

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MRS. Dr.JUSTICE ANITA SUMANTH

CRL.A.No.161 of 2017
and Crl.M.P.Nos.4211 & 4212 of 2017

Marimuthu Appellant/Accused No.1

Vs

The State rep by its
Inspector of Police,
Kizhvelur Police Station,
Nagapattinam District
(Crime No.741 of 2011) Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam dated 14.10.2016 made in S.C.No.93 of 2013.

For Appellant : Mr.Greetha Senthilkumar

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is A.1 in S.C.No.93/2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam A.2 was one Chellathurai. The trial court framed as many as four charges against the accused as detailed below:

Charge Nos.	Accused Rank	Offence
1	A.1 and A.2	342 IPC
2	A.2	449 IPC
3	A.1	302 IPC

Charge Nos.	Accused Rank	Offence
4	A.2	302 r/w 34 IPC

By Judgment dated 14.10.2016, the trial Court acquitted A.2 from all the charges, however, convicted A.1 for the offence under Sec.302 IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year. The trial Court acquitted A.1/appellant from the charge under Sec.342 IPC. Challenging the said conviction and sentence, the appellant/A.1 has come up with this appeal.

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

(a) The deceased in this case was one Mrs.Vasanthi. A.1 is the husband of the deceased. A.2 is the neighbour of the deceased. It is alleged that A.1 had developed illicit relationship with the wife of A.2. A.1 also had illicit relationship with many other women in the village. Because of the said conduct of A.1, there arose quarrel between the deceased and A.1. In fact, the deceased had made a complaint to the Police also and there were also enquiries about the same. Despite efforts made by the police and Panchayatadars, A.1 did not stop having intimacy with the wife of A.2.

(b) It is alleged that on 28.12.2011, A.1 had gone to the house of A.2, stayed with the wife of A.2 and returned home in the midnight. The deceased questioned the same. This resulted in a quarrel. On 29.12.2011, around 8.30 a.m, there arose further quarrel between A.1 and the deceased. On account of the above incident, A.2 also joined A.1. It is alleged that A.1 and A.2, at the end of the quarrel, dragged the deceased to the house of A.1 and confined her inside. It is further alleged that A.1 poured kerosene and set fire to the

deceased. A.2, who was present there, caught hold the deceased to enable A.1 to set fire. After the deceased was in flames, A.1 and A.2 fled away from the scene of occurrence.

© On hearing the alarm, raised by the deceased, the neighbours rushed to the house of the deceased. They extinguished the fire. They also informed the parents and other family members of the deceased. They all came. Thereafter, they arranged for 108 Ambulance and took the deceased to the Government Hospital at Nagapattinam.

(d) On receipt of intimation from the hospital, P.W.1, the Special Sub Inspector of Police rushed to the hospital and recorded the statement of the deceased. P.W.1, on returning to

the police station at 7.00 a.m, on 29.12.2011 registered a case in Cr.No.741 of 2011 under Secs.342 and 307 IPC against A.1 alone. Ex.P.2 is the statement of the deceased and Ex.P.3 is the First Information Report.

(e) P.W.8 the learned Judicial Magistrate also rushed to the hospital on receipt of the intimation and recorded the dying declaration of the deceased on 29.12.2011 at 12.45 p.m.

(f) The case was taken up for investigation by P.W.20-the then Inspector of Police. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch and recovered the material objects from the place of occurrence. On 30.12.2011 at 9.00 a.m, he arrested A.1 at Puthur Bus Stop. While in custody, A.1 made voluntary confession, in which, he disclosed the place where he had thrown a white plastic kerosene can. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the M.O.1 Plastic can. P.W.20 recovered the same under mahazar. The he forwarded the accused to judicial custody and handed over the material objects to the Court.

(g) When the investigation was in progress, on 03.01.2012 at 4.15 a.m, the deceased succumbed to the injuries in the hospital. P.W.20 went to the hospital, conducted inquest at 8.00 a.m and after altering the case into one under Sec.302 IPC, he forwarded the body for post-mortem.

(h) P.W.15 Dr.Robert conducted autopsy on the body of the deceased on 03.01.2012 at 12.45 p.m. He found extensive burn injuries on the body of the deceased. He opined that the death of the deceased was due to shock and hemorrhage due to extensive burn injuries on the body of the deceased. Ex.P.11 is the Post Mortem Certificate.

(i) P.W.20, the then Inspector of Police, during the course of investigation, arrested A.2 on 09.04.2012 at 5.00 a.m and forwarded him to the Court for judicial remand. He made a request to the learned Judicial Magistrate for forwarding the material objects for chemical analysis. On completing the investigation, P.W.20 laid charge sheet against the accused under Sections 342 and 302 IPC.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 20 witnesses were examined and 18 documents and 2 material objects were also marked.

4. Out of the said witnesses, P.W.1, the Special Sub Inspector of Police has spoken about the statement of the deceased, recorded by him at the hospital. P.Ws.2 to 7, neighbours, turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 the learned Judicial Magistrate has spoken about the judicial dying declaration recorded by him. P.W.9 the father of the deceased has stated that on receiving the intimation about the occurrence, he rushed to the house of the deceased and accompanied the deceased in 108 Ambulance. When the deceased was taken in the Ambulance, he enquired the deceased as to how she sustained burn injuries. According to him, the deceased told him that A.1 and A.2 attacked her and then A.1 poured kerosene and A.2 set fire to her. P.W.10 the mother of the deceased has stated that when she accompanied the deceased, she enquired the deceased and at that time, the deceased told her that A.2 caught hold of her and A.1 poured kerosene and set fire. P.W.11 is the elder sister of the deceased. She has stated that the deceased told her that A.2 caught hold of her and A.1 poured kerosene and set fire. P.W.12 is a neighbour. He has stated that he heard about the occurrence. P.W.13, the brother of the deceased has spoken about the recovery of material objects during the course of investigation. P.W.14, Special Sub Inspector of Police has stated that he passed on the hospital intimation to the police station concerned. P.W.15 has spoken about the post mortem conducted and her final opinion regarding the cause of death. P.W.16 the Special Sub Inspector of Police has spoken about the handing over of the altered first information report to the Judicial Magistrate at 11.30 a.m on 03.01.2013. P.W.17 yet another Constable has spoken about the handing over the dead body to the doctor for post mortem. P.W.18 Constable attached to the respondent police has spoken about the handing over of the material objects to the Forensic Lab, Thanjavur, as directed by the Court. P.W.19 Scientific Assistant has spoken about the chemical analysis conducted on the internal organs of the deceased. He stated that neither poison nor alcohol found in the internal organs. P.W.20 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. On his side, three witnesses were examined.

6. One Baskaran, a neighbour, was examined as D.W.1. He has spoken about the frequent quarrel between A.1 and the deceased on account of the matrimonial dispute. He has also spoken about the Panchayat held and settled between A.1 and the deceased. He has further stated that on the day of occurrence, when the deceased was taken to the hospital, the parents of the deceased were giving some instructions to her about the

statement to be made to the police. D.W.2 M.R. Ravichandran, yet another neighbour, has also spoken about the same facts. D.W.3 is the Head Constable. He has stated about the service of summons in connection with the enquiry. In essence, the defence of the accused is a total denial.

7. Having considered all the above, the trial Court convicted A.1 under Sec.302 IPC alone and acquitted from the charge of 342 IPC. The trial Court acquitted A.2 from all the charges. Challenging the said conviction and sentence, the appellant/A.1 is before this Court.

8. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. In this case, as already pointed out, the prosecution mainly relies on the multiple dying declarations made by the deceased to more than one person. The earliest dying declaration is the one made to P.W.9, the father of the deceased. P.W.9 has stated that when the deceased was taken to the hospital in 108 Ambulance, the deceased told him that A.1 and A.2 attacked her, A.1 poured kerosene and A.2 alone set fire to her. P.W.10 the mother of the deceased has stated that while she was with the deceased, the deceased told her that both the deceased attacked her, A.2 caught her hold and A.1 poured kerosene and set fire. The next dying declaration was made before the learned Judicial Magistrate, in which, she has stated that A.1 attacked her and A.2 induced her and further stated that A.1 pushed her inside the house, locked the door, poured kerosene and set

fire. A.2 did not enter into the house at all. After the deceased was in flames, A.1 and A.2 ran away from the scene of occurrence. It is the essence of the judicial dying declaration made. In the statement made, she has stated that both the accused attacked her; A.1 pushed her inside the house and both of them poured kerosene and both set fire to her. Thus, in these dying declarations, there is no consistency.

10. It is the law that in a case, where there are multiple dying declarations, the dying declaration, which inspires confidence of the Court, could be acted upon and others could be rejected. But in the instant case, all these dying declarations are self contradictory and also contradicting each other. Above all, the trial Court has acquitted A.2, rejecting all the dying declarations. A.1 also stands in the same footing. The possibility of the parents of the deceased tutoring the deceased to make a false statement cannot be ruled out. That apart, the earliest statement of the deceased should have been entered in the Accident Register, maintained in the hospital. That Accident Register has been suppressed by the prosecution. This also

creates doubt in the case of the prosecution. In view of the inconsistency of these dying declarations and since we find that no dying declaration is reliable, we have no option except to acquit the accused.

11. In the result,

(i) The appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam dated 14.10.2016 made in S.C.No.93 of 2013 are set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

Consequently, connected Crl.M.Ps are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sr

To

- 1.The Sessions Judge, Fast Track Mahila Court, Nagapattinam
- 2.-do-thro the Principal Sessions Judge, Nagapattinam
- 3.The Judicial Magistrate, Judicial Magistrate, Court No.I, Nagapattinam
- 4.-do-thro the chief Judicial Magistrate, Nagapattinam
- 5.The Superintendent, Central Prison, Cuddalore.
6. The Inspector of Police, Kizhvelur Police Station, Nagapattinam District
- 7.The District Collector, Nagapattinam
- 8.The Director General of Police, Mylapore, Chennai-4

9.The Public Prosecutor,
High Court, Chennai.

10.The Section Officer, Crl.Section, High Court, Madras.

+1cc to M/s.Greetha Senthil Kumar,Advocate sr.23726

Crl.A.No.161/2017

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ss(19/5/2017)



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