



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02..12..2016

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.205 of 2016

Mohammed Meeran

... Appellant/Sole Accused

-Versus-

State Rep. by
The Inspector of Police,
Ariyamangalam Police Station,
Trichy District.

[Crime No.13 of 2015 of
Ponmalai A.W.P.S.]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging judgement of conviction and sentences imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in S.C.No.147 of 2015 dated 29.04.2016.

For Appellant

*: Mr.P.Andiraj for Mr.T.Senthil
Kumar*

For Respondent

*: Mr.C.Mayil Vahana Rajendran,
APP*

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The sole accused in S.C.No.147 of 2015 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli. He stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 29.04.2016, convicted the accused under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three years. Challenging the said conviction and sentence, the accused 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.Apsara Banu. P.Ws.1 to 3 are the father, mother and brother respectively of the deceased. The deceased was given in marriage to the accused three years before



the occurrence and through the said wedlock, they have got a male child. Initially their marital life was smooth, but, later on, it turned out to be a troublesome one as the accused had started consuming liquor and ganja. He did not go for work. This resulted in frequent quarrels between the accused and the deceased.

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3. In order to bring peace in their matrimonial life of the accused and the deceased, P.W.1 fixed a rental house at Ariyamangalam Village and made the accused and the deceased to live together in that house with their child. The said house was situated few yards away from the house where P.W.1 and his family members were residing. Even there, quarrel continued between the couple as there was no change in the attitude of the accused. P.W.1, in fact, got him a job in a private shop. But, the accused was not regular in attending his work.

4. On 07.07.2015, the accused returned home very late around 08.00 p.m. The deceased questioned the accused as to why he was very late and as to why he did not go for work. The accused told that he had gone to his mother's home and he did not go for work. This resulted in a quarrel. In that quarrel, the accused was abused by the deceased. In retaliation, the accused told the deceased that she also used to go her parental home and to lie down with her father. This aspersion used by the accused further infuriated the deceased. The deceased out of shame told that she would self immolate by pouring kerosene and set fire to herself. The accused, in turn, told that the deceased was very pretending as though she was going to self immolate herself. In so shouting, he took the kerosene can which was lying there, poured kerosene, set fire with a lighted match stick and flew away from the scene of occurrence. On hearing the alarm raised by the deceased, P.Ws.2 and 3 rushed to the house of the deceased. They found the deceased in flames. They extinguished the fire. The deceased was still in conscious. When P.W.1 inquired the deceased, she told about the above occurrence and further told that it was this accused who poured kerosene and set fire. P.W.1 immediately made arrangements to shift the deceased to the hospital with the help of 108 Ambulance. The deceased was admitted at Mahatma Gandhi Memorial College Hospital at Tiruchirappalli at 09.15 p.m on 07.07.2015. She was taken to hospital by P.W.1. When P.W.12 Doctor inquired P.W.1, he told that the deceased had poured kerosene and set fire to herself. P.W.12 Doctor recorded the same in the accident register (Ex.P.7). Then, he gave intimation to the learned Judicial Magistrate for recording dying declaration and also sent a message to the police.

5. P.W.16, the then Judicial Magistrate-I, Tiruchirappalli, rushed to the hospital on 07.07.2015 at 11.45 p.m. He found the deceased in conscious state. The doctor also gave opinion that the deceased was conscious. Having ascertained that the deceased was in a fit state of mind to make the dying declaration, P.W.16



recorded the dying declaration of the deceased. In that dying declaration the deceased told that in the quarrel it was this accused who poured kerosene and set fire. On receiving the intimation from the hospital, the Sub Inspector of Police (P.W.17) rushed to the hospital and recorded the statement of the deceased. On returning to the police station, at 03.30 a.m. P.W.17 handed over the statement of the deceased. Based on the same, P.W.18, the Inspector of Police registered a case in Crime No.13 of 2015 at 03.30 a.m. on 08.07.2015 against the accused under Sections 498-A and 307 of IPC. Ex.P.10 is the Statement and Ex.P.11 is the FIR.

6. Taking up the case for investigation, P.W.18 visited the place of occurrence, but, since the house of the deceased was found locked, he was not able to enter into the house so as to inspect the scene of occurrence and prepare observation mahazar and rough sketch. While so, early in the morning around 06.30 a.m. he received an intimation from the hospital that around 05.45 a.m. the deceased succumbed to the injuries at the hospital. Therefore, P.W.18 altered the case into one under Sections 498-A and 302 of IPC. He sent an intimation to the Revenue Divisional Officer / Executive Magistrate to hold inquest on the body of the deceased. But, the Executive Magistrate declined to go for inquest on the body of the deceased as the case was not registered under Section 174 of Cr.P.C. Therefore, P.W.18 handed over the case diary to the Assistant Commissioner of Police having jurisdiction who, in turn, entrusted the investigation to P.W.19.

7. P.W.19, the Inspector of Police, went to the hospital and conducted inquest on the body of the deceased. Then, he forwarded the body for post mortem to the Government Hospital at Tiruchirappalli.

8. P.W.11, Dr.Selvakumar, conducted autopsy on the body of the deceased on the same day at 03.20 p.m. and found the following ante mortem injuries:

"(1) Superficial burn injuries involving entire body surface except over the buttock, both thighs on front and lower aspect. Base of burn injuries are bright red in colour. Skin peeling and carbonization present here and there over the body. Singeing of hair present over burnt region.

(2) Surgical incised wound over the inner aspect of left lower leg of size 6 x 0.1 cm muscle deep"

He opined that the death was due to the extensive burn injuries found on the body of the deceased.

<https://hcservices.courts.gov.in/hcservices/> in the course of investigation, examined many more witnesses including P.Ws.1 to 3 and recorded their statements. On 08.07.2015, he arrested the accused. While in custody, the

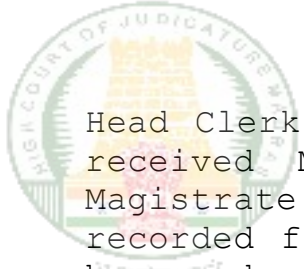


accused in the presence of the witnesses made a voluntary confession in which he disclosed the place where he had hidden a plastic can and a match box. In pursuance of the same, he took the police and the witnesses to his house and produced the plastic can (M.O.1) and the match box (M.O.2) at 05.00 p.m. in the presence of the witnesses under a mahazar. On returning to the police station, he forwarded the accused to the court for judicial remand and he also forwarded the material objects to the court. At this request, later on, on the orders of the learned Magistrate, the material objects were sent to the Forensic Science Laboratory for chemical examination. P.W.19 also examined the learned Magistrate who recorded the dying declaration. On completing the investigation, he laid charge sheet against the accused.

10. Based on the above materials, the trial Court framed a lone charge as detailed in first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of prosecution, as many as 19 witnesses were examined and 17 documents were marked, besides two material objects, marked as M.Os.1 & 2.

11. Out of the said witnesses, P.Ws.1 and 2, the father and the mother of the deceased, have spoken about the frequent quarrel between the accused and the deceased. They have further stated that on the day of occurrence on hearing the alarm raised by the deceased when they rushed to the house of the deceased, the accused was found fleeing away from the scene of occurrence and the deceased was in flames. They immediately extinguished the fire. They have further stated that the deceased told that it was this accused who poured kerosene and set fire to her. P.W.3 the brother of the deceased has also stated so. P.W.4, a neighbour, has turned hostile and he has not supported the case of the prosecution. P.Ws.5 and 6 have spoken about the preparation of observation mahazar and rough sketch. P.W.7 has not stated anything incriminating against the accused. P.W.8 has spoken about the arrest of the accused and the disclosure statement made by him and also the consequential recovery of M.Os.1 and 2. P.W.9 has turned hostile and he has not supported the case of the prosecution. P.W.10 has also not stated anything incriminating.

12. P.W.11 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.12 has stated about the treatment given to the deceased at Mahatma Gandhi Memorial Government Hospital, Tiruchirappalli. He has stated that P.W.1 told him that the deceased poured kerosene and set fire to herself. P.W.13 a Woman Police Constable has stated that she assisted the investigating officer for typing the statements from the witnesses on the laptop. P.W.14, a Women Police Constable, has stated that he carried the dead body of the deceased for post-mortem as directed by the inspector of police to the Government General Hospital at Tiruchirappalli. P.W.15, the



Head Clerk of the Court of Judicial Magistrate has stated that he received M.Os.1 and 2 from the police. P.W.16, the learned Magistrate has spoken about the judicial dying declaration recorded from the deceased. P.W.17, the Sub Inspector of Police, has spoken about the statement made by the deceased to her and handed over the same to the Inspector of Police. P.W.18 has spoken about the registration of the case and the investigation done by him. P.W.19 has spoken about the further investigation done by him in the case and the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. His defence was a total denial. He, however, did not chose to examine any witness, but marked a lone document viz., Certificate given by Dharga evidencing the marriage between the deceased and the accused as Ex.D.1.

14. Having considered all the above, the trial court convicted the appellant/accused as stated in the first paragraph of this judgement. Challenging the said conviction and sentence, the accused is before this Court with this appeal.

15. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the materials placed on record.

16. In this case, there is no denial of the fact that the accused and the deceased were living together in a rented house which is situated a few yards away from the house where P.Ws.1 and 2 were living. From the evidence of P.Ws.1 and 2 it has been proved that there were frequent quarrels between the accused and the deceased. It has also been further proved that the deceased was in the bad habit of consuming liquor and ganja and also spending money lavishly. This resulted in frequent quarrels between the couple. These facts have been clearly spoken by P.Ws.1 and 2 and thus they stand proved.

17. On the day of occurrence, according to P.Ws.1 and 2, they heard the alarm raised by the deceased and therefore, they rushed to the house of the deceased. At that time, the accused was found fleeing away from the scene of occurrence. The accused has got no plausible explanation to offer. Until he was arrested, he was absconding. This conduct of the accused is inconsistent with the plea of innocence which he made before the court. The accused has got no explanation for this unnatural conduct. Had he been innocent, naturally, he would have made an attempt to save the deceased. The conduct of the accused in fleeing away from the



scene of occurrence is a natural conduct of a guilty man and unnatural conduct of an innocent. Thus, the conduct of the accused by itself would be sufficient to hold that it was he who poured kerosene on the deceased and set fire to her.

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18. Apart from the above fact, the prosecution relies on the earliest statement namely, the dying declaration made by the deceased to P.Ws.1 and 2. P.Ws.1 and 2 have stated that after extinguishing the fire when they inquired the deceased, she told them about the entire occurrence and more specifically, she told that it was this accused who poured kerosene and set fire to her.

19. The learned counsel for the appellant would submit that the evidence of P.Ws.1 and 2 in this regard should not be believed. We find no force at all in this argument. Of course, P.W.12, the doctor, has stated that when the deceased was brought to the hospital, P.W.1 told him that the deceased had poured kerosene and set fire to herself. This has been explained by P.W.1. After all, P.W.1 had made such a statement to P.W.12, the Doctor, only with a view to save his son-in-law namely, the accused, from the criminal prosecution. Therefore, no weightage could be attached to the said statement made by P.W.1 to P.W.12, the doctor. Apart from this, we do not find any infirmity in the evidences of P.Ws.1 and 2 inasmuch as they have spoken that the deceased told them that it was this accused who poured kerosene and set fire to the deceased. This statement made by the deceased to P.Ws.1 and 2 is the dying declaration falling within the sweep of Section 32 of the Indian Evidence Act.

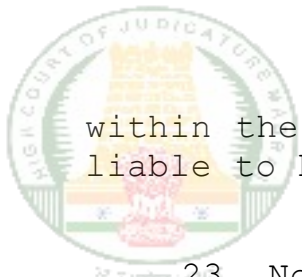
20. Next comes the dying declaration. After the deceased was admitted in the hospital, there again came to be recorded two dying declarations. The first one was the dying declaration recorded by P.W.16, the learned Judicial Magistrate. P.W.16 has stated that at the time when he visited the hospital, the deceased was in a fit state of mind to make the dying declaration. The only point urged by the learned counsel for the petitioner is that when the Magistrate entered the ward where the deceased was admitted and undergoing treatment, she was found surrounded by her relatives. From out of this, the learned counsel would try to make out a case that the deceased would have been tutored by her relatives. In our considered view, simply because, the deceased was surrounded by her relatives, it cannot be said that she could have been tutored by some one. Such kind of inference, in our considered view, is too remote going by the given facts and circumstances of the case. The learned Magistrate has further stated that from the inquiries made by him with the defendant and from the certificate issued by the doctor, he got his judicial conscience satisfied that the declarant was in a fit state of mind



to make dying declaration. But, the learned counsel for the appellant would submit that the doctor who gave the certificate as to the mental fitness of the declarant, has not been examined in court. In our considered view though it is a flaw, on that score, we cannot reject the evidence of P.W.16. It is only the mental fitness of the declarant that matters. Even in the absence of a certificate from the doctor, if the learned Magistrate had satisfied his judicial conscience about the mental fitness of the declarant, then, there would be no reason to reject the dying declaration. In this case going by the facts and circumstances of the case, we hold that the dying declaration was free from any tutoring embellishment or manipulation.

21. Similarly, P.W.17 has recorded a statement from the deceased. In that also the deceased repeated that it was this accused who poured kerosene and set fire to her. This is third dying declaration. Thus, these two dying declarations coupled with the earliest declaration made by P.Ws.1 and 2 and from out of the conduct of the accused, the prosecution has clearly proved that it was this accused who poured kerosene and set fire to the deceased which resulted in her death.

22. Having come to the said conclusion, now, the question is "what was the offence that was committed by the accused by his act?" In the dying declarations upon which we have placed reliance, the deceased had narrated the entire event preceding the actual occurrence of pouring kerosene and setting fire. The accused came to the house at 08.00 a.m. When the deceased questioned the accused as to why he was very late, the accused told her that he had gone to his mother's home. The deceased did not stop, she further quarreled with him and called him as a spendthrift. She further questioned him as to why he had gone to his mother's home without going for work. When this quarrel was going on, the deceased abused the accused in a filthy language. The accused, in turn, scolded her by saying as to whether she had frequently went to her parental home to lie down with her father. On hearing the abusive words from the accused, the deceased told that she would self immolate by pouring kerosene and setting fire. It was only in that quarrel, the accused had taken kerosene, poured the same on the deceased and set fire. The event preceded the act of the accused pouring kerosene and setting fire would go to clearly establish that in the quarrel the deceased had used abusive words which had provoked the accused and the said provocation had rendered the accused to lose his mental balance. Having lost his self control over the mental faculty on account of the above grave and sudden provocation, the accused had taken kerosene can lying there, poured the kerosene on the deceased and set fire. Thus, the act of the accused though would fall within the third limb of section 300 of IPC, which would squarely fall



within the first exception to Section 300 of IPC. Therefore, he is liable to be punished under Section 304(i) of IPC.

23. Now turning to the quantum of sentence, the accused is to take care of his child. He had no bad antecedents. The accused is a poor man eking out his livelihood by doing his coolie work. There are lot of chances for reformation. The occurrence was not premeditated. The learned counsel would at this juncture submit that the appellant/accused is capable of paying fine of Rs.10,000/-.

24. Having regard to all the mitigating as well as aggravating circumstances in this case, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- for offence under Section 304(i) of IPC would meet the ends of justice.

25. **In the result**, the criminal appeal is partly allowed. The conviction of the appellant/accused imposed by the trial court under Section 302 of IPC and the sentence imposed thereunder are hereby set aside and instead he is convicted under Section 304(i) of IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/- in default to rigorous imprisonment for eight weeks. It is directed that the period of detention already undergone by the appellant/accused shall be given set off as required under Section 428 of Cr.P.C. Fine amount already paid, if any, shall be adjusted towards the fine now imposed in this judgement.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

NB

To

1. The Sessions Judge, Mahila Court, Tiruchirappalli.

2. The Chief Judicial Magistrate, Trichy District.

3. The Principal District Judge, Tiruchirappalli.

4. The District Collector, Trichy District.

5. The Director General of Police, Mylapore, Chennai-4

6. The Superintendent Central Prison, Trichy.



7. The Commissioner of Police, Tiruchirappalli.

8. The Secretary to Government, Home Department, Secretariat,
Chennai.

9. The Inspector of Police, Ariyamangalam Police Station,
Trichy District.

10. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

GJM/SS2/KSM/SAR-I-12.1.17-9p-11C

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