigorous imprisonment for the offence under Section 302 r/w 201 IPC with default sentence of rigorous imprisonment for three months. The sentences imposed were ordered to run concurrently. Aggrieved by the judgment of conviction and



sentence passed by the trial court, the accused has preferred the present Criminal Appeal before this Court.

2. The case against the accused/appellant is that, the deceased Saranya was the wife of the appellant and they lived separately as tenant in the upstairs of the house belonged to one Babu. The appellant often quarrelled with her wife in a drunken mood. On 25.01.2013, from the dawn itself, the appellant and his deceased wife were quarreling with each other and they were also warned by their house owner, namely Babu. After pacification, both of them went to their house at about 12.00 O' clock in the night. On 26.01.2013, at about 00.30 a.m. smoke emanated from the appellant's house and on noticing the same, the house owner and another person by name Muthuvel came out of their house. At that time the appellant, also came out of his house hurriedly and when the house owner and said named person enquired the appellant, the appellant replied that he done away his wife, since he has no peace at all in her existence. When both the house owner and Muthuvel entered into the house of appellant, they noticed that the deceased was burning and they tried to extinguish the fire, however, the deceased burnt completely. The Prosecution further alleged that during the course of heated arguments, the appellant dashed her wife's head into the wall and thus, murdered her. In order to screen the murder, the appellant set fire on her body. Thus, the accused was charged for the offences as stated above.

3. Before the trial court, in order to substantiate its case, the prosecution examined PWs-1 to 16, marked Exs.P1 to P23 and produced MOs1 to 11. On the side of the accused, neither any person was examined nor any document was marked.

4. Out of the above said witnesses PW1/Muthuvel/complainant and PW2/Babu, are the neighbours of the appellant. They have spoken about the occurrence. However, they did not support the case of the prosecution and hence they were treated as hostile witnesses. Similarly PW3/Mohan, PW4/Ayya Durai, PW5/Vikram and PW6/Ramakrishnan have been treated as hostile witnesses.

5. PW7/Anthonysamy, the father of the deceased Saranya, has spoken about the quarrel between his deceased daughter and the appellant. He has further stated that he went to his daughter's house at Thoothukudi, on 26.01.2013, on being informed by PW1/Muthuvel/complainant and PW2/Babu over phone about the incident that had occurred on 25.01.2013 at about 12.30 a.m.. PW11, is the mother of the deceased, who is also deposed in the same line of PW7. PW10, is the Doctor who conducted postmortem on the deceased Saranya and he gave Ex.P9/Postmortem certificate. PW14, is the Doctor, who gave treatment to the accused on 26.01.2013 and he has given Ex.P14/Accident Register, in which he has mentioned as follows:-

"Alleged H/O sustained burns while burning his wife at about 12.30 a.m. on 26.01.2013 at his residence."

6. The learned trial Judge, after completing the procedure and



considering the oral and documentary evidence let in, and upon hearing both sides, convicted and sentenced the accused as aforementioned, resulting in filing of the present Appeal before this Court.

7. The point that arises for consideration in this Appeal is as to whether the judgment of conviction and sentence passed by the trial court is sustainable in law or not?

8. Learned Senior counsel for the appellant submitted that P.Ws.1 to 5, who are stated to have seen the occurrence and examined as eye-witnesses to the occurrence, have not supported the case of the prosecution and they have turned hostile and hence the conviction of the appellant is liable to be set aside. He would further submit that the trial court has based its conviction taking into account the statement said to have been made by the accused to P.W.14 at the time when he was taken by the Police for treatment for the burn injuries sustained by him at the time when he tried to save his wife when she poured kerosene and set herself on fire to commit suicide and recorded by P.W.14 in Ex.P-14. It is the contention of the learned Senior Counsel for the appellant that since the said statement was given by the appellant at the time when he was in the custody of police, the same shall not be proved, as per section 26 of the Indian Evidence Act and therefore the conviction of the appellant is liable to be set aside. In support of his contention, the learned Senior Counsel relied on a decision of Orissa High Court reported in **Laws (OR)-1963-10-6 (Paramhansa Jadab V. State)**. It is the further submission of the learned Senior Counsel that since P.W.7 and P.W.11, father and mother of the deceased, are interested witnesses, their evidence is liable to be eschewed.

9. On the contrary, learned Additional Public Prosecutor, contended that though P.Ws.1 to 5 have turned hostile, their evidence to the extent it supports the prosecution case can be taken into account and appreciated. P.Ws.1, 2, 4 and 5 in their evidence have stated that in the midnight of 25.01.2013, they saw smoke coming out from the house where the deceased and the accused were residing and upon seeing the same, they rushed to the house of the accused and found the deceased in flames and immediately they put-off the fire by pouring water and to that extent their evidence is clear and cogent. He would further submit that the accused himself has admitted before P.W.14, the doctor, who gave treatment to the burn injuries sustained by him, that he sustained injuries when he set fire on the body of his wife, the deceased, which has been duly recorded by P.W.14 in Ex.P-14, Accident Register issued to the accused. He would further submit that from the evidence of Doctor who conducted postmortem and issued postmortem certificate, it is clear that the deceased was done to death before her body was set on fire. Therefore, it is his submission that the trial court after taking into account all the above has come to conclusion it is the accused who has murdered his wife and thereafter in order to screen the evidence he has set fire on her body and thus convicted the

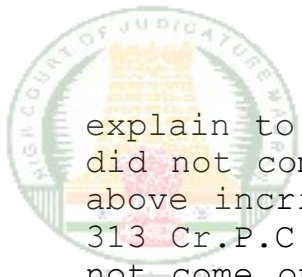


appellant under Sections 302 and Section 302 read with 201 IPC and the same does not require any interference, except confirmation at the hands of this Court.

10. We have considered the above submissions and perused the materials on record, carefully.

11. It is admitted that the accused and the deceased were husband and wife and they were living in a house belonged to P.W.2, as tenants, for about three months prior to the occurrence. It is the evidence of P.Ws.1, 2, 4 and 5 that there used to be quarrel between the spouses, often and on some occasions they pacified them. It also emerges from the evidence of P.W.7, father of the deceased and P.W.11, mother of the deceased, that their daughter used to call them over phone and complain about the conduct of the accused in quarrelling with her. There is no denial by accused to the said facts.

12. It is the case of the prosecution that at the midnight of 25.01.2013, when the accused and the deceased were alone in the house, the accused murdered the deceased by causing such injuries and in order to screen the evidence, he has set fire on the body of the deceased and in the same transaction, he also sustained burn injuries. Based on the above stated accusation, it is to be seen whether it was the accused who caused the death of the deceased and tried to screen the evidence. It is proved through the evidence of P.Ws.1 to 5 and P.W.7 and P.W.11 that the accused and the deceased were living separately, in a house owned by P.W.2. Though P.Ws.1 to 5 have turned hostile and did not support the prosecution, it is settled law that their evidence to the extent it supports the prosecution case can be considered and appreciated. It is the evidence of P.Ws.1, 2, 4 and 5 that at the midnight of 25.01.2013, they found smoke emanating from the house of the accused and when they rushed there they found the deceased in flames and immediately they put-off flames by pouring water. But, they did not support the case of the prosecution that on 25.01.2013 at about 8.00 p.m., there was a quarrel between the accused and the deceased and they pacified them. But, the evidence of P.W.7 and P.W.11, the parents of the deceased, would go to show that their daughter phoned to them at 8.30 p.m. on 25.01.2013 and complained about the conduct of the accused in quarrelling with her and also informed them that P.W.1 and P.W.2 intervened and pacified. If the above said evidence of P.Ws.7 and 11 is considered along with the admitted evidence of P.Ws.1, 2, 4 and 5, their evidence cannot be brushed aside merely on the ground that they are interested witnesses, as it inspires the confidence of the Court. It is not the case of the appellant that he and his wife, the deceased, never quarrelled with each other. Thus, from their evidence it is clear that on 25.01.2013 night the accused and the deceased were alone present together in the house and in such circumstances, it is for the Court to presume that it is the appellant who had committed the offence. Of course, the said presumption is rebuttable and it is the burden of the accused to



explain to the satisfaction of the court that he is innocent and he did not commit any offence as alleged by the prosecution. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he has only stated that they were all false and he did not come out with any explanation to the satisfaction of the Court. In the above circumstances, the trial court has correctly come to the conclusion that the accused was present in the house at the time of occurrence.

13. It is evident from the evidence of P.W.14 that on 26.01.2013 at 10.15 a.m., the accused was brought before him for treatment to the burn injuries found on his body and when enquired, he stated that he sustained those injuries when he set her wife on fire. Though an objection was made by the learned counsel for the appellant to the recording of the said evidence, relying on Section 26 of the Indian Evidence Act, the trial court has considered the same and rejected such a contention in the facts and circumstances of the case. It is the case of the accused that he sustained those injuries when he attempted to save his wife, when she poured kerosene and set fire herself to commit suicide. From the above submission, it is the finding of the trial court that by this defence the accused/appellant has admitted his presence in the scene of occurrence at the time of occurrence. It is true that confession by accused while in custody of police not to be proved against him. But, in the present case the conviction of the appellant/accused is not merely based on the statement made by the appellant/accused before PW14/Doctor. The said statement was relied on by the Trial Court only to come to the conclusion that the appellant/accused was present at the time of incident in the scene of occurrence. Further, it is his case that he sustained injuries in his efforts to save his wife. Therefore, the appellant's/accused presence is admitted. The statement made by the learned Senior Counsel for the appellant cannot be accepted and facts and circumstances under which the above judgment came to be delivered are distinguishable.

14. P.W.10 is the doctor who conducted autopsy on the body of the deceased. According to him, he found superficial burns all over the body and the wounds were pale in colour. He found the following ante-mortem injuries:

"(i) A contusion of size 6 cms x 4 cms x 1 cm seen over the left side of forehead."

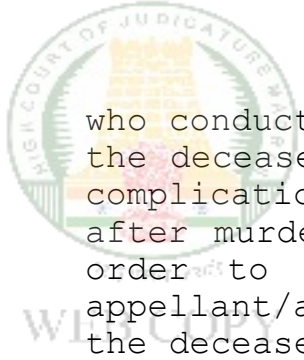
On dissection of scalp, skull and dura, he found the following:

"Scalp contusion of size 8 cms x 6 cms seen over the left frontal region. Sub-arachnoid haemorrhage seen over the left occipital lobe."

It is his opinion that the deceased would appear to have died of complications of head injury and the death would have occurred 12-24 hours prior to autopsy and no poison was detected in the viscera analysed.

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

15. Thus, it is clear from the evidence of P.W.10, the doctor



who conducted autopsy on the body of the deceased, that the death of the deceased was not due to the burn injuries but it was due to the complications of head injury. From the above, it becomes clear that after murdering his wife by causing the above said head injury, in order to screen the commission of the offence of murder, the appellant/accused has poured kerosene and set fire on the body of the deceased. If at all the accused/appellant did not commit murder of his wife and his wife attempted to commit suicide, as a normal prudent man, he would have sought for the assistance of his neighbours in the effort of saving his wife. But, he did not do so. On the contrary, his statement before P.W.14 was that he sustained injuries when he set fire on the body of the deceased. Further, if he did not commit any offence, on the arrival of police, he would have made a complaint to the police as to the occurrence, but he failed to do so. This conduct of the appellant/accused leads to the inevitable conclusion that it was this appellant/accused who committed the murder of the deceased and in order to screen the evidence, he has set fire on the body of the deceased and thereby committed offences punishable under Section 302 and Section 302 read with 201 IPC and liable to be punished thereunder. The trial court has, after appreciating the evidence in detail, found the accused guilty under both the charges and sentenced him thereunder. We find no reason or ground to interfere with the well considered judgment of the trial court. Accordingly, the appeal sans merit and it is dismissed, confirming the conviction and sentence imposed on the appellant/accused by the learned Principal Sessions Judge, Tuticorin in S.C.No.128 of 2014, vide judgment dated, 20.07.2015. Connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

jikr

To

- 1.The Principal Sessions Judge,
Tuticorin.
- 2.The Inspector of Police,
Tuticorin North Police Station,
Tuticorin District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.R.Venkateswaran ,Advocate, Sr.No: 53871

JAM/SKS-RR/27.09.16 /6p-5c

Pre delivery judgment in
Criminal Appeal No.301 of 2015
19. 09.2016