

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Criminal Appeal No.220 of 2017

Mohamed Hussain @ Hussain

... Appellant/Accused

-Vs-

State rep. by

The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.

(Crime No 1106/2011)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgement of learned Principal Sessions Judge, Tiruppur, passed in S.C.No.10 of 2012 on 30.10.2012.

For Appellant : Mr.V.Perarasu

For Respondent : Mr.V.Arul
Additional Public Prosecutor.

J U D G M E N T

(Judgment of the Court was delivered by C.T.SELVAM, J.)

This appeal arises against judgement of learned Principal Sessions Judge, Tiruppur, passed in S.C.No.10 of 2012 on 30.10.2012, convicting appellant/accused for offence u/s.302 IPC and sentencing him to undergo life imprisonment and fine of Rs.10,000/- i/d 6 months R.I.

2. The prosecution case is that on 14.12.2011 at about 4.00 p.m, there was a quarrel between the appellant/accused and his wife over the appellant/accused being given to bad habits. The wife/deceased threatened appellant/accused that she would commit suicide, if he failed to mend his ways and threatened to pour kerosene over herself. The appellant/accused informing that he would not allow her but would do so himself, threw a lit match resulting in her suffering burn injuries. The deceased was taken to Government Hospital, Udumalaipet on 14.12.2011 at 4.00.p.m. She succumbed to her injuries on 26.01.2012 at 10.15

a.m. Hence, the appellant/accused was tried for offence under Section 302 IPC.

3. Upon intimation from hospital, PW-9, Head Constable went over and recorded the statement of the victim and registered a case in Crime No.1106 of 2011 on the file of respondent for offence u/s.307 IPC. The First Information Report is Ex.P6. PW-11, Inspector of Police, took up investigation on 14.12.2011 at 23.45 hours, visited the place of occurrence, prepared Ex.P8 - Observation Mahazar. He seized Material Objects vide M.O.1-White Kerosene Can of 10 litre capacity, M.O.2- Two bits of burnt blouse and M.O.3-Match Box under seizure Mahazar Ex.P2 in the presence of PW-5 and another. On 15.12.2011 at about 6.30.p.m, he arrested the accused at Cholamadhevi Junction. He recorded the confession statement of the accused in the presence of PW-5 and another. He sent the accused to Judicial custody. He examined PWs.1 to 5 and another and recorded their statements. On 26.01.2012, upon receiving information about the death of the victim, he altered the offence to one under Section 302 IPC and sent report to learned Judicial Magistrate-II, Udumalaipet. The alteration report is Ex.P9. On the same day, between 13.30 and 15.30 hours, he conducted inquest in the presence of Panchayatdars and witnesses. The inquest report is Ex.P10. He sent the body for post-mortem. He examined PWs-1 to 4 and 6 and recorded their statements. On 27.01.2012, he examined PWs-7 to 9 and recorded their statements. On 10.02.2012, upon completion of investigation, he filed final report informing commission of offence u/s.302 IPC. Upon committal, the case was tried in S.C.No.10 of 2012 on the file of learned Principal Sessions Judge, Tiruppur.

4. Before the trial Court, prosecution examined PWs.1 to 11 and marked Exs.P1 to P11 and three material objects. None were examined on behalf of the defence, nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of evidence, under judgment dated 30.10.2012, convicted appellant/accused for offence u/s.302 IPC and sentenced him to undergo life imprisonment and fine of Rs.10,000/- i/d 6 months R.I. There against, the present appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the records.

6. Prosecution case bristles with infirmities as mentioned below:-

1. As per evidence of PW-7 Doctor, upon the admission of deceased to hospital, she had informed of having suffered burn injuries owing to a stove burst. This evidence finds support in Ex.P11 Accident Register maintained at hospital.

2. PW-10, learned Judicial Magistrate has recorded statement of deceased under Section 164 Cr.P.C, Ex.P7 and the same is found to be most unreliable. Besides an obvious correction of the date in column 3 in Ex.P7 from 16.12.2011 to 14.12.2011, further recording is informed to be on 14.12.2011 at 3.25 p.m when even according to the prosecution, the occurrence had taken place on 14.12.2011 at 4.00 p.m.
3. Ex.P5 is the complaint and Ex.P6 is the printed FIR. They replicate what is informed in Ex.P7, which has been found to be totally unreliable. The complaint allegedly has been recorded at 4.00 p.m on 14.12.2011 and the same has reached the learned Magistrate only on 15.12.2011 at 4.00.p.m. The same bears only a thumb impression. Given the discrepancies and inherent defects in the prosecution case, it is difficult to sustain the finding of conviction arrived at by the Court below.

7. There is every possibility of the first contemporaneous record i.e. Ex.P11 Accident Register reflecting the correct position of the deceased having succumbed to injuries owing to a stove burst. The occurrence has also taken place on 14.12.2011 and the deceased died on 26.01.2012. The reason informed in Ex.P4 Post-mortem Report is "Shock and Septicimea due to burns" and raises the possibility of medical negligence.

8. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Principal Sessions Judge, Tiruppur, in S.C.No.10 of 2012 on 30.10.2012, are set aside and appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

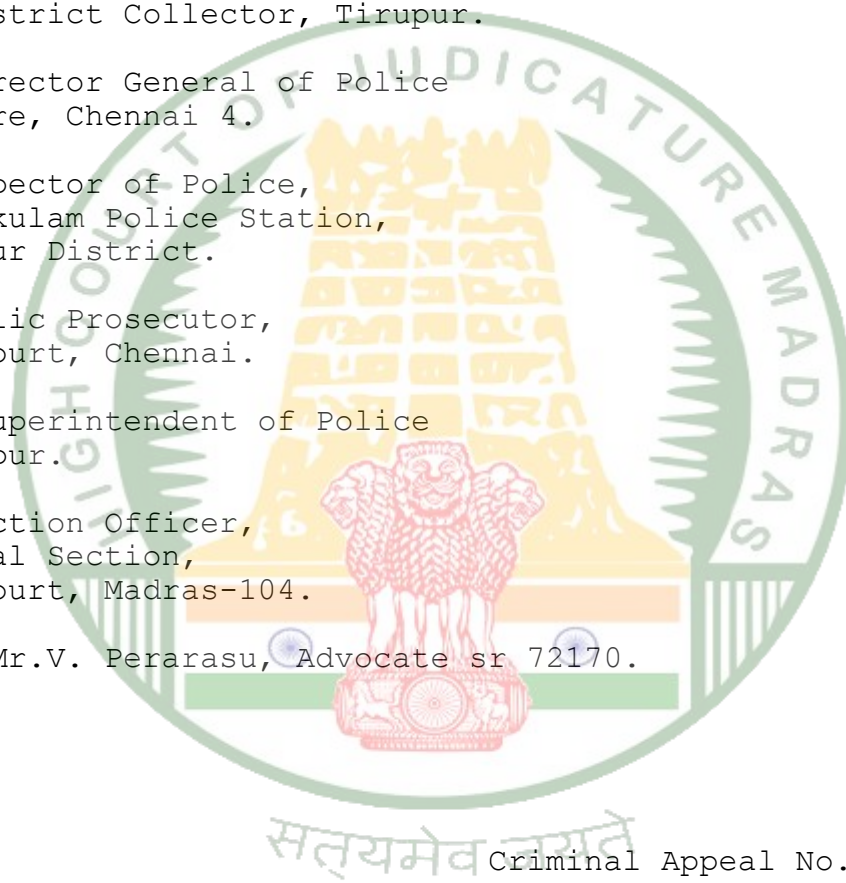
kmi

To

1.The Principal Sessions Judge,
Tiruppur.

WEB COPY

2. The Chief Judicial Magistrate
Tirupur.
 3. The Judicial Magistrate No II,
Udumalpet.
 4. Do Thro The Chief Judicial Magistrate, Tirupur.
 5. The Additional Superintendent
Central Prison, Coimbatore.
 6. The District Collector, Tirupur.
 7. The Director General of Police
Mylapore, Chennai 4.
 8. The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
 9. The Public Prosecutor,
High Court, Chennai.
 10. The Superintendent of Police
Thirupur.
 11. The Section Officer,
Criminal Section,
High Court, Madras-104.
- +1 CC to Mr.V. Perarasu, Advocate sr 72170.



Criminal Appeal No.220 of 2017

NM(CO)
SP(27/11/2017)

WEB COPY