

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Crl.A.No.77 of 2017

Palani Appellant/Accused No.1

vs.

State, rep.by
The Inspector of Police,
Athiyamankottai Police Station,
Dharmapuri District
(Crime No.02/2012) Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 25.06.2015 passed by the Sessions
Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.146 of
2012.

For Appellant : Mr.P.M.Jayachandran

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the first accused in Sessions Case No.146 of 2012, on the file of the learned Sessions Judge (Fast Track Mahila Court), Dharmapuri. There were a total number of five accused, including the appellant herein. The first accused stood charged for the offence under Sections 498(A) and 302 IPC and the accused 2 to 5 stood charged for the offence under Sections 498(A) and 302 read with Section 109. By judgement dated 25.06.2015, the trial Court acquitted the accused 2 to 5; however, convicted the first accused under Sections 498(A) and 302 IPC and sentenced him to undergo rigorous imprisonment for

one year and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month for offence under Section 498 (A) IPC and to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for six months for offence under Section 302 IPC. Challenging the said conviction and sentences, the appellant/first accused is before this Court with this appeal.

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

(a) The appellant is the first accused. There were a total number of five accused, including the appellant herein. The accused 2 and 3 are the parents and 4 and 5 are the brothers of the first accused. They were living together at Oddapatti, Mettukottai Village. The deceased in this case was one Mrs.Astalakshmi. She was married to the first accused nine years before the occurrence. All these accused and the deceased were living under a common roof. It is alleged that all these accused were harassing the deceased, since the deceased did not give money to the first accused for drinking purpose. Because of the said quarrels, it is alleged that all the five accused decided to do away with the deceased. It is also alleged that on the instigation made by the accused 2 to 5, on 5.1.2012, at around 6.00 p.m., the first accused poured kerosene on the person of the deceased and set fire. The deceased raised alarm, which attracted the neighbours. Thereafter, the first accused himself took the deceased to the Government Medical College and Hospital, at Dharmapuri. At the time of admission, the deceased was conscious. She told the Doctor that in an attempt to commit suicide, she herself poured kerosene over her body on 5.1.2012 at 6.00 p.m. and set fire. The Doctor admitted her in the hospital at 6.45 p.m. on 5.1.2012 and gave intimation to the Police as well as to the Judicial Magistrate. Ex.P9 is the Accident Register.

(b) On receipt of the intimation, the Judicial Magistrate, Fast Track Court, Dharmapuri, Mr.Venkatasubramanian, rushed to the hospital at 10.30 p.m. on 5.1.2012. He found the deceased in a fit state of mind to make dying declaration. Then, he recorded the said dying declaration between 10.45 p.m. and 11.00 p.m. In the said dying declaration, the deceased told that the first accused, on being induced by the others, quarreled with her. It is further alleged that on the day of occurrence, the first accused came to the house in drunken state and developed quarrel with her. Unable to bear the said torture, according to her, she told that instead of harassing like this, he could set fire and kill her. Immediately, according to her, the accused poured kerosene on her body and threw a lighted 'beedi bud' on

her. Soon, the deceased was in flames. Then, it was extinguished by the accused. She further told that the first accused did so on the instigation of the other accused, though the other accused were not present.

(c) Thereafter, the Inspector of Police, Athiyamankottai Police Station, went to the hospital and recorded the statement of the deceased. On returning to the police station, at 1.00 a.m., on 6.1.2012, he registered a case in Crime No.2 of 2012, under Sections 307 and 109 IPC. When the case was under investigation, the deceased died. Thereafter, he altered the case into one under Section 302 IPC. He conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.6, Dr.Menaka, conducted autopsy on the body of the deceased. She found extensive burn injuries on the body of the deceased measuring 80%. She further opined that the death of the deceased was due to shock and haemorrhage due to the extent of burn injuries. She also noticed that there was smell of kerosene on the dead body. The investigation was continued by P.W.15. On completing the investigation, he laid charge-sheet against all the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined, 16 documents and 5 material objects were marked. Out of the said witnesses, P.W.1-the mother, P.W.2-the brother of the deceased have spoken about the frequent quarrels between the first accused and the deceased. They have further stated that they came to know about the occurrence later and when they went to the hospital, the deceased told them that it was the first accused, who poured kerosene and set fire. P.W.3 and P.W.4, who are the neighbours, have turned hostile and they have not supported the case of the prosecution. P.W.5 has spoken about the preparation of observation mahazar and a rough sketch and the recovery of material objects from the place of occurrence. P.W.6 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.7 is the father of the deceased. He has also spoken about the frequent quarrels between the first accused and the deceased and the fact that he came to know about the occurrence later. According to him, on hearing about the occurrence, he rushed to the house of the deceased. The deceased was found with injuries. Then the deceased was taken to the Government Hospital at Dharmapuri. P.W.8 has spoken about the arrest of the accused on 7.1.2012. P.W.9 has also spoken about the arrest of the first accused. P.W.10, a Police Constable, has stated that he handed over the

dead body to the Doctor for post-mortem. P.W.11 has stated that he certified to the learned Judicial Magistrate that the deceased was in a fit state of mind to make dying declaration. P.W.11 was working as Doctor in the Government Medical College and Hospital, Dharmapuri. P.W.12, the learned Magistrate, has spoken about the dying declaration recorded by him. P.W.13 has spoken about the admission of the deceased at the Government Hospital at 6.45 p.m. on 5.1.2012. This witness, namely, Dr.S.Sohanraj, has stated that at 6.45 p.m. on 5.1.2012, when he examined the deceased she was conscious. She told that in an attempt to commit suicide, she poured kerosene on her body and set fire to herself. P.W.14, the Inspector of Police, has spoken about the registration of the case on the statement made by the deceased and the investigation done. P.W.15 has spoken about the further investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was a total denial.

5. Having considered all the above, the trial Court acquitted the accused 2 to 5. However, convicted the appellant alone. That is how he is before this Court with this appeal.

6. We have heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. This is a case where the prosecution relies on three dying declarations made at three different points of time by the deceased to prove that it was this accused, who poured kerosene and set fire to the deceased. The presence of the appellant, at his house, at the time of occurrence, may not be doubted. But, according to P.W.7, the father of the deceased, on being informed about the occurrence, immediately he rushed to the house of the deceased and at that time, he found the deceased with burn injuries on her body. He also assisted her being taken to the hospital. She was accompanied by the accused also. At 6.45 p.m., when she was admitted at the Government Medical College and Hospital at Dharmapuri, the deceased was conscious. She told the Doctor that in an attempt to commit suicide, she poured kerosene to herself and set fire at 6.00 p.m. on 5.1.2012. This is the earliest dying declaration made by the deceased. Since this dying declaration was made not only in the presence of the accused, but in the presence of P.W.7, namely,

the father of the deceased, we find no reason to reject the same. It is also difficult to believe that she would have made a false statement to the Doctor because of the presence of her husband with a view to save him. The presence of her father at the time when she was brought to the hospital cannot be taken lightly of.

8. The next dying declaration was the one which was made to the learned Judicial Magistrate. The learned Magistrate has stated that at that time, the deceased was conscious and she was in a fit statement of mind to make a statement. In one statement, as we already pointed out, the deceased has stated that the accused came to the house in a drunken state and developed quarrel. At that time, the deceased told the accused not to harass her and instead, to pour kerosene and kill her by setting fire. It was only thereafter, according to this dying declaration, the deceased took out kerosene and poured on her body. But in the third dying declaration, which was made to the Inspector of Police, the deceased had stated that the accused came to the house, developed quarrel and shouted at her that she should not be alive. Then, he further shouted that she should die. So saying, he, on his own, took the kerosene can from the house and poured kerosene on her. Thus, there are two contradictory versions spoken by the deceased as to how the accused poured kerosene on her. This is totally in contra to the earliest dying declaration made to the Doctor. After pouring kerosene, according to the dying declaration made to the learned Magistrate, the accused threw a lighted 'beedi bud' on her and in that process, she caught fire. But, in the dying declaration made to the Inspector of Police, she has stated that the accused lighted a match stick and threw it on her body. This is also a major contradiction, which in turn contradicts the earliest statement made to the Doctor. In the judicial dying declaration, she has spoken about the inducement made by the rest of the accused; whereas, in the other she did not say so. There are three contradictory statements made by the deceased. When there are multiple dying declarations, prudence requires that the Court should see the consistency in the dying declarations. If any one such dying declaration convinces the judicial conscious of the Court, then there may not be any difficulty for the Court to reject the other dying declarations and to act upon the one which inspires the confidence of the Court. In the instant case, at the earliest point of time, in the dying declaration made to the Doctor, the deceased told that in an attempt to commit suicide, she herself poured kerosene and set fire. We find no reason to reject this earliest dying declaration. The subsequent dying declaration may be out of tutoring by her parents or someone else. That is the reason why the subsequent two dying declarations are also contradictory to

each other. In these circumstances, we are of the view that this is not a fit case, where we can place explicit reliance on any of the dying declarations so as to sustain the conviction. Thus, we hold that the prosecution has failed to prove the charges against the appellant and therefore, he is entitled for acquittal.

9. In the result, this criminal appeal is allowed; the conviction and sentences imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk
To

- 1.The Inspector of Police,
Athiyamankottai Police Station,
Dharmapuri District.
- 2.The Sessions Judge, Fast Track Mahila Court,
Dharmapuri.
- 3.The Judicial Magistrate No.II,
Dharmapuri.
- 4.-Do- Thro the Chief Judicial Magistrate,
Dharmapuri.
- 5.The Superintendent,
Central Prison,
Vellore.
- 6.The District Collector,
Dharmapuri.
- 7.The Director General of Police,
Mylapore, Chennai-600 004.

8.The Superintendent of Police,
Dharmapuri.

9.The Public Prosecutor,
High Court, Madras.

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