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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 22.11.2016

Pronounced on: 22.12.2016

CORAM:

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

Criminal Appeal(MD)No.363 of 2015

Kannan

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
(Crime No.2/2013)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and to set aside the Judgment of conviction and sentence passed in S.C.No.158 of 2013 dated 29.10.2015, on the file of the learned Principal Sessions Judge, Thanjavur.

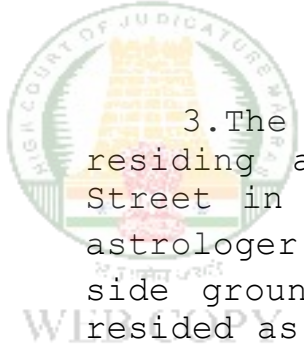
For Appellant : Mr.A.Thiruvadikumar,
for Mr.K.Karunakaran.
For Respondent : Mr.C.Ramesh,
Assistant Public Prosecutor.

JUDGMENT

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

The appellant is the sole accused in S.C.No.158 of 2013 on the file of the Principal Sessions Judge, Thanjavur. The trial court framed charges under Sections 294 (b) and 302 of I.P.C against this Appellant/ Accused.

2.The Trial Court by Judgment dated 29.10.2015 convicted the appellant under Section 302 of I.P.C for life imprisonment and to pay a fine of Rs.25,000/- in default further undergo rigorous imprisonment for Six months, under Section 294 (b) has not been proved against accused. 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 PW-9 Jeya is residing at Chidambaram, has 4 houses at Thropathiamman Kovil Street in Orathanadu. In the said houses, the accused who is an astrologer at the right side 1st floor, PW-1 Saroja at the right side ground floor and PW-4 Durairaj at the left side 1st floor resided as Tenants under PW-9 Jeya. The PW-1 kept left side ground floor as vacant for her own purpose. The PW-1 is the mother of the deceased Saravanan, a car driver. The PW-2 Vennila, PW-3 Rajathi are the sisters of the deceased Saravanan and PW-5 Chinnasamy is the brother of PW-9 Jeya. On 31.12.2002, the accused parked his bicycle in front of his house. At 7.00 A.M on 31.12.2002 the accused found missing Valve Tube of his bicycle and the same was allegedly taken away by the grandchildren of PW-1. When the accused questioned the same, to PW-1 Saroja, she replied that she would purchase a new one Valve tube to him. But the accused shouted at PW-1 abusing with filthy languages. At that time, PW-2, PW-3 and their brother Saravanan were sleeping inside the house. On hearing the wordy quarrel, the son of PW-1 Saravanan came out from the house and questioned the act of the accused and in turn the accused also abused him with filthy language and also took an iron rod from his house and threatened him by showing the same. On hearing the sound, the neighbours came there and compromised the matter. Thereafter on the same day night, the deceased Saravanan was sleeping in front of his pial. The PW-1 and her daughters PW-2 & PW-3 and grandchildren were sleeping inside the house. During the same night at 2 A.M on 1.1.2013, the son of PW-1 Saravanan raised an alarm shouting that the accused lite him with fire and on hearing the same, PW-1 and her daughters PW-2 & 3 came out of the house and saw Saravanan with fire. The deceased Saravanan told them that the accused poured kerosene upon his body and lit him with fire and ran away towards western side. At the street light, PW-1 to PW-3 saw the accused running and also burning of Saravanan. Then they put off the fire by placing a cloth around him and took him to Thanjavur Medical Hospital by 108 Ambulance. The PW-10 Dr.A.R.Sampath admitted the Saravanan as impatient and gave first aid to him. On information received from Thanjavur Medical College Hospital PW-12 the Special Sub Inspector came to the hospital and enquired the patient Saravanan and recorded his statement of complaint in the presence of his mother Saroja and his sister Rajathi and obtained thumb impression from Saravanan and his mother and signature from his sister. Thereafter PW-13, Swaminathan registered a case in Crime No.2/2013 under Sections 294 (b) and 307 of IPC against the accused. Thereafter on 3.1.2013, the injured Saravanan succumbed due to the burn injuries at 9.45 A.M and the same was informed to PW-15 who in turn altered the section of law as 302 of IPC and sent Ex-P11 alteration report to the court.

4. After filing the charge sheet before the Learned District Munsif cum Judicial Magistrate, Orathanadu in P.R.C.No.27 of 2013, the case was made over to the Principal Sessions Judge, Thanjavur



and the same was numbered as S.C.No.158 of 2013. In this case, 17 witnesses were examined as prosecution side witnesses and 14 Exhibits were marked on the side of prosecution and there are 5 material objects produced before the Trial court. But there was no witness and exhibits on the side of the accused.

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5. In this case, PW-1 Saroja deposed that she is having 3 children namely Saravanan, Vennila and Rasathi and her husband is no more. They were residing at Thorupathiyamman Kovil Street in Orathanadu as tenant under one Jeya in the ground floor. The PW1's son Saravanan was married, have 2 children and he is not living his wife for the past 3 years due to some misunderstanding. The accused Kannan was known to PW-1 and he is residing in the first floor as tenant and he is an astrologist. The PW1's son is a car driver. On 31.12.2002, the accused parked his bicycle in front of his house. At 7.00 A.M on 31.12.2002 the accused found missing Valve Tube of his bicycle and the same was allegedly taken away by the grandchildren of PW-1. When the accused questioned the same, to PW-1 Saroja, she replied that she would purchase a new one Valve tube to him. But the accused shouted at PW-1 abusing with filthy languages. At that time, PW-2, PW-3 and their brother Saravanan were sleeping inside the house. On hearing the wordy quarrel, the son of PW-1 Saravanan came out from the house and questioned the act of the accused and in turn the accused also abused him with filthy language and also took an iron rod from his house and threatened him by showing the same. On hearing the sound, the neighbours came there and compromised the matter. Thereafter on the same day night, the deceased Saravanan was sleeping in front of his pial. The PW-1 and her daughters PW-2 & PW-3 and grandchildren were sleeping inside the house. During the same night at 2 A.M on 1.1.2013, the son of PW-1 Saravanan raised an alarm shouting that the accused lit him with fire and on hearing the same, PW-1 and her daughters PW-2 & 3 came out of the house and saw Saravanan with fire. The deceased Saravanan told them that the accused poured kerosene upon his body and lit him with fire and ran away towards western side. At the street light, PW-1 to PW-3 saw the accused running and also burning of Saravanan. Then they put off the fire by placing a cloth around him and took him to Thanjavur Medical Hospital by 108 Ambulance. The PW-10 Dr.A.R.Sampath admitted the Saravanan as impatient and gave first aid to him. On information received from Thanjavur Medical College Hospital, PW-12 the Special Sub Inspector came to the hospital and enquired the patient Saravanan and recorded his statement of complaint in the presence of his mother Saroja and his sister Rajathi and obtained thumb impression from Saravanan and his mother and signature from his sister.

6. The PW-2 Vennila deposed that she is an elder daughter of PW-1, sister of PW-3 Rajathi and sister of the deceased Saravanan. She has categorically stated the incident as narrated by her



mother PW-1 except the averment that in Ex-P1 all were put their signatures. The PW-3 who is the younger sister of deceased Saravanan also deposed as that of her mother PW-1.

7.The PW-4 deposed that he is residing in the 1st floor of the house of Jeya as tenant. The accused was resided in the 1st floor and in the ground floor PW-1 was resided. He further stated that at 2.00 A.M on the date of occurrence he heard the sound and he came down from his house. At that time he saw the deceased Saravanan fell down and he was sent to hospital in 108 ambulance. In the morning the police enquired him and obtained his signature in Ex-B2 Mahazar.

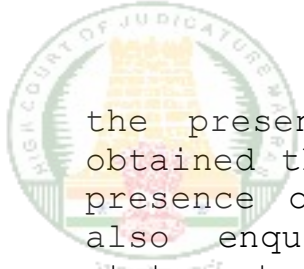
8.The PW-5 Chinnasamy deposed that he did not see the occurrence and on 1.1.2013 at 3.00 P.M the police came to the place of occurrence and recovered M.O-1 to M.O.-4 and prepared Ex-P4 Mahazar in which he signed as Mahazar witness.

9.The PW-7 deposed that he is working in TNEB as Helper. On 1.1.2013, he was informed by the public of Thropathiamman Kovil street that electric wire was burn. He went to the spot and found that the electric meter was burn and it was due to fire and not due to electrical defect. The PW-8 is also Ganesan who was working as line man in TNEB, Orathanadu deposed that he went to the place of occurrence and found that the electric meter fixed in the occurrence house was burned and it was not burn due to electrical defect, but it was burned only due to fire.

10.The PW-10 is Dr. A.R.Sampath deposed that he recorded Ex-P6 accident register and the same was given by a person accompanied with the injured Saravanan. He further deposed that it is informed to him by a person accompanied with injured Saravanan that the injury was caused due to electric shock given by a known male person.

11.The PW-11 Dr.Padmanaban deposed that he declared the death of deceased Saravanan on 3.1.2013 at 9.45 a.m. The PW-12 who is SSI of Orathanadu police station deposed that he recorded the confession statement of the deceased Saravanan on 1.1.2013 and produced the same to the sub inspector for perusal. The PW-13 D.Swaminathan Sub Inspector of Police deposed that on receipt of statement from PW-12 SSI, he registered FIR in Cr.No.2/2013 under sections 294 (b) and 302 of IPC at 3.00 P.M on 1.1.2013. The registered FIR is Ex-P7. The Pw-14 Dr.M.Rajakumar deposed that he conducted autopsy on the dead body of Saravanan and he further stated that the deceased was having 100% burn injury and he found the smell of kerosene on the dead body. He issued Ex-P8 postmortem certificate.

12.The PW-15 Karthikeyan Inspector of Police deposed that while he was in-charge inspector of Orathanadu Police Station, he took up the case in Cr.No.2 of 2013 registered under section 294 (b) and 307 for investigation. He went to the place of occurrence at 2.30 P.M and prepared Ex-P3 Mahazar and Ex-P9 Rough Sketch in



the presence of witnesses. PW-5 Chinnasamy and Ravindran and obtained their signature. He also recovered M.O-1 to M.O-4 in the presence of PW-4 and obtained statement from PW-4 Durairaj. He also enquired PW-1 to PW-3 independently and recorded the statement. On 3.1.2013, after hearing the news that the injured Saravanan died at 9.45 A.M, he went to Thanjavur Medical College and confirmed the same and thereafter he altered the offence under section 302 of IPC. He also sent Ex-P11 Alteration report. He also prepared Ex-P12 Inquest report. On 7.1.2013, he sent the material objects to the Judicial Magistrate Court, Orathanadu. Since he was transferred on 16.1.2013 he has handed over the file to the Inspector of Police, Orathanadu.

13.The PW-16 Ravindra Boopathi, the Inspector of Police, deposed that after he took up the investigation, he went to the place of occurrence and enquired the witnesses, but not obtained any independent statement from them. On 18.1.2013, the accused surrendered before the Judicial Magistrate Court, Aranthangi. Therefore on 23.1.2013, he filed application for police custody of accused for 2 days and accordingly the accused was taken to the police custody on 24.1.2013 as per the order of the learned Judicial Magistrate. In the police custody the accused voluntarily gave confession statement and the admitted portion of the confession statement is Ex-P13. As per Ex-P13, the accused taken the PW-16 and produced M.O-5 Kerosene Can.

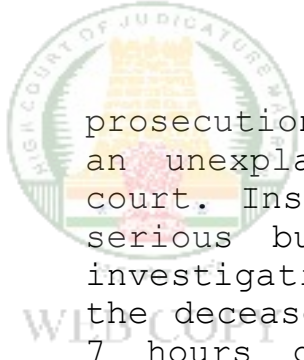
14.The PW-17 Inspector of Police deposed that after he taken charge of Orathanadu Police Station, he went to the place of occurrence and enquired PW-1 to PW-3 and recorded their statement. Apart from that he went to Orathanadu Electricity Board Office and recorded the statement of PW-7 Gnanaprakasam and PW-8 Ganesan. He also enquired Doctors A.R.Sampath, Padmanaban and Rajkumar and recorded their statement. After conclusion of enquiry on 25.03.2013 he filed final report against the accused under Sections 294(b) and 302 of IPC.

15.On the evidence taken by the trial court namely Principal Sessions Judge, Thanjavur came to the conclusion that the charges laid against the sole accused in so far as the offence under Section 302 alone is proved by the eye witnesses led by the prosecution.

16.In the above said circumstances, there is direct eye witness, the learned Trial Judge convicted the sole accused for the offence under section 302 of I.P.C and acquitted the accused from the offence under Sections 294(b) of IPC. Against the said conviction the present appeal has been filed.

17.We have heard Mr.M.Karunakaran, learned Counsel for the appellant and Mr.C.Ramesh, learned Additional Public Prosecutor and we have also perused the records carefully.

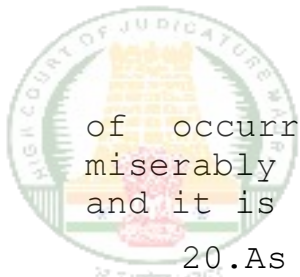
18.In this case, going through the evidences and documents produced by the prosecution, the investigation conducted by the



prosecution is improper. Now we have to see that whether there is an unexplained delay in sending the dying declaration to the court. Instant case, the deceased was taken to the hospital with serious burn injury at about 2.30 a.m on 01.01.2013 and the investigation officer PW-12 who recorded the dying declaration of the deceased at about 11.00 a.m. So admittedly there is more than 7 hours gap in between the time of occurrence and time of recording of statement of the deceased. Further, the FIR Ex-P7 was registered at 3.00 P.M. though statement was recorded from the deceased at 11.00 A.M and therefore there was a delay of 4 hours in registering the F.I.R and for that there was no explanation by the prosecution. Since the injured Saravanan died on 03.01.2013 at 9.30 a.m. due to burn injuries and therefore the statement given by him to PW-12 was treated as dying declaration. It is significant to note that Ex-P1 is more doubtful that it was sent to court concern after a delay of nearly 4 days that too after the death of the deceased. For this unreasonable and inordinate delay absolutely no explanation on the part of the prosecution that too the distance between the police station and the Magistrate Court is less than one K.M. In this regard it is relevant to refer the Judgment of the Hon'ble Apex Court reported in State of Himanchal Pradesh Vs. Prem Singh: AIR 2009 (SC) Page 1010 is extracted below:-

"This is trite law that Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

19. So at this juncture, it is to be testified that Ex-P1 could not have been given by the deceased when the A.R entry Ex-P6 would show that the nature of injury was explained by person accompanied with the deceased. The further scrutiny of Ex-P6 would show that the deceased was set fire by way of electric shock that too at the house of the deceased by a known male person. This would shatter the case of the prosecution as it is totally contradictory with the testimony of the ocular witness. The categorical case of the PW-1 to 3 is that the deceased was set ablaze when he was sleeping at the pial of their house. The observation mahazar Ex-P3 and rough sketch Ex-P9 would not show any pial, but denoted the place



of occurrence is inside the house. So the prosecution has miserably failed to prove even the very place of occurrence itself and it is a fatal to the case of the prosecution.

20. As per as the criminal cases are concern, the investigation officer is expected to have a diligent investigation in a scientific manner. Here, PW-15, the investigation officer is failed to prove the place of occurrence and also failed to record the statement of the deceased in considering the nature of injury and the fit state of mind. He has not chosen to meet the injured though he was 100% of burn injuries. Unfortunately in a mechanical manner, PW-15 directed the Special Sub-Inspector to record the statement of the injured in a mechanical manner. Further, the said SSI, PW-12 has not taken any steps to record the statement of injured in the presence of duty Medical Doctor. The statement given by the deceased i.e. Ex-P1 is unreliable for two reasons. One is in the Accident Register the injured/deceased did not explain the nature of the injuries suffered by him. His heart beat and pulse rate have not been mentioned. Per contra, he was able to give such a long statement Ex-P1 by narrating all the events without any hesitation. If a person is able to give such a long statement, he could have been expected to explain the manner of occurrence and the nature of injuries suffered by him before the doctor who recorded the A.R. So, the complete scrutiny of Ex-P1 and Ex-P6 would falsify the case of the prosecution especially the evidence of PW-1 to PW-3 which is contradictory to Ex-P6. So it is unsafe to having reliance upon Ex-P1 and Ex-P6 and evidences of PW-1 to PW-3 to warrant conviction for the offence under section 302 I.P.C.

21. Further, as per the evidences of PW-1 & PW-3, the deceased Saravanan said to have put his thumb impression in Ex-P1 and PW-1 also put her thumb impression in Ex-P1. Whereas PW-3 has stated that PW1 to PW-3 have put their signatures and her deceased brother also put his signature in Ex-P1. Therefore there are two contradictory versions with regard to putting signature and thumb impression in Ex-P1 and the same has not been proved by the prosecution beyond reasonable doubt. Apart from that PW-1 to PW-3 all are interested eye witnesses and in order to prove the commission of offence, the prosecution failed to examine any other independent eye witnesses. The learned Judge convicted the accused solely on the evidences of PW-1 to PW-3, they are all interested witnesses. Further, the nature of occurrence itself is different from the version of PW-1 to PW-3 and A.R. entry Ex-P6.

22. In the present case, taking into consideration the inadmissible evidences, the contradictions and the trial not being in conformity with law do raise doubts which are not only reasonable but are actual and substantial.

23. In this case the conviction is based on eye witnesses of PWs 1 to 3. As discussed above, they are all interested witnesses. The prosecution failed to establish the murder committed by the



appellant herein from the evidence of eye witnesses beyond reasonable doubt. Therefore benefit of doubt is given to the accused/appellant and the appellant is acquitted from the charge and the sentence and conviction imposed on him by the Trial court is hereby set aside.

24. 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(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate, Orathanadu.
2. Do thro The Chief Judicial Magistrate, Thanjavur.
3. The Principal Sessions Court,
Thanjavur.
4. The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
7. The District Collector,
Thanjavur District.
8. The Director General of Police, Chennai.

+1cc to M/S. K.M. KARUNAKARAN, Advocate, SR.No.83212.

Judgment made in
Criminal Appeal (MD) No.363 of 2015
22.12.2016