

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.A.No.827 of 2016
and Crl.M.P.No.13442 of 2016

Anbu

... Appellant/Accused

versus

The State of Tamilnadu,
Rep. by The Inspector of Police,
Valasaravakkam Police Station,
Chennai.
(Crime No 2/2011)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order of conviction and sentence of 10 years Rigorous Imprisonment for the offence under Section 304(2) IPC passed by the Principal District and Sessions Judge, Tiruvellore in S.C.No.2 of 2012 dated 30.08.2016 and acquit the appellant/accused.

For Appellant : Mr.A.M.Ayyadurai

For Respondent : Mr.K.Mathan
Government Advocate (Crl.Side)

J U D G M E N T

The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.2 of 2012 on the file of the learned Principal District and Sessions Judge, Tiruvellore, ordering the accused to undergo Rigorous Imprisonment for 10 years and also to pay a fine of Rs.6,000/-, in default, to undergo further period of six months Rigorous Imprisonment for the offence under Section 304(2) IPC.

3. The facts necessary for the disposal of the appeal, are as follows:-

[i] The accused is the appellant herein. Mary [deceased] fell in love with the accused. The accused is a

native of Seyyur. She eloped with the accused and lived at Seyyur for some time. The accused is a coolie and they have migrated to Chennai. They lived in a rental home at No.34, Nethaji Nagar, Ramapuram, Chennai - 600 089. Lakshmanan [P.W.4] is their landlord. P.W.1 to P.W.3 are their neighbours.

[ii] The accused has become a drunkard and he used to pick up quarrel with the deceased after consuming liquor. On New Year eve [31.12.2010], the accused promised the deceased to take her to Church. However, he returned home only at 10.30 p.m. in a drunken-state. The deceased questioned his conduct. The accused retorted "vd;Dld; ,Uf;FDk;dh ,U> ,y;nyd;dh rht[" and poured kerosene and set her on fire. The deceased came out of her house. Santha [P.W.1], Anbudhasan [P.W.2] and Valli [P.W.3], neighbours of Mary, on hearing the screams came out and saw Mary in flames. They dowsed the fire. Mary told them that the accused set her on fire. They contacted Ambulance Service over phone and she was taken to Kilpauk Medical College Hospital, Chennai in 108 Ambulance.

[iii] Dr.Suresh Babu [P.W.5], attached to Kilpauk Medical College Hospital, examined Mary at about 12.15 a.m. on 01.01.2011 for certain injuries said to have been accused by her husband at around 10.30 p.m. on 31.12.2010. He found burns on Mary's neck, chest, back abdomen and both upper limbs. He admitted Mary to Burns Ward of the Hospital. Ex.P.3 is the duplicate Accident Register dated 01.01.2011 issued by Dr.R.Suresh Babu.

[iv] Dr.Nirmala Ponnambalam [P.W.10], Associate Professor, in charge of Burns Ward treated Mary. She sent requisition memo to the learned Judicial Magistrate for recording the declaration of the deceased. Ex.P.10 is the Requisition Memo [given to the Magistrate]. S.Priya [P.W.8], then XVII Metropolitan Magistrate, Saidapet, received the intimation and visited the Hospital at 5.40 a.m. and recorded the statement of the deceased. Ex.P.5 is the dying declaration. P.W.10 - Doctor certified that the deceased was in a fit state of mind to give her statement. Exs.P.7/8 is the Certificate issued by P.W.10-Doctor.

[v] Mr.Mahadevan [P.W.11], the then Sub Inspector, attached to Kilpauk Police Station, visited the Burns Ward at 7.30p.m. on 01.01.2011 and recorded the statement of the deceased (Ex.P.11) and on the basis of Ex.P.11, he registered a case in Crime No.2 of 2011 for the offence under Section 307 IPC. Ex.P.12 is the First Information Report. P.W.12-the then Inspector of Police, Valasaravakkam, took up the investigation and visited the place of occurrence at 8.15a.m. on 01.01.2011 and prepared Ex.P1-Observation Mahazar and Ex.P13-Rough Sketch in the presence of witnesses. He seized M.Os.1 to 5 viz.,

1.While Colour Plastic Bottle, 2.Blouse Bit. 3. One saree, 4.Skirt and 5.Match Box.

[vi] The Investigating Officer examined Mary, Santha, Anbudhasan, Valli, Lakshman, Dhuraikannu, Dr.Sureshbabu, Tmt.Latha and Mahadevan and recorded their statements. He arrested the accused at about 5.00 a.m. on 03.01.2011 in the presence of the witnesses Venkatesan and Anandhaprabhu and he recorded the statement of the accused. The deceased died on 04.01.2011 at about 14.00 hours at the Hospital. Therefore, the Investigating Officer altered the Section of the case into one under Section 302 IPC and sent alteration report Ex.P.14. On 06.01.2011. He held inquest over the dead body between 11.00 a.m. and 3.40 p.m. at the mortuary. Ex.P.15 is the Inquest Report. Dr.W.Harry Santha Seelan [P.W.9], attached to Forensic Department, Kilpauk Medical Hospital, conducted autopsy on the dead body of the deceased Mary. He found the following injuries:

"Dermo-epidermal burns with yellowish white slough loosely adherent on to the base present on the face, neck, chest, upper abdomen, front and back of both upper limbs and patchy areas of back. No other external or internal injuries made out.

Other findings:-

HEART: Normal in size. C/S:All chambers contained clotted blood. CORONARY VESSELS: Patent. LUNGS: Normal in size. C/S: Pale HYOID BONE: Intact. No definite smell perceived. LIVER, SPLEEN, KIDNEYS: Normal in size C/S: Pale. Cavity Empty. SCALP: Intact. SKULL BONES: Intact. MEMBRANES: Intact. BRAIN: Normal. SPINAL COLUMN: Intact."

[vii] He opined that the deceased would appear to have DIED OF COMPLICATION OF BURNS INJURIES (SEPTICAEMIA). Ex.P.9 is the Postmortem Certificate. After completion of investigation, P.W.12 laid charge-sheet against the accused for the offence under Section 302 IPC.

[viii] In support of the prosecution case, 12 witnesses were examined. 15 documents have been marked and 5 Material Objects were produced. The accused denied the commission of the offences. He examined himself as D.W.1 and one Moorthy, a native of Seyyur was examined as D.W.2.

[ix] The accused stated that at about 10.00 p.m. on 31.12.2010, the deceased asked him to take her to Church. He told her as he was tired he would take her to Church in the morning. Thereafter, he lay down and fell asleep. He woke up to the screams of the deceased. He saw the deceased in flames. As

their residence was a thatched house, he pushed her out of the house. He along with P.W.1 to P.W.3 doused the fire. The deceased became unconscious and 108 Ambulance was contacted over phone. The accused informed his brother over phone and on his advice, immediately, he went to the Police Station. He was detained at the Police Station. He has further stated that the deceased used to threaten him that she would commit suicide and put the blame on him. According to him, he was not responsible for the death of Mary.

[x] Moorthy [D.W.2], a native of Seyyur, has stated in his evidence that prior to the incident, the accused informed him that the deceased used to threaten that she would commit suicide and put the blame on him. He advised the accused and the deceased to lead a moral life. On the date of incident, the accused contacted him over phone and he advised him to report the matter to the Police. He has also stated that on the next day, he along with Thiyaagu, brother of the accused went to the Valasaravakkam Police Station to meet the accused. However, they were prevented from meeting the accused by the Police Personnel saying that a case was registered against the accused. The statement of the accused recorded by the Investigating Officer [P.W.12] was marked as Ex.D.1.

4. The Trial Court accepted the case of the prosecution partly and convicted the appellant / accused under Section 304(2) IPC. Aggrieved by the said conviction and sentence, the appellant has preferred the present Appeal.

5. The learned counsel appearing for the appellant has submitted that the trial Court has committed error in convicting the appellant, that the trial Court has not taken into account the explanation given by the accused and that, the evidence of witnesses had not been properly considered by the Trial Court.

6. The learned Government Advocate (Criminal Side) supported the judgment of the Trial Court. He would state that there are sufficient materials to convict the accused under Section 304(2) of IPC.

7. It is not in dispute that the accused and the deceased Mary lived together in a rental house belonging to P.W.4. P.W.1 to P.W.3 are their neighbours. The postmortem report [Ex.P.9] issued by P.W.9 Doctor, who conducted autopsy, on the body of Mary, undoubtedly reveals that Mary died due to burns [Septicaemia]. The accused and P.W.1 to P.W.3 saw the deceased in flames at about 10.00 p.m. on 31.12.2010. According to the prosecution, the accused set the deceased on fire. The defence of the accused that he was not responsible for the burns sustained by Mary.

8. The deceased was examined by Dr.Sureshbabu [P.W.5], attached to Kilpauk Medical College Hospital, who issued Ex.P.3 Accident Register dated 01.01.2011 at about 12.15 a.m. The deceased Mary was taken to the Hospital in 108 Ambulance. The evidence of P.W.5 would reveal that the deceased told him that her husband poured kerosene and set her on fire. Mary was admitted to Burns Ward. P.W.10, Assistant Professor was in charge of the Burns Ward. It is the evidence of P.W.10 that the Mary was conscious at the time of admission. She has sent a requisition memo [Ex.P.10] for recording statement of the deceased by the learned Judicial Magistrate. S.Priya [P.W.8], learned XVII Metropolitan Magistrate, Saidapet, visited the hospital at 5.40 a.m. She ascertained that the deceased was in a fit condition to give statement. After ascertaining the fitness of the deceased from Dr.Nirmala Ponnambalam [P.W.10], she recorded dying declaration [Ex.P.5] at about 5.45 a.m. On 01.01.2011, P.W.10 has also certified that the deceased was in a fit state of mind to give her statement. Ex.P.7/8 is the Fitness Certificate issued by P.W.10-Doctor. In Ex.P.5 the deceased clearly stated that her husband set her on fire. It is seen from evidence of P.W.10-Doctor that, Mary sustained only 36% burns. Mary died at 2.00p.m. on 04.01.2011. Therefore, there is no reason to disbelieve evidence of P.W.10-Doctor and P.W.8 [Magistrate]. The then Sub Inspector of Police [P.W.11] visited the Hospital and recorded the statement of Mary at 7.30 a.m. On 01.01.2011. In her Ex.P.11 statement to P.W.11 also the deceased has stated that her husband set her on fire at their house. It is seen from the evidence of P.W.1 to P.W.3 that immediately after the occurrence, the deceased informed them that her husband set her on fire.

9. The accused has admitted that at the time of occurrence, he was present at the place of occurrence. However, he would state that after taking food, he lay down and fell asleep and thereafter, he woke up to the screams of the deceased and saw the deceased in flames. D.W.2 would state that the accused informed him that on the date of occurrence, Mary committed suicide and that he only advised him to lodge a complaint in the nearest Police Station. According to them, the deceased used to threaten the accused that she would commit suicide and put the blame on him.

10. The learned counsel appearing for the appellant pointed out that P.W.1 to P.W.3 did not support the case of the prosecution. In the cross-examination, they have said that they did not ask the deceased as to how she sustained injuries. P.W.3 in her cross-examination would state that Mary was not in a position to speak. P.W.4 signed as a witness in Ex.P.1 [Observation Mahazar] Ex.P.2 [Recovery Mahazar]. These Mahazars

were dated 01.01.2011. In his cross examination he would state that he signed the Mahazars at Police Station and at that time, the accused was in the Police Station. The case of the accused is that immediately after the occurrence, he went to the Police Station. However, the Inspector [P.W.12] claims that he arrested the accused on 03.01.2011. The Inspector gave evidence with case diary. Therefore, his evidence to the effect that the accused was arrested on 03.01.2011 cannot be doubted. It is significant to note that they were examined in chief on 24.06.2013. They were not cross-examined on the said date. They were cross examined on 13.08.2013. P.W.2 and P.W.3 were cross-examined only on 22.08.2013. The use of evidence of the said witnesses did not make any difference as the statements of the deceased was sufficient to prove the case of the prosecution.

11. The accused was present in the house at the time of incident. The deceased sustained burns. However, admittedly, the accused did not take her to the Hospital to save her life. The explanation offered by the accused does not appear to be reasonable and accords with probabilities. Therefore, the statements of the deceased cannot be doubted on the basis of the evidence given by the defence witnesses. It is well settled that a judgment of conviction can be recorded on the basis of a dying declaration alone provided the Court is satisfied that the dying declaration is not vitiated in any manner. In the case at hand, as has already been noticed the deceased has made consistent statements to Doctor [P.W.5], the Magistrate and to the Police, who have recorded her statements that the accused set her on fire. The statements of the deceased do not suffer from any infirmity. I am of the considered view that the trial Court was justified in convicting the appellant punishable for the offence under Section 304 (2) IPC.

12. The learned counsel for the appellant would submit that the sentence imposed on the appellant under Section 304(2) IPC by the Trial Court is excessive and he prayed for leniency. He would further submit that the appellant has to look after his aged parents and he has no bad antecedents.

13. The accused appears to have committed the crime wholly in a fit of rage and anger and under the aforesaid circumstances. The deceased sustained 36% of burns and she died due to burns [septicaemia] as per postmortem report. I feel that the accused is entitle to merciful considerations. In view of the abovesaid circumstances, I feel that the ends of justice would be met by awarding a lesser punishment.

14. In view of all the above, this Criminal Appeal is partly allowed. The conviction imposed on the appellant under Section 304(2) of Cr.P.C. by the Principal District and Sessions Judge, Tiruvellore in S.C.No.2 of 2012 dated 30.08.2016 is

hereby confirmed. However, the sentence of 10 years rigorous imprisonment imposed on the appellant is reduced to 7 years rigorous imprisonment. Consequently, Miscellaneous Petition is closed. Consequently, connected Miscellaneous Petition is closed

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kal/sri

1. The Judicial Magistrate, Ambattur.
 2. Do Thro The chief Judicial Magistrate, Tiruvallur.
 3. The Principal District and Sessions Judge, Tiruvellore.
 4. The Superintendent, Central Prison, Puzhal, Chennai.
 5. The Director General of Police
 6. The District Collector, Tiruvallur.
 7. The Public Prosecutor High Court, Madras.
 8. The Inspector of Police, Government of Tamil Nadu, Valasaravakkam Police Station, Chennai.
 9. The Section Officer Criminal Section, High Court, Madras.
- +1 CC to Mr.A. Ayyadurai, advocate sr 70449.

MSM(CO)
SP(23/11/2017)

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