

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.846 of 2013

Navaneetham

.. Appellant

vs.

The State Rep. by
Inspector of Police
B10 Selvapuram Police Station,
Coimbatore.

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 (2) Cr.P.C., against the Judgment of Conviction and Sentence, dated 07.11.2013 passed by the learned V Additional District and Sessions Judge, Coimbatore in S.C.No.292 of 2012 convicting the appellant herein for an offence under Section 305 of IPC and sentenced her to undergo Simple Imprisonment for a period of three years and to pay a fine of Rs.3,000/- and in default to undergo Simple Imprisonment for a period of three months.

For Appellant : Mr.M.Habeeb Rahman

For Respondent : Mr.V.M.R.Rajentran
Additional Public Prosecutor

JUDGMENT

Challenging the conviction and sentence made in
S.C.No.292 of 2012 dated 07.11.2013 passed by the learned V

<http://www.judis.nic.in> Additional District Judge, Coimbatore, this criminal appeal has been

preferred by the accused as appellant.

2. The parents of the deceased Shanmugapriya obtained loan from the accused and others. When the victim and her grand mother Ranganayagi (PW2) were in the house at about 7.30 p.m on 10.05.2010, the accused came and demanded the repayment of the loan given by him. At that time, mother of the deceased Murugeswari was not in the house. The accused abused and asked repayment by sending the victim girl to some one and get money. Affected by the abusive words of the accused, the deceased poured kerosene and set fire and succumbed to the injuries. P.W.1, mother of the deceased on her return, found her daughter dead due to burn injuries inside the house. She went to the police station and lodged complaint, Ex.P.1. P.W.10, the Special Sub-Inspector of Police of Singanallur police station registered the case in Cr.No.655 of 2010 and the FIR was marked as Ex.P.10. P.W.12, the Inspector of Police took up the investigation, went to the spot prepared observation mahazar and examined the witnesses. He sent the dead body to the hospital for postmortem. P.W.6, Dr.S.Muthiah conducted postmortem and found the following injuries :

"Dermo epidermal burns involving head to foot, sparing patchy area of back of chest and back of left thigh.

Peeling and blackening of skin noted all over the burnt area.

Total singeing noted over eyebrows, eye lashes and marginally scalp hairs.

Partial singeing noted over pubic hairs.

The base of the burnt area was reddish in colour.

Degloving noted on both palms and soles."

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

3. The Investigating Officer continued the investigation, examined the witnesses and recorded their statements and laid charge sheet.

4. The learned Judicial Magistrate No.V, took up the case in PRC.No.23 of 2001 and committed to the Court of Sessions as the offence alleged to have committed by the accused is triable by the Court of sessions. The learned District and Sessions Judge, Coimbatore took up the case in S.C.No.292 of 2012 and made over to the trial Court. The trial Court after hearing the arguments of the learned Public Prosecutor and the learned counsel for the accused, framed charge under Section 305 IPC. He read over the same and explained to the accused. The appellant / accused denied the charge and claimed to be tried. After examination of prosecution witnesses, the trial Court questioned the accused under Section 313 (1) (b)

5. The learned trial Judge after analysing the evidence, found the accused guilty under Section 305 IPC and convicted the accused to undergo Simple Imprisonment for three years and fine of Rs.3,000/- in default to undergo 3 months Simple Imprisonment. Against the said conviction and sentence, the present appeal has been filed by the accused as appellant.

6. The learned counsel appearing for the appellant raised the following points :

"(i) The only eye witness in this case is P.W.2 and her evidence is highly unbelievable in the light of the complaint given by P.W.1.

(ii) 161 statements recorded by the Investigating Officer have been sent to Court belatedly and the same would clearly show that the case was subsequently cooked up according to the convenience of the prosecution."

7. The learned Additional Public Prosecutor per contra contends that there are trustworthy evidence as to the motive and P.W.2 clearly spoke about the occurrence. The trial Court after carefully analysing the entire evidence on record came to the conclusion and the same does not warrant any interference by this Court.

8. The victim / deceased Shanmugapriya is aged 17 years and she succumbed to burn injuries. There is no dispute in it and the same has been established through medical evidence, namely P.W.6, Ex.P.6 and Ex.P.9.

9. P.W.1, mother of the deceased lodged compliant, Ex.P.1 before the police. She has deposed that on the date of occurrence, as usual she went for avocation in the morning and returned home only by 8 p.m. When she returned home, she saw the crowd and found her daughter dead due to burn injuries inside the house. In the complaint, Ex.P.1, she has stated that when she came home, she was told that creditors came to her house and abused and due to that her daughter went inside the house and set fire on her. In the complaint, she has not named the creditor who abused or abetted the deceased to commit suicide. Further, she has not mentioned about the presence of her mother Ranganayagi (P.W.2) at the time of occurrence or on her arrival to the scene of crime. But only in the evidence, P.W.1 says that she heard from her mother about the occurrence and her mother Ranganayagi was also present at the time of occurrence. P.W.2 also says in her evidence that she was present at the time of occurrence and the accused only abused and due to that the deceased committed suicide. Non-mentioning of the presence of P.W.2 in the house at the time of

occurrence and non-mentioning of the name of the accused in the complaint create doubt about the prosecution case. Further, this Court perused the 161 statements recorded by the Investigating Officer. The occurrence took place on 10.05.2010. The Investigating Officer recorded the statement of P.W.1 on 10.05.2010 and 11.05.2010 and he also recorded the statement of P.W.2 on 11.05.2010. But it is seen that the above statements reached the Judicial Magistrate Court only on 18.06.2010. After about a month the above statements are found sent to the Court. The belated sending of those material records to the Court coupled with the non-mentioning of the name of the accused as well as the presence of P.W.2 in the complaint clinchingly create the doubt about the occurrence particularly as to the abetment alleged to have been made by the accused. Therefore the evidence of P.W.2 cannot be taken as trustworthy and credible. In the absence of evidence of P.W.2, there is absolutely no evidence to spell about the abetment. Hence, the argument advanced by the learned counsel appearing for the appellant has force.

10. For the aforesaid reasons, this Court is of the considered view that the appellant / accused is entitled to acquittal and the learned trial Judge is not correct in convicting and sentencing the accused and therefore, the conviction and sentence imposed by the trial Court as against the appellant / accused is

liable to be set aside.

In fine, this Criminal Appeal is allowed and accordingly, the order of conviction and sentence imposed on the appellant by the court below is set aside. The fine amount, if any paid by the appellant / accused shall be refunded to the appellant. The bail bond, if any, executed by the appellant/accused, shall stand cancelled.

21.09.2017

tsvn

Index : Yes / No

To

1. The V Additional District and Sessions Judge
Coimbatore.
2. The Inspector of Police
B10 Selvapuram Police Station,
Coimbatore.
3. The Public Prosecutor
High Court of Madras.

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P.KALAIYARASAN, J

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