

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.436 of 2016

V.Arul Jothi

..

Appellant

Vs

State by
The Inspector of Police,
Namakkal Police Station,
Namakkal,
Namakkal District
(Cr.No.886/2012)

..

Respondent

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of the Mahila Fast Track Court, Namakkal dated 11.05.2016 in S.C.No.26 of 2014.

For Appellants : Mr.C.D.Johnson

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is A.1 in S.C.No.26 of 2014 on the file of the

learned Sessions Judge (Mahila Fast Track Court), Namakkal. A.2 – Mrs.Mahalakshmi, is the mother of the appellant/A.1. Both the accused stood charged for offences under Sections 498(A) & 302 I.P.C. By judgment dated 11.05.2016, the trial Court acquitted A.2 from all the charges and acquitted the appellant/A.1 from the charge under Section 498(A) I.P.C., and convicted him for offence under Section 302 I.P.C., to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant/A.1 is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Nivedha. The appellant/A.1 is the husband and A.2 is the mother-in-law of the deceased. The marriage between A.1 and the deceased was celebrated few months before the death of the deceased. After the marriage, A.1 and the deceased were residing together as husband and wife at Rajeev Nagar, Namakkal District. A.2 was also living with them as a joint family. It is alleged that after the marriage, these two accused started demanding two more sovereigns of gold jewels from the deceased family as dowry and also harassed the deceased. It is further alleged that on 11.04.2012, around 5.00 pm, when the

deceased was at the house of A.1, A.1 who returned home in drunken state, poured brandi mixed with kerosene on the deceased and set fire to her. When the deceased tried to escape, A.2, according to the case, pulled her into the house. After extinguishing the fire, it is alleged that both the accused took her and admitted her in a private hospital known as Srinidhi Hospital. At the time when she was admitted in the hospital, the deceased was conscious. She told the Doctor that she suffered injuries in an accidental fire, due to bursting of kerosene stove. She underwent treatment in the hospital between 11.04.2012 and 09.05.2012. During the said period, she was conscious and was in a position to speak. On 09.05.2012, she was discharged from the said hospital and admitted in the Government hospital at Namakkal at 11.45 am on 10.05.2012. She was brought to the hospital by her father. When P.W.7 – Dr.Jayanthini, examined her, she told that on 11.04.2012, around 3.30 pm, she self-immolated herself. P.W.7 recorded the same in an Accident Register. Thereafter, P.W.7 sent an intimation to the learned Judicial Magistrate for recording dying declaration. According to which, the learned Judicial Magistrate visited the hospital on 10.05.2012 at 2.45 pm. At that time, the deceased told that A.1 who returned home in a drunken state poured kerosene mixed with brandi on her and set fire. When the deceased tried to escape, A.2 pulled her inside the house. Thereafter, the deceased died on 20.05.2012.

3. When the deceased was in the hospital, on receiving intimation, the Special Sub Inspector of Police went to the Government hospital and recorded the statement of the deceased on 13.05.2012. On returning to the Police Station, on the same day at 3.00 pm, he registered a case in Crime No.886/2012 for offence under Section 307 I.P.C., against the accused. He forwarded both the documents to Court. Thereafter, the case was investigated by P.W.15.

4. P.W.15 visited the place of occurrence on 13.05.2012 at 1.30 pm and prepared an observation mahazar and a rough sketch in the presence of witnesses and also examined many witnesses including P.Ws.1 & 2 who are the parents of the deceased. When the deceased was admitted in Government Hospital, Namakkal, he examined the deceased also. After the demise of the deceased on 20.05.2012, he requested the Revenue Divisional Officer/Executive Magistrate to hold inquest. Accordingly, the Revenue Divisional Officer held inquest. Then the dead body was sent for post mortem. Thereafter, the case was investigated by P.W.16, the then Inspector of Police.

5. P.W.7 – Dr. Jayanthini conducted autopsy on the body of the deceased on 20.05.2012 at 12.30 pm. She gave opinion that the death of the deceased was due to infected extensive burnt injuries.

On completing investigation, P.W.16 laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 19 documents were exhibited, besides a plastic can (M.O.1).

7. Out of the said witnesses, P.Ws.1 & 2 are the father and mother respectively of the deceased. They have stated about the marriage between A.1 and the deceased and the frequent quarrel between A.1 and the deceased. They have further stated that on the day of occurrence, they were informed by A.1 that the deceased had self-immolated herself and immediately, they went to the hospital and enquired the deceased. She told that it was due to accidental fire, namely, due to the bursting of kerosene stove. They have further stated that she underwent treatment in the private hospital till 19.05.2012 and thereafter, she was taken to the Government hospital at Namakkal on 20.05.2012. They have also further stated that while she was in the private hospital, the Police came to enquire the deceased and the deceased told that she caught fire in an

accident while cooking and sustained the burnt injuries. They have further stated about the death of the deceased.

8.P.Ws.3 & 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken about the preparation of observation mahazar and rough sketch. P.W.6 – Dr.Kathiravan, has spoken about the treatment given by him at Srinidhi Hospital. He has further stated that the deceased told him that she sustained injury due to bursting of the kerosene stove.

9.P.W.7 - Dr.Jayanthini has spoken about the admission of the deceased at the Government hospital on 20.05.2012. At the time of admission, the deceased told her that she self-immolated herself. She has further stated about the death of the deceased and the post mortem conducted by her. P.W.8, the then Village Administrative Officer has spoken about the recovery of the plastic can from the house of the deceased. P.W.9, the Special Sub Inspector of Police has stated about the statement recorded from the deceased on 16.04.2012. In the said statement, the deceased told that while cooking by using kerosene stove, suddenly it was burst and which resulted in burnt injuries on her. P.W.10 has spoken about the chemical examination conducted on the internal organs of the deceased. The report revealed that there was no poison or alcohol.

P.W.11, a Constable has stated that he brought the dead body of the deceased to the Doctor for conducting post mortem as requested by the Investigating Officer. P.W.12 has spoken about the statement recorded from the deceased on 13.05.2012 upon which, the present case was registered. In that statement, the deceased told that A.1 set fire to her. P.W.13, the learned Judicial Magistrate has spoken about the dying declaration recorded by her on 10.05.2012 wherein, the deceased had stated that A.1 set fire and A.2 pulled her inside the house. P.W.14, the Sub Collector has spoken about the inquest conducted by her on the dead body of the deceased. P.Ws.15 & 16 have spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor did they mark any documents on their side.

11. Having considered all the above materials, the trial Court convicted the appellant/A.1 for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

12.We have heard the learned counsel appearing for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13.This is a case based on circumstantial evidence. More precisely, the prosecution relies on the dying declarations made by the deceased at various points of time. Admittedly, she sustained burnt injuries on 11.04.2012. At the earliest point of time, when she was admitted in a private hospital known as 'Srinithi Hospital', the deceased told that while cooking with the use of kerosene stove, accidentally, she caught fire and sustained injuries. This was recorded by P.W.6 – Dr Kathiravan, who treated her in the said hospital.

14.On getting information from the hospital, the Special Sub Inspector of Police went to the hospital and recorded the statement of the deceased on 16.04.2012 vide Ex.P.9. In that statement also, she told that due to accident while cooking in the kerosene stove, she caught fire and sustained injuries. She underwent treatment in the said hospital till 09.05.2012. That was, for about 29 days. During the said entire period, as admitted by P.Ws.1 & 2, they were by the side of the deceased and taking care of her. During these days i.e., 29 days, she did not make any complaint against the accused. She was

discharged from the said hospital and admitted in the Government hospital at Namakkal on 20.05.2012.

15.P.W.7 Dr.Jayanthini examined her in the Government hospital at Namakkal. At that time, she told that she self-immolated herself and she did not make any complaint against the accused. Thereafter, the judicial dying declaration was recorded in which, for the first time, on 10.05.2012, she made such an allegation that it was A.1 who poured kerosene and set fire on her and A.2 pulled her inside the house. Absolutely, there is no explanation as to why for 29 days, she did not make any complaint against the accused and instead, she was making a consistent statement that it was an accidental fire. It is also not explained to this Court as to why based on the statement recorded on 16.04.2012 from the deceased, no case was registered. Curiously, fresh statement was obtained from the deceased on 13.05.2012 upon which, the present case was registered. In our considered view, though, it is true that in the judicial dying declaration, the deceased had told that it was A.1 who poured kerosene and set fire on her and A.2 pulled her from inside the house, we find it difficult to believe the same, in view of the consistent statements made by the deceased for the initial 29 days that she sustained injuries in the accident while cooking with the use of the kerosene stove.

16.It is true that the dying declaration of the deceased is a substantive evidence and even in the absence of any corroboration, that by itself can be this foundation to convict the accused. In the instant case, since, we find it difficult to believe the judicial dying declaration, we are unable to sustain the conviction imposed on the appellant/A.1. We hold that the prosecution has failed to prove the case beyond reasonable doubts. Hence, the appellant/A.1 is entitled for acquittal.

17.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.1 by the learned Sessions Judge (Mahila Fast Track Court), Namakkal in S.C.No.26 of 2014, dated 11.05.2016, are set aside and the appellant/A.1 is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/A.1, shall stand discharged.

(S.N.J) & (N.A.N.J.,)
08.02.2017

jbm

Index:Yes

To

1.The Sessions Judge
(Mahila Fast Track Court),
Namakkal.

2.The Public Prosecutor,
High Court, Madras.

**S.NAGAMUTHU.J.,
and
N.AUTHINATHAN.J.,**

jbm

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