



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.372 of 2015

Lawrance

: Appellant/Sole Accused

Vs.

The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam, Thanjavur District,
(Crime No.148 of 2011)

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 27.02.3013 made in S.C.No.232 of 2011 on the file of the learned First Additional District and Sessions Judge, (P.C.R. Court), Thanjavur.

For Appellant

: Mr.K.M.Karunakaran

For Respondent

: Mr.K.S.Duraipandian

Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.232 of 2011, on the file of the learned First Additional District and Sessions Judge, Thanjavur. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 27.02.3013, the Trial Court convicted the appellant, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302	To undergo imprisonment for life.	Rs.500/- in default to undergo simple imprisonment for one year.

Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mrs.Kannalagi. The accused is her husband. The marriage between them was celebrated eighteen years before the occurrence. Out of the wedlock, they



have three sons. They were all residing near MGR Nagar Over Bridge. In due course of time, the accused became a liquor addict. He also had other bad habits. In drunken state, he used to quarrel with the deceased frequently and to harass her both physically and mentally. The deceased was bearing all his tortures with a fond hope that the accused would change his attitude in future. But, it never happened. On 17.02.2011, around 02.15 PM, the accused snatched away a sum of Rs.150/- from the deceased, went out, spent it for liquor, returned to the house and again, demanded a sum of Rs.100/- for taking liquor further. The deceased refused to do so. This resulted again in a quarrel between the accused and the deceased.

2.2. At the end of the quarrel, it is alleged that the accused bolted the doors of the house from inside, took out a Can with kerosene, poured kerosene on the deceased and set fire to her. The deceased, who was in flames, cried for help, opened the door and rushed out of the house. On hearing the alarm raised by the deceased, PW-1 to PW-3 and the other neighbours rushed to the house of the accused. The accused did not care to take the deceased to the hospital. When PW-1 and other enquired the deceased, she stated that inside the house, her husband poured kerosene and set fire to her. Thereafter, PW-1 and the others took the deceased to the Government Hospital at Kumbakonam.

2.3. On receiving intimation from the Government Hospital, PW-11, the then Sub-Inspector of Police, went to the Kumbakonam Government Hospital, recorded the statement of the deceased, between 04.30 PM and 05.30 PM, on 17.02.2011. He registered a case in Crime No.148 of 2011, under Section 307 of the Indian Penal Code against the accused. EX-P8 is the complaint and EX-P9 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.4. Taking up the case for investigation, at 06.45 PM, on 17.02.2011, PW-12 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He also recovered a Plastic Kerosene Can, a burnt match stick and a piece of burnt saree from the place of occurrence. Then, he arranged for a photographer to take photographs at the place of occurrence. He examined many more witnesses and recorded their statements. He went to the hospital and recorded the statement of the deceased under Section 161(3) of the Code of Criminal Procedure. Around 01.40 PM, on 19.02.2011, the deceased succumbed to the injuries. On receiving intimation from the hospital, he altered the case into one under Section 302 of the Indian Penal Code and



submitted alteration report to the Court. EX-P11 is the alteration report. On the same day, at 02.30 PM, he conducted inquest on the body of the deceased. EX-P12 is the inquest report. Then, he forwarded the dead body for postmortem.

2.5. PW-6 - Dr.Nirmala conducted autopsy on the body of the deceased, at 11.30 AM, on 20.02.2011. EX-P4 is the postmortem certificate. She found 90% of burn injuries on the body of the deceased. She gave opinion that the death of the deceased was due to 90% of burn injuries found on the body of the deceased.

2.6. PW-12, during the course of investigation, at 07.15 PM, on 20.02.2011, arrested the accused in the presence of the witnesses. On such arrest, he gave a voluntary confession. But, no fact whatsoever was discovered out of the same. Then, he forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On completing the investigation, he laid charge sheet against the accused.

2.7. Based on the above materials, the Trial Court framed a lone charge, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charge, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 12 witnesses were examined, 12 documents and 6 material objects were marked. Out of the said 12 witnesses, PW-1, a relative of the deceased, has stated that around 02.30 PM, on 17.02.2011, she heard the distress call of the deceased from her house. When she rushed to the house of the deceased, she found the deceased rushing out of the house with flames. PW-1 and the others extinguished the fire and took the deceased to the hospital.

2.8. PW-2 is the husband of PW-1. He has also spoken about the same facts, as spoken by PW-1. PW-3, the son of the deceased, has stated that he heard about the occurrence and went to the hospital thereafter. PW-4 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of Plastic Can from the place of occurrence. PW-5 is the wife of PW-4. She has stated that he heard about the cry of the deceased. When she went to the house of the deceased, she found PW-1, PW-2 and the others extinguishing the fire and taking the deceased to the hospital. PW-6 has spoken about the autopsy conducted by her and her final opinion regarding the cause of death. PW-7 is the photographer. He has stated about the photograph taken by him at the place of occurrence from various angles, as directed by PW-12. PW-8, the then Judicial Magistrate, Kumbakonam, has spoken about the judicial dying declaration recorded by him at 02.10 PM, on 17.02.2011. According to him, at the time, when he visited the deceased, she



was fully conscious and in a fit state of mind to make dying declaration. In the said dying declaration, the deceased, according to PW-8, stated that the accused only poured kerosene on her and set fire to her. PW-9, a Head Constable, has stated that he handed over the complaint and the First Information Report to the Court, at 03.00 PM, on 19.02.2011, as directed by the Investigating Officer. PW-10, yet another Head Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by PW-12. PW-11 has spoken about the registration of the case, on the complaint made by the deceased herself. PW-12 has spoken about the investigation conducted by him and the filing of final report.

2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. This is a case based on circumstantial evidence. PW-1 and PW-2 have stated about the frequent quarrels between the accused and the deceased. They have also stated that the accused was a drunkard and he was demanding money from the deceased for taking liquor. On the day of occurrence, according to these witnesses, they heard the cry of the deceased. When they rushed to the house of the deceased, they found the deceased rushing out of the house with flames. PW-1 and PW-2 extinguished the fire and took the deceased to the hospital. At that time, when PW-1, PW-2 and the others enquired the deceased, she told that inside the house, her husband poured kerosene and set fire to her. According to PW-1 and PW-2, it was her husband, who alone poured kerosene on her and set fire to her. This being the earliest statement of the deceased, falling within the ambit of Section 32 of the Indian Evidence Act, 1872, we have no reason to decline to give weightage for this dying declaration.

5. The learned counsel for the appellant is not in a position to point out any infirmity in respect of the evidences of PW-1 and PW-2. Thus, from the evidences of PW-1 and PW-2, it has been clearly established that the deceased sustained burn injuries, when she was inside the house. When the deceased went



out of the house, PW-1 and PW-2 found the deceased rushing out of the house with flames. When they enquired, the deceased informed that it was her husband, who alone poured kerosene on her and set fire to her. Thereafter, the deceased was taken to the hospital. But, unfortunately, neither the Accident Register nor the other treatment records have been produced by the prosecution. This is, of course, a flaw. But, on that flaw, we cannot reject the entire case of the prosecution, which is based on other circumstantial evidences. When the learned Judicial Magistrate visited the hospital, he found the deceased in a fit state of mind to make dying declaration. In the said dying declaration, the deceased told that it was her husband, who set fire, after pouring kerosene. Nothing has been suggested to raise any doubt regarding the said dying declaration. There is no evidence even remotely to infer that the deceased would have been tutored by somebody to make such a false allegation against her husband. Thus, the judicial dying declaration recorded by PW-8 is a very strong circumstance against the accused. That, by itself, would be sufficient to hold him guilty.

6. The doctor, who conducted autopsy on the body of the deceased, found 90% of burn injuries. The learned counsel for the appellant would submit that a person with 90% burn injuries would not have been conscious to make a dying declaration. This argument does not persuade us, because PW-8, the learned Judicial Magistrate, who visited the hospital, had found her mentally fit to make a dying declaration and only after having satisfied his judicial conscience about the mental fitness of the deceased, PW-8 had recorded the dying declaration. Thus, in our considered view, the dying declaration, in the instant case, was not as a result of any tutoring and the same needs to be given utmost weightage.

7. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by his act. As we have already narrated, it is in evidence that the accused had taken a sum of Rs.150/- from the deceased, went out of the home, had liquor and thereafter returned home. Again, he demanded a sum of Rs.100/- for taking liquor further. The deceased did not give money. This resulted again in a quarrel between the accused and the deceased. It is quite natural for a woman of this stature to question her husband, when he had returned home in a fully drunken state by spending a sum of Rs.150/-. Though there is no positive evidence available, it is inferable that there is every possibility that the deceased would have provoked the accused. Thus, because of the sudden provocation caused by the deceased, the accused poured kerosene on her and set fire to her. Thus, in our considered view, though the act of the accused would



squarably fall within the ambit of Third limb of Section 300 of the Indian Penal Code, it would squarably fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Therefore, the accused is liable to be punished under Section 304(i) of the Indian Penal Code.

8. Now, turning to the quantum of punishment, the accused hails from a poor family. He has to take care of the children. Either prior to the occurrence or subsequent to the occurrence, he was not involved in any crime. The occurrence was not a premeditated one. Having regard to all the above mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused 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 would meet the ends of justice.

9. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for four weeks.
- It is directed that the Trial Court shall take steps to secure the accused/appellant to commit him in prison to serve out the remaining period of sentence. Bail bond executed by the appellant and the sureties shall stand cancelled.
- It is further directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure. Fine amount, if any paid by the appellant/accused, shall be adjusted towards the fine amount now imposed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam, Thanjavur District.



2.The First Additional District and Sessions Judge,
(P.C.R.) Court, Thanjavur.

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

4.The Judicial Magistrate, Kumbakonam.

5.-do through- The Chief Judicial Magistrate,
Thanjavur.

6.The District Collector, Thanjavur.

7.The Director General of Police, Chennai.

8.The Superintendent, Central Prison, Trichy.

JUDGMENT MADE IN
CRL.A[MD].No.372 of 2015
16.11.2016

nb
anr/ss3/sar2/29.12.2016/7p/9c