

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2017

CORAM

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

CRL.A.No.97 of 2017

Kalyani Appellant/Single Accused
Vs

State rep by
The Inspector of Police,
Palladam Police Station,
Tiruppur District
(Crime No.373/2008)

..... Respondent/Complainant

Appeals filed u/s.374 (2) Cr.P.C., seeking to set aside the judgment passed in S.C.No.104/2009 on the file of Additional District and Sessions Judge (Fast Track Court No.5), Coimbatore at Tiruppur dated 28.07.2010.

For appellant : Mr.S. Mohamed Ansar

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.104/2009 on the file of Additional District and Sessions Judge (Fast Track Court No.5), Coimbatore at Tiruppur. He stood charged for the offence under Sec.302 IPC. By Judgment dated 28.07.2010, the trial Court convicted the accused under Sec.302 IPC and sentenced him to undergo imprisonment for life and no fine was imposed. 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 Raja. He was working in a private company, known as Saravana Bleaching and Dying Company at Tiruppur. He was working in the Drying Section. P.W.1 was

working in the same Company as Winch Cleaner. The accused was working in the same Company for some time as a Gardener. Three months before the occurrence, the accused stopped attending to his work.

(b) In the meanwhile, it came to light that the deceased had developed illicit relationship with the wife of the accused. The deceased and the wife of the accused used to exchange love through cell phones. When this came to the knowledge of the accused, he reprimanded his wife and the deceased.

© On 11.04.2008 around 9.00 a.m, the accused again came to the very same Company and requested the Management to offer him employment. The Management refused to give him employment. On that date, the deceased, P.W.1 and others were in the night shift. Around 9.45 p.m, the accused came to the deceased and asked the deceased about the relationship between himself and the wife of the accused. This resulted in a quarrel. In the said quarrel, it is stated that the accused took out Sulphuric Acid, which was in the Company in a plastic mug and threw it on the face of the deceased. The deceased sustained extensive burn injuries on the face and other parts of the body. The accused ran away from the scene of occurrence. P.W.1 and others immediately took him to the private hospital from where, after first aid, they took him to C.M.C. Hospital at Coimbatore. Around 1.00 a.m on 12.04.2008, they admitted him in the hospital. P.W.1 informed the family members of the deceased. They all came to the hospital. Thereafter, on 12.04.2008 at 1.00 p.m P.W.1 went to Palladam Police Station and made a complaint. Ex.P.1 is the complaint and Ex.P.12 is the first information report. P.W.13, the then Sub Inspector of Police registered a case in Cr.No.373/2008 for the offence under Sec.307 IPC. He forwarded both the documents, which were received by the learned Judicial Magistrate on 12.04.2008 at 3.15 p.m..

(d) P.W.15, the then Inspector of Police, took up the investigation. He went to the place of occurrence, prepared observation mahazar and rough sketch at the place of occurrence in the presence of witnesses. On 12.04.2008, he examined the deceased in the hospital. (the said statement has not been marked). On 14.04.2008, he arrested the accused. While in custody, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the plastic can and plastic mug. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the material objects. P.W.15 recovered the same under 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 deceased underwent treatment in the hospital for 82 days. Thereafter, he was discharged from the hospital. He came to

Thanjavur and remained with his parents. On 03.07.2008 at 11.30 a.m, unfortunately, the deceased died due to burn injuries. P.W.16, the then Inspector of Police, who took up the investigation after P.W.15, altered the case into one under Sec.302 IPC. He held inquest on the body of the deceased on the same day at 4.30 p.m and forwarded the same for postmortem.

(e) P.W.12 Dr.Senthil Kumar, Assistant Professor, attached to Thanjavur Medical College conducted autopsy on the body of the deceased on 04.07.2008 at 11.45 a.m. He found the following injuries.

"EXTERNAL INJURIES:

- I. 1. Extensive acid burns with charring of the skin, exposing the underlying bones noted over anterior half of scalp (exposing vault of skull), whole of face, both eyes (with shrinkage of eyeballs), whole of the nose (exposing nasal bone), around the both lips and whole of the neck-(6%)
2. Whole of left ear was found missing due to acid burns effect
3. Extensive muscle deep acid burns noted over.
 - (i) Whole of both upper limbs except dorsum of both hands (12%)
 - (ii) Whole of front of chest except few patches over left side outer aspect (6%)
 - (iii) Upper 2/3 of front of abdomen (6%)
 - (iv) Few patches over the inner aspect of both legs and feet (6%)
 - (v) Back of middle of chest and upper portion of abdomen (6%)Total amounting to 42% acid burns.
- II. Evidence of infection in the form of greenish yellow colour noted in patches over the burns affected area.
- III. Peeling of the cuticle, reddening of the skin and evidence of partial peripheral healing noted in certain areas.
- IV. Evidence of skin contracture due to acid Burns effect seen over whole of the neck and both axillary region with heat ruptures exposing the underlying muscles.

4. Out of the said witnesses, P.W.1, a Co-worker, has spoken about the entire occurrence as an eyewitness. He has also spoken about the motive. P.W.2 has stated that on 12.04.2008 around 5.00 a.m the accused came to him and told him that he poured acid on the deceased. P.W.3 is the brother of the deceased. He has stated that he heard about the occurrence and went to the hospital. P.W.4 is the father of the deceased. He has stated that from 11.04.2008 onwards the deceased was undergoing treatment in the Government Medical College Hospital at Coimbatore. After 83 days of treatment on 02.07.2008. He was discharged and went to Thanjavur. On 03.07.2008 he died. P.W.5 is the brother of the deceased. He has also spoken about the same facts. P.W.6 is an another eyewitness to the occurrence. He was also working in the same Company, where P.W.1 was working. He has spoken about the entire occurrence. P.W.7 has spoken about the preparation of observation mahazar, rough sketch and recovery of Acid stain in the mug from the place of occurrence. P.W.8 has spoken about the arrest of the accused and the consequential recoveries of the plastic can and plastic mug. P.W.9, was a Doctor of Uma Nursing Home at Tiruppur. According to him, on 11.04.2008 at 10.30 p.m, the deceased was brought to him for treatment. The deceased was then conscious. There were extensive burn injuries. The deceased told him that a known person poured Acid. After first aid, he was shifted to Government Hospital at Coimbatore. P.W.10 Doctor Karuppusamy, Assistant Doctor at Government Hospital at Coimbatore has stated that on 12.04.2008 at 1.00 p.m, the deceased was brought to the said hospital for treatment. P.W.11 the Deputy Nazar of Sub Court, Udumalpet has stated that he forwarded the material objects for chemical examination. P.W.12 has spoken about the post mortem conducted and final opinion regarding cause of death. P.W.13 has spoken about the registration of the case on the complaint of P.W1. P.W.14 yet another Doctor from Coimbatore has stated that on 12.04.2008 at 1.30 a.m the deceased was admitted in the hospital for 40% acid burn injuries. After 82 days of treatment, he was discharged at the request of the father of the deceased. P.Ws.15 and 16 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 have 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, there are two eyewitnesses viz., P.W.1 and P.W.5 who were working in the same Company. They stated that the accused came to the Company seeking re-employment but the Management refused. At that time, on seeing the deceased, the accused asked him as to why he continued to have illicit relationship with the wife of the accused. This resulted in a quarrel. The accused was not armed with any weapon or Acid. The Acid was lying in the Company for bleaching purpose. Enraged, the accused took the Acid and threw on the face of the deceased. This was clearly spoken by these two witnesses. They they had taken him to the hospital. When the deceased was admitted in the hospital, he was conscious and he told that a known person had poured acid on his face. Though he was undergoing treatment for 83 days and though his statement was recorded, unfortunately such statement of the deceased, amounting to dying declaration, has not been marked. But on that score, we cannot reject the evidences of P.Ws.1 and 5. From these evidences, it has been clearly established that this accused had poured acid on the face of the deceased, which resulted in his death.

8. Thus, having come to the said conclusion, now we have to examine as to what was the offence committed by the accused by causing the death of the deceased.

9. Admittedly, the accused did not go to the Company with any premeditation. He was stopped from duty three months before the occurrence. On the date of occurrence, the accused came to the Company to seek re-employment. The Management refused to give employment. At that time, he found the deceased sitting there. He questioned the deceased as to why he was having illicit relationship with his wife. This resulted in a quarrel. Quite naturally, the accused would have been provoked by the words and deeds of the deceased. The accused was also not armed with any weapon or acid. The acid was in the Company for bleaching purposes and the accused took it when he was out of control and threw on the face of the deceased. Thus, though the act of the accused would fall within the third limb of Section 300 of IPC, the same would also fall Exception I to Section 300 IPC and therefore, the 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.

10. Now turning to the quantum of punishment, we are informed that the appellant has been in jail continuously from the date

of conviction. He is a poor man. He has got family and to take care of the family. He has no bad antecedents. The occurrence

was not premeditated. It was only out of sudden quarrel and out of grave provocation.

11. Having regard to these mitigating and aggregating circumstances, we are of the view that sentencing them to undergo rigorous imprisonment for seven years and directing him to pay a sum of Rs.500/-each for 304 Part-I IPC would meet ends of justice.

12. 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 seven years and to pay a fine of Rs.500/- (Rupees five hundred only) in default, to undergo rigorous imprisonment for two weeks.

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

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

To

1. The Inspector of Police,
Palladam Police Station,
Tiruppur District
2. The Additional District and Sessions
(Fast Track Court No.5), Coimbatore at Tiruppur
3. The District Collector, Tiruppur District
4. The Director General of Police
Chennai 4

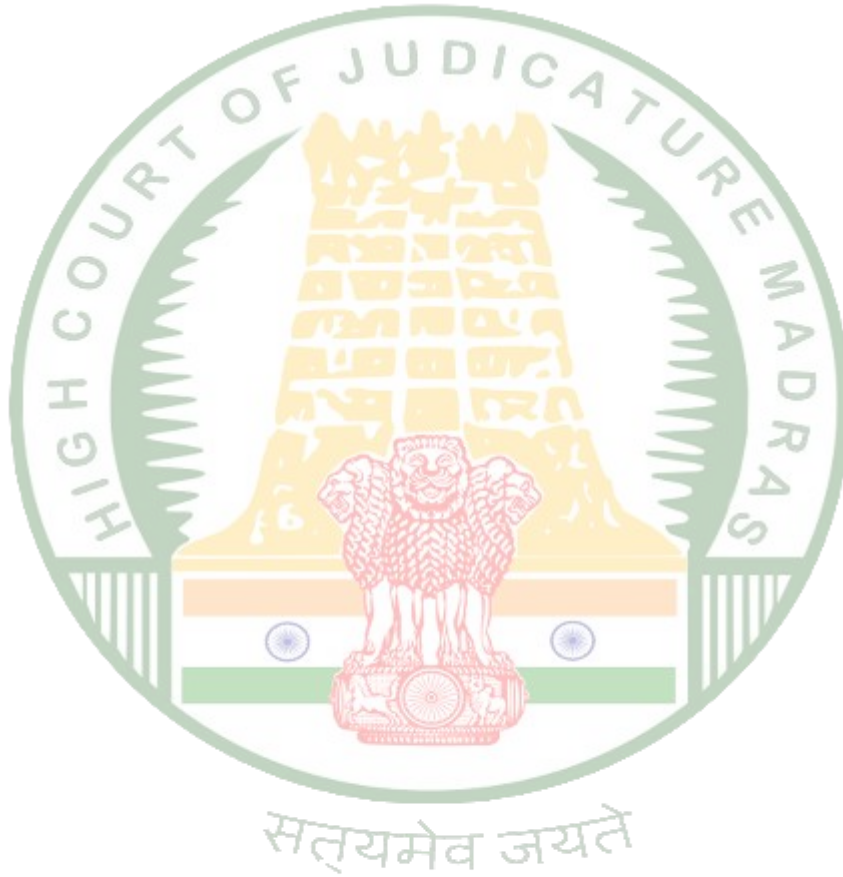
5. The Superintendent Central Prison
Coimbatore

6. The Public Prosecutor
High Court, Madras

+1 cc to Mr.S.Mohamed Ansar, advocate,sr.16957. (28/4)

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