

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2017

CORAM

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

CRL.A.No.17 of 2017

Shajahan

... Appellant /Accused

Vs

State rep by
The Deputy Superintendent of Police,
Sub Division,
Namakkal Police Station,
Namakkal
(Crime No.311/2011)

... Respondent /Complainant

Appeals filed u/s.374 Cr.P.C., seeking to call for the records and to set aside the judgment passed in S.C.No.77/2011 on the file of Principal District and Sessions Judge, Namakkal dated 21.12.2012.

For appellant : Mr.A. Raja Mohamed

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.77/2011 on the file of Principal District and Sessions Judge, Namakkal. He stood charged for the offence under Sec.302 IPC and 3 (2) (V) of SC/ST Act. By Judgment dated 21.12.2012, the trial Court convicted the accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo imprisonment for one year for the offence under Sec.302 IPC. The trial Court did not impose separate sentence for the offence under Sec.3(2)(V) of SC/ST Act. Challenging the said conviction and sentence, the appellant 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 Nallaiyan. He was working as a load man in the shop of one Rajalingam Chettiar at Namakkal. P.W.1 was working in a neighbouring shop. Thus, the deceased was known to P.W.1. The accused also hails from Namakkal. The accused was also a poor man doing repairing of vessels. Some time before 21.02.2011, the daughter of the accused was kidnapped by the son of the deceased. The accused went in search of his daughter to various places, but he could not find her anywhere. On 21.02.2011 around 3.00 p.m, the deceased was sitting near Sumangali Covering Shop in the lane at Namakkal. P.W.1 walked by his side. The accused who was passing through that way, found the deceased sitting there. On nearing the deceased, the accused asked him as to where his son had kidnapped the daughter of the accused. This resulted in a quarrel. Enraged over the same, the accused poured petrol on the deceased, which he was having in a plastic can and set him on fire. The deceased was in flames. The accused ran away from the scene of occurrence. P.W.1 and others extinguished the fire. They took him to Government Hospital at Namakkal.

(b) The Duty Medical Officer examined the deceased and found 90% of burn injuries. The deceased was then conscious. He told the Medical Officer that a known person poured petrol and set fire near temple. The doctor admitted him as inpatient and then sent intimation to the Magistrate as well as to police.

(c) The Sub Inspector of Police (P.W.20) at Namakkal Police Station, on receiving the said intimation, went to Government Hospital at Namakkal. The deceased was then conscious. He recorded the statement of the deceased and returned to Police Station at 5.00 p.m on 21.02.2011. He has registered a case under Sec.307 IPC. Ex.P.18 is the statement of the deceased and Ex.P.19 is the first information report. He forwarded both the documents to Court, which were received by the Judicial Magistrate.

(d) P.W.21, then Inspector of Police took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of witnesses. He recovered a match box, a gunny bag and a half burnt white cloth. On the same day at 7.30 p.m he arrested the accused in the presence of witnesses. While in custody, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the plastic can and plastic paint tin. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the material objects. P.W.21 recovered the same under a

mahazar. On returning to the police station he forwarded the accused to Court for judicial remand and handed over the material objects to Court. The report reveals that there was no trace of petrol or diesel.

(e) While the investigation was in progress, at 9.50 p.m, the deceased died in the hospital. Therefore, P.W.21 altered the case into one under Sec.302 IPC. Ex.P.21 is the Alteration Report. He conducted Inquest on the body of the deceased on the next day between 7.00 a.m and 9.00 a.m and recorded the statement of witnesses. Then he forwarded the body for post mortem.

(f) P.W.14 Dr.Tamil Selvi, Senior Surgeon, Government Hospital, Namakkal conducted autopsy on the body of the deceased on 22.02.2011 at 11.30 a.m. She found 90% burn injuries. Ex.P.10 is the Post Mortem Certificate. She opined that the death of the deceased was due to shock and hemorrhage due to extensive burn injuries.

(g) P.W.21, thereafter, altered the case, including the offence under Sec.3(1)(x) and 3(2) (V) of SC/ST Act. Ex.P.23 is the alteration report. Then he forwarded the investigation to P.W.22. P.W.22 examined few more witnesses, collected Community Certificate of the deceased as well as from the accused.

(h) It needs to be mentioned that the when the deceased was in the hospital, P.W.17, the then Judicial Magistrate went to the hospital at 6.45 p.m on 21.2.2011 and recorded the dying declaration of the deceased. On completing the investigation, P.W.22 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the judgment. In order to prove the case, on the side of the prosecution, as many as 22 witnesses were examined and 25 documents and 5 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 have spoken about the entire occurrence as eyewitnesses. They have stated that the accused asked the deceased as to where his son had kidnapped the daughter of the accused. This resulted in a quarrel. In that quarrel, according to them, the accused poured petrol on the deceased and set fire. P.Ws 1 and 2 took the deceased to hospital and admitted the deceased. P.W.2 has spoken about the preparation of observation mahazar and rough sketch. P.W.3 has spoken about the observation mahazar, rough sketch and recovery of material objects from the place of occurrence. P.W.4 has stated that he heard the cry of the deceased from the place

of occurrence. He rushed to the place of occurrence and helped P.W.1 to take the deceased into hospital. He turned hostile and has not supported the case of the prosecution. P.W.5 has spoken about the arrest of the accused and the consequential recoveries of the plastic can and plastic tin. P.W.6 has spoken about the motive viz., the son of the deceased had kidnapped the daughter of the accused. P.W.7 has turned hostile and he has not supported the case of the prosecution. P.Ws.8 and 9 have also spoken about the motive. P.Ws.10 and 11 have turned hostile and they have not supported the case of the prosecution. P.W.12 the Tahsildar has stated about the Community Certificate issued. According to him, the accused belongs to Backward Community. P.W.13 has spoken about the chemical examination conducted on the internal organs of the deceased. According to him, neither poison nor alcohol found in the internal organs. P.W.14 has spoken about the post mortem conducted and final opinion regarding cause of death. P.W.15 has stated that the deceased belonged to Scheduled Caste. P.W.16 Scientific Officer, Forensic Science Lab, Chennai has stated that he examined the material objects and found that there was no petrol or diesel on the same. P.W.17, the Judicial Magistrate has stated that on receiving the intimation from the hospital on 21.02.2011 at 6.45p.m, she went to the hospital and recorded the dying declaration of the deceased and according to her, at that time, the deceased was fully conscious and in a fit state of mind to make a dying declaration. P.W.18 a Constable has stated that he handed over the first information report to the Magistrate on 11.20p.m. P.W.19, a Constable has stated that he handed over the Dead Body to the doctor for post mortem after inquest was over. P.W.20 has stated that he recorded the statement of the deceased under Ex.P.18 in the hospital and on return to police station, he registered a case at 5.00 p.m on the same day. P.Ws.21 and 22 have spoken about the investigation and 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. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph and that is how, the accused has come up with this appeal.

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

7. As we have already narrated, in this case, the prosecution mainly relies on the eyewitness account of P.Ws.1 and 2. They have categorically stated about the fact that the

accused came to the place of occurrence and on seeing the deceased, who was sitting in the lane, went near him and asked him as to where the son of the deceased had kidnapped the daughter of the accused. This resulted in a quarrel. They have further stated that in that quarrel, it was the accused who poured petrol and set fire. The learned counsel for the appellant would submit that these two witnesses would not have seen the occurrence at all. But we find no force at all in the said argument. A perusal of the entire evidence, more particularly, the cross examination by the defence counsel, would go to show that nothing has been elicited to disbelieve their presence. In our considered view, their evidences fully inspire the confidence of the Court. Thus, we find no reason to reject the evidences of P.Ws.1 and 2.

8. Immediately, after the occurrence, the deceased was taken to hospital and admitted in the hospital, P.W.23, examined before this Court by way of additional evidence, in exercise of the power of this Court under Sec.391 of Criminal Procedure Code, has stated that at 4.00 p.m., the deceased was brought to the hospital and at that time, he was conscious and he told that a known person poured petrol and set fire. This has been duly entered in the accident Register. This is the earliest dying declaration made by the deceased to an independent authority viz., the doctor. We find no reason to reject the same. After this, the Sub Inspector of Police went to the hospital and recorded the statement of the deceased under Ex.P.18. In that statement, the deceased told that it was the accused, who poured petrol and set fire. Then, again, at 6.45 p.m, the P.W.17, the learned Judicial Magistrate had gone and recorded the dying declaration. According to the learned Judicial Magistrate, the deceased was fully conscious and in a fit state of mind to make a dying declaration. In that judicial dying declaration also, the deceased had told that he was set fire by a Muslim. Admittedly, the accused is a Muslim. These dying declarations would clearly go to prove that it was this accused who set fire to the deceased.

9. The learned counsel for the appellant would further submit that in the judicial dying declaration, the deceased had not mentioned the name of the accused, whereas, in the statement, recorded by the Sub Inspector of Police, the deceased had mentioned about the name of the accused. There is no explanation for this major flaw he contended. In this argument, we find some force, but, on this score, we cannot reject the entire case of the prosecution only because the deceased had not mentioned the name of the accused in the judicial dying declaration. There are two eyewitnesses who have spoken that it was this accused who poured petrol and set fire.

Therefore, this argument is also rejected.

10. By these evidences, in our considered view, the prosecution has clearly established that it was this accused who poured petrol and set fire to the deceased, which resulted in his death.

11. Now, having come to the said conclusion, we have to examine as to what was the offence that was committed by the accused by causing the death of the deceased.

12. It could be gathered from the evidence available on record that the accused did not come to the place of occurrence in search of the deceased at all. He was just passing through and carrying petrol in a can. Incidentally, he saw the deceased sitting on the ground. Pws.1 and 2 were also there. On seeing the deceased, the accused went and asked the deceased as to where his son had taken the daughter of the accused, but the deceased did not respond. This resulted in a quarrel. In that quarrel, because of the words and deeds of the deceased, the accused would have got provoked and on account of such provocation, having lost his mental balance, the accused had poured petrol and set fire.

13. Though there is no direct evidence to prove the provocation, from the circumstances of the case, as spoken by witnesses as well as the dying declarations, more particularly, from the fact that the meeting of the accused and the deceased was purely accidental, we are able to presume that the accused would have been provoked and because of that provocation only, he had poured petrol and set fire. In our considered view, the said provocation was not only sudden but also grave. In such view of the matter, we hold that though the act of the accused would fall within the third limb of Section 300 of IPC, the same would also fall within Exception I to Section 300 IPC and therefore, the accused is liable to be punished for the offence punishable under Sec.304 Part I IPC for having caused the death of the deceased.

14. Now turning to the quantum of punishment, the appellant has been in jail continuously from the date of conviction. He is a poor man and he had no bad antecedents. The occurrence was not premeditated. It was only out of sudden quarrel and out of grave provocation.

15. Having regard to these mitigating and as well as aggravating circumstances, we are of the view that sentencing the accused undergo rigorous imprisonment for five years and directing him to pay a sum of Rs.1000/- for 304 Part-I

IPC would meet ends of justice. So far as the offence under Sec3 (2) (V) of SC/ST Act, there is no evidence that the accused had committed any atrocity in terms of Sec.3(2) (V) of SC/ST Act. Therefore, he is entitled for acquittal.

16. In the result,

(i) The appeal is partly allowed and the conviction and sentence imposed on the accused for the offence under Sec.302 IPC are set aside and instead, the accused is convicted for the offence punishable under Sec.304 Part I IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- (Rupees one thousand only) in default, to undergo rigorous imprisonment for two weeks.

(ii) the conviction of the accused for the offence under Sec.3(2) (V) of SC/ST Act is set aside and he is acquitted;

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal Police Station,
Namakkal
2. The Principal District and Sessions Judge,
Namakkal.
3. The Public Prosecutor,
High Court, Chennai.
4. The Judicial Magistrate No.I,
Namakkal.
5. do-thro-The Chief Judicial Magistrate,
Namakkal.
6. The Superintendent,
Central Prison,
Coimbatore.
7. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.Rajamohamed, Advocate, S.R.No.

C.A.No.17 of 2017

AK(CO)
RS(11/04/2017)

सत्यमेव जयते

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