

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

Cr1.A.No.855 of 2016

Vimalraj

...Appellant/Accused

Vs.

State rep by
Inspector of Police,
Sembanorkoil Police Station.
Sambanorkoil
Nagapattinam District
(Crime No.38/2010)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment made in S.C.No.36 of 2013 on the file of the Sessions Judge (Fast Track Mahila Court), Nagapattinam dated 09.09.2015.

For Appellant :Mr.S.Sasikumar
Legal Aid Counsel

For Respondent :Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by N.SESHASAYEE, J)

The appellant has been convicted for the offence under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one year has approached this Court challenging his conviction and sentence in this appeal.

2.1 On 25-01-2010, at about 8.30 a.m. one Manimegalai daughter of P.W.1 was set on fire by the appellant after pouring kerosene on her. She had screamed in pain and ran to the street where P.W.2, P.W.3, P.W.5 who were all her neighbours, have rushed to her aid, doused the fire and organised to send her to the hospital through emergency ambulance service. She was admitted in the hospital at 10.00 am. P.W.9, the doctor examined her, prepared Ext.P4 Accident Register. However, on being intimated by the hospital, P.W.7, Judicial Magistrate No.1, Maviladuthurai, went to the hospital and recorded Ext.P-

2 dying declaration. P.W.1, the mother of the victim, had gone to the police station later in the evening on the same day and preferred Ext.P-1 complaint based on which an FIR was registered at 5.00 pm under Section 307 IPC. Manimegalai battled hard to stay alive but lost her battle with destiny and died on 05.02.2010. Thereafter, the the investigating officer altered the offence to Section 302 IPC.

2.2 In the meantime, P.W.14 the Inspector of Police arrested the appellant the next day of occurrence at about 8.00 p.m. and on the basis of the information provided by the appellant he seized the kerosene can, (M.O.1). After completing other investigating procedure such as visting the scene of occurrence, preparing observation magazar, preparing rough sketch, conducting inquest on the body of the victim, had the postmortem done on the body and recording the statement of witnesses, he laid his charge sheet.

3. On committal to the Sessions Court charge was framed under Section 302 IPC against the appellant and he pleaded not guilty. Accordingly, the case went for trial and during trial prosecution examined P.W.1 to P.W.14 and produced Ext.P1 to Ext.P15 besides M.O.1.

4. Almost all the independent witnesses including the mother of the victim turned hostile and the only piece of evidence available for the prosecution is the dying declaration given by the victim to P.W.7 who was then the Judicial Magistrate No.I, Mayiladuthurai. Evidence of P.W.7 and the nature of statement that was recorded by him indicate that the victim was conscious and had orientation when she made tendered her statement to the Magistrate. The motive for the crime appears to be that the appellant was loving the victim for close to five years, that the victim had taken up a job in Tiruppur which the appellant did not approve and that the former insisted that Manimegalai stopped going to her job and that she refused the idea. The appellant had been quarreling with Manimegalai on this issue for sometime and on the date of occurrence he had another round of quarrel and set fire on Manimegalai.

5. The learned counsel for the appellant argued that the dying declaration is not cogent, reliable or trust worthy. Secondly, P.W.9, the doctor who admitted the patient has not specifically stated anything about the condition of Manimegalai. Thirdly, the learned Sessions Judge has not appreciated the time lag between the time of dying declaration and the time of death of Manimegalai in evaluating the evidentiary value of dying declaration.

6. On carefully going through the Ext.P15, dying declaration, it is evident that Manimegalai was conscious and was in a competent state of mental disposition to give dying declaration and that her statement as to the cause of the injury she had suffered was unequivocal. There is nothing on

record to indicate that she might have been tutored. If only it were so, why should P.W.1 her mother should turn hostile?

7. It is settled law that dying declaration is a substantial piece of evidence and can be acted upon. However, on going through the dying declaration it is apparent that the appellant had no premeditation to murder Manimegalai and the occurrence had happened in the heat of the moment when Manimegalai refused to give up her employment. The act of the accused falls under limb 3 of Section 300 IPC and also exception (4) to Section 300 IPC. This case therefore squarely falls within Section 304(i) IPC.

8. In the result, the appeal is partially allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to under simple imprisonment for a period of one year. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C.

9. While parting with the case, we appreciate the services rendered by Mr.S.Sasikumar, learned counsel who appeared on behalf of the appellant/accused, as legal aid counsel. The legal services authority is directed to pay his remuneration.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To:

1.The Judicial Magistrate-II,
Myladuthurai.

2.Thro'The Chief Judicial Magistrate,
Nagapattinam

3.The Sessions Court
(Fast Track Mahila Court)
Nagapattinam.

4.The Inspector of Police,
Sembanorkoil Police Station.
Sambanorkoil
Nagapattinam District.

5.The Superintendent,
Cuddalore.

6.The Public Prosecutor,
High Court, Madras.

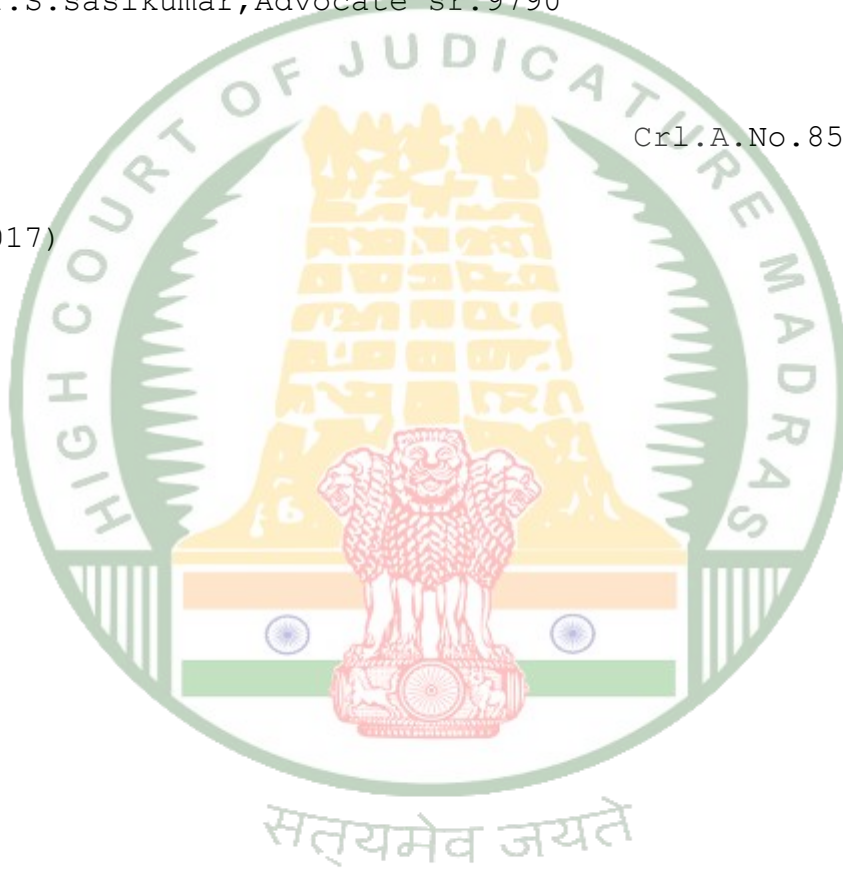
7.The District Collector,Nagapattinam Dist.

8.The Director General of Police, Chennai-4.

+lcc to Mr.S.sasikumar,Advocate sr.9790

Crl.A.No.855 of 2016

nm(co)
ss(18/7/2017)



WEB COPY