

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Cr1.A.No.611 of 2016

Deena @ Dinakaran ... Appellant

Vs.

State represented by
Inspector of Police,
K5-Peravallur Police Station,
Chennai.
(Crime No.513 of 2013)

... Respondent

Prayer:- Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Sessions Judge, Mahilir Neethimandram, Chennai in S.C.No.451 of 2013 by judgment dated 26.07.2016 and acquit the appellant herein from the charges.

For Petitioner : Mr.K.Chandru

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

JUDGEMENT

N.AUTHINATHAN, J.

The appellant is the sole accused in S.C.No.451 of 2013 on the file of learned Sessions Judge, Mahilir Neethimandram, Chennai. The appeal is directed against the conditional sentence imposed in S.C.No.451 of 2013 ordering the accused to undergo rigorous imprisonment for three years and pay a fine of Rs.3,000/- in default to undergo further period of three months rigorous imprisonment for the offence under Section 450 IPC and life imprisonment and to pay a fine of Rs.10,000/- in default undergo further period of six months rigorous imprisonment for the offence under Section 302 IPC.

2. The facts which are necessary for the disposal of the appeal, are as follows :- Radhakrishnan-P.W.3 and Radhamani-P.W.4 are the father and mother respectively of deceased Sangeetha. Sangeetha was married to one Ramesh and a child was born to them. However she had separated from her husband. Since 2011 she had a living relationship with P.W.1-Parameswaran. P.W.1-Parameswaran and Sangeetha were living together in a portion on the first floor of a house belonging to P.W.2-Ashtalakshmi, situated at G.K.M.Colony, Amman Koil Street, Peravallur, Chennai. The accused Deena @ Dinakaran was also residing in another portion on the first floor of the said house. The accused behaved towards the deceased like a sister. On 13.03.2013, the accused came to the house of deceased at about 3.30 p.m. and made sexual advances to the deceased but she rejected it and admonished the accused. On 14.03.2013 at about 13.45 hours the accused entered the house of the deceased and bolted the door from inside. He pulled the saree of the deceased. The deceased asked him to go away. But the accused picked up a kerosene can lying nearby and poured kerosene on her and set her on fire as a result of which the deceased sustained burns. She was taken to Government General Hospital, Periyar Nagar. P.W.11-Doctor Radhika examined the deceased at 2.20 p.m. on 14.03.2013 and she has given first aid to the deceased Sangeetha and referred her to Killpauk Medical College Hospital. The sangeetha sustained 64% burn. Ex.P.4 is the Accident Register copy issued by P.W.11.

3. P.W.12, the then XIV Metropolitan Magistrate, Egmore visited the Kilpauk Hospital and recorded the dying declaration of Sangeetha at 5.15 p.m on 14.03.2013 in the presence of Dr.Dhanraju-P.W.15. Ex.P.5 is the dying declaration. He read over the statement to the deponent and obtained her signature and the deponent was in a fit state of mind throughout the recording of the statement. P.W.15 Doctor attached to burns ward Kilpauk Medical College has also certified to that effect.

4. P.W.16-Mathankumar, the then Sub Inspector of Police, Peravallur Police Station, on receipt of information from the Kilpauk Medical College Hospital, visited the hospital and examined Sangeetha and recorded her statement marked Ex.P.10. He returned to the Police Station and registered a case under Section 307 IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act in Crime No.513 of 2013. Ex.P.11 is the First Information Report.

5. P.W.17-Kamala Kannan, Inspector of Police took up the investigation and he arrested the accused on 15.03.2013 at about 8.30 a.m. near Logo Scheme Road, Muthukumarappa Salai in the presence of witnesses Ramesh and Stephen Raj and intrograted him. He sent the accused for remand.

6. One Masanam the then Inspector of Police, Paravallur took up investigation. He visited the scene of

occurrence and prepared Observation Mahazar-Ex.P.11 and Rough Sketch Ex.P.12. He recovered M.O.1 - Kerosene Bottle, M.O.2-Match Box under Mahazar Ex.P.13. He also recovered the Chidithar Top of the deceased that was worn by the deceased at the time of occurrence. Thereafter the said Investigating Officer went on leave. The said Sangeetha died on 16.03.2013 at 12.10 p.m. After the receipt of death intimation under Ex.P.14, the case was altered into one under Section 302 IPC. The said Inspector held inquest over the dead body of Sangeetha in the presence of Panchayatars and he prepared inquest report and sent the body for Postmortem.

7. P.W.13-Dr.Jithendar attached to Kilpauk Medical College, Chennai conducted autopsy on 17.03.2013 at 12.40 p.m. He sent the content of stomach viscera to Forensic Department for examination. P.W.14, V.Valliammal, Scientific Officer who examined the viscera and issued certificate that poison was not detected. P.W.13 also found the following injuries and issued the postmortem certificate Ex.P.7 :-

"DERMO-EPIDERMAL BURNS WITH DENUDED CUTICLE EXPOSING THE REDDISH AREA SEEN OVER THE FACT, NECK, FORNT AND BACK OF CHEST AND ABDOMEN, RIGHT ARM, FOREARM, HAND FRONT AND OUTER ASPECT, FRONT AND BACK OF LEFT UPPER LIMB, BACK OF CHEST, MIDDLE TO LOWER THIRD OF RIGHT THIGH, RIGHT KNEE, INNER ASPECT OF RIGHT UPPER TO MIDDLE THIRD OF LEG, LEFT THIGH LOWER THIRD AND INNER ASPECT, LEFT KNEE PATCHY AREAS, MIDDLE THIRD AND OUTER ASPECT OF LEFT LEG, PATCXHY AREASOVER UPPER THIRD OF ABDOMEN, OUTER ASPECT OF LEFT ABDOMEN, BOTH BREAST, WHICH CHARRED HAIRS SPARED FOOT"

He opined that the deceased would appear to have died of shock due to extensive burns.

8. Since, the Investigating Officer Masanam died on 10.04.2013, P.W.18-Rajesh Kanna, Inspector of Police took up further investigation. After completing the investigation, he lodged the Charge Sheet against the accused for the offences under Sections 450 and 302 IPC.

9. In support of the prosecution, the prosecution examined 18 witnesses and marked Exs.P.1 to 16. They have produced Material Objects 1 to 3.

10. The accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstance appearing against him in the prosecution evidence, the accused reiterated his innocence. The accused did not produce any defense witness on his behalf. The trial Court has accepted the case of the prosecution and come to convict the accused as aforesaid.

11. The learned counsel for the accused submitted that P.Ws.1,3,4 and 5 are interested witnesses and there was delay in lodging the First Information Report, that the learned Metropolitan Magistrate, who recorded the dying declaration failed to follow the guidelines while recording the dying declaration and that the trial Court committed error in convicting the accused.

12. P.Ws.3 and 4 are the parents of the deceased Sangeetha. The deceased Sangeetha married one Ramesh and a child was born to them. It is not in dispute that the deceased had separated from her husband and had a relationship with P.W.1-Parameshwar. They lived together in a portion on the first floor of the house belonging to P.W.2 Ashtalakshmi. It is seen from evidence of P.W.2 that the accused was also residing in a portion on the first floor of the same house.

13. The case of the prosecution is that on 14.03.2013 at about 1.45 p.m, the accused entered the portion of the deceased Sangeetha and try to molest her. When the deceased ask him to go away the accused poured kerosene on her and set fire on her as a result of which she sustained burns and admitted to the Hospital. It is seen from the evidence of Dr.Radhika, the then Medical Officer attached to Periyar Nagar General Hospital, that the deceased Sangeetha was admitted to the hospital at about 2.20 p.m. and she (Sangeetha) told that a known person poured kerosene on her and set her on fire. Ex.P.4 is the wound certificate issued by her. According to the doctor Sangeetha had sustained 64% burns.

14. It is seen from the evidence of P.W.16-Mathankumar, the then Sub Inspector of Police, attached to Peravallur Police Station that he received intimation from the hospital and visited the hospital and recorded the statement of Sangeetha. Ex.P.10 is the statement given by the deceased. On the basis of the statement given by the deceased, a case was registered and Ex.P.11 is the First Information Report. P.W.12, the then XIV Metropolitan Magistrate recorded the dying declaration of the deceased on 14.03.2013 at about 5.15 p.m. in the presence of P.W.15 Dr.Dhanraju. It is seen from the evidence of P.W.12 that the deponent was in a fit state of mind at the time of recording dying declaration. Dr.Dhanraju has also certified to that effect. Ex.P.5 is the dying declaration. She died on 16.03.2013 at 12.10 p.m.

15. A close reading of the dying declaration clearly reveals that the accused entered the house of deceased Sangeetha and try to molest her and when the deceased asked him to go away he picked up a kerosene can and poured kerosene on her exclaiming “எனக்கு கிடைக்காத நீ வேறுயாருக்கும் கிடைக்கக் கூடாது.”, The deceased has also clearly stated in her statement that the accused set her on fire.

16. The learned counsel for the accused would submit that there was delay in lodging the FIR and sending the same to the Magistrate. The occurrence according to the prosecution has taken place on 14.03.2013 at 13.45 hours. The learned Magistrate received the First Information Report at 15.03.2013 at 10.50 p.m.

17. The prosecution case primarily rests on the dying declaration of the deceased. As has already been pointed out, the deceased has given her first statement to the Doctor Radhika at 2.20 p.m. She has also given her statement to the police under Ex.P.10 and on the basis of the statement, the case was registered on 14.03.2013 at 15.30 hours. The dying declaration was recorded at 5.15 p.m. and she had died on 16.03.2013 at 12.10 p.m. The medical certificates and the evidence given by the Doctors would show that she was in a fit state of mind at the time of giving statement to them and also at the time of recording dying declaration by the learned Magistrate. Her statement was consistent as regards the her assailant. There is no material to show that she was tutored to give statements against the accused. There is no reason as to why she should speak to a thing involving the accused which is un-true. We have therefore, have no hesitation in accepting the dying declaration of the deceased. The criticisms of the appellant cannot be countenanced.

18. Dying declaration, if truthful, can form the basis of conviction. In the case at hand the dying declaration of the deceased does not suffer from any infirmity. The trial Court has analyzed the materials and records in proper perspective. We agree with the conclusion of the trial Court that the prosecution succeeded in proving beyond reasonable doubt that the appellate was assailant who set Sangeetha ablaze

19. In the result, the criminal appeal fails and is dismissed. The conviction and sentence imposed on the appellant are confirmed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Sessions Judge, Mahilir Neethimandram,
Chennai
2. -do- Thro Principal Sessions Judge,
Chennai.

3. The Inspector of Police,
K5-Peravallur, Police Station,
Chennai.

4. The Superintendent,
Central Prison,
Puzhal, Chennai.

Judgment in
Crl.A.NO.611 of 2016

VD(CO)
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