



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 27.11.2017

Pronounced on : 21-12-2017

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 247 of 2016

Murugan

.. Appellant/Sole Accused

Versus

State represented by
The Inspector of Police
Perumalpuram Police Station
Tirunelveli District

.. Respondent

Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 24.11.2015 passed in S.C. No. 116 of 2013 on the file of the III Additional Sessions Judge, Tirunelveli.

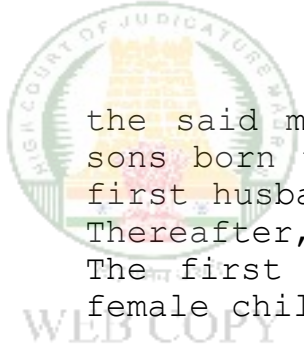
For Appellant	: Mr. A.R. Jayaruthran for Mr.M. Jegadeesha Pandian
For Respondent	: Mr. C. Ramesh Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

The appellant herein was the sole accused in S.C. No. 116 of 2013 on the file of the III Additional District and Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Section 294 (b), 324, and 302 of IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. After conclusion of trial, he was convicted under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of three months. The accused was however acquitted of the other charges under Section 294 (b) and 324 of IPC.

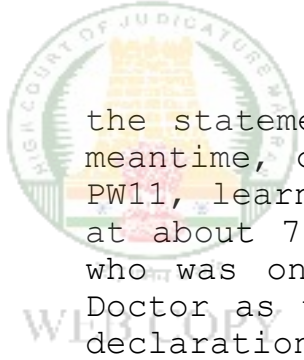
2. The case of the prosecution is that the deceased in this case namely Saroja Devi was the second wife of the accused and they were living at N.G.O. New Colony, Perumalpuram, Tirunelveli District. The accused is a Painter by profession. PW1 is the sister of the deceased. PW2 is the son of PW1. Earlier, the deceased was married to a person by name Minor. After the marriage with the said Minor, the deceased was residing at Tenkasi. Through



the said marriage, the deceased had two sons. PW3 is one of the sons born to the deceased through the said Minor. The said Minor, first husband of the deceased, died 9 years prior to the occurrence. Thereafter, the accused married the deceased as his second wife. The first wife of the accused is one Shanthi through whom three female children were born to the accused and the said Shanthi.

3. It is the further case of the prosecution that for 15 days prior to the occurrence, the accused did not return to the house where the deceased and accused were living. After 15 days, on 13.07.2012, the accused came to the house at Perumalpuram, Tirunelveli at about 3.00 pm. The deceased questioned the appellant as to where he had gone for the past 15 days. The accused replied that he went to the house of his first wife Shanthi. To this, the deceased replied that it would be better if he stays with the first wife and he need not come home any further and that she will stay in the house alone. Enraged by this reply, the accused started quarrelling with the deceased. At the height of such quarrel, at about 3.30 pm, the accused took a bottle containing Thinner used for painting, poured it on the deceased, threw a lighted match stick on her and set her ablaze. When the deceased went up on flames, the accused attempted to leave the house, however the deceased shouted to save her by putting the blanket on her. Thus, the accused attempted to douse the fire with a blanket by saying that he would save her at any cost and requested the deceased not to reveal this incident to any one and put off the flames. However, the deceased sustained burn injuries in her face, scalp, stomach and arms. Thereafter, the deceased called upon her sister, PW1 through phone, narrated the incident to her and asked to her to save her. Thereafter, PW1 and PW2 came to the house, called the ambulance service and had taken her to High-ground hospital. The accused also accompanied PW1, 2 and the deceased to the hospital.

4. On the basis of an intimation sent by the hospital authorities, PW16, Women Sub-Inspector of Police reached the hospital and recorded the statement of the deceased, Ex.P1, based on which she registered a case in Crime No. 990 of 2012 for the offences punishable under Section 294 (b), 324, 307 and 506 (I) of IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1988 against the accused at 10.30 pm. The First Information Report is Ex.P10. The copies of First Information Report were forwarded by PW16 to higher authorities. On receipt of the first information report, PW17, Inspector of Police, proceeded to the scene of occurrence at 10.30 pm and prepared an Observation Mahazar in the presence of witnesses namely Suresh and Chandrasekar. He also drew a rough sketch, Ex.P11. At the scene of occurrence, he recovered a big size matchbox, half-burnt Videocon Cell Phone, 500 ml Thinner Bottle, unburnt match sticks and burnt match sticks in the presence of witnesses namely Chellammal (PW1), Mathi, Nagarajan (PW2), Saroja Devi, Navaneetha Krishnan (PW5), Kittammal, Mariraj (PW4) and Pushpalatha (PW7). He also recorded the statement of the witnesses. Thereafter, he proceeded to the hospital and recorded



the statement of the deceased under Section 161 of Cr.P.C. In the meantime, on the basis of an intimation received from the hospital, PW11, learned Judicial Magistrate No.3, Madurai reached the hospital at about 7.05 pm. The deceased was identified by Dr. Nirmal Kumar, who was on duty in the hospital. PW11 also ascertained from the Doctor as to whether the deceased is in a position to give a dying declaration and whether she is in a sound and disposing state of mind and energy. When the Doctor informed PW11 that the deceased is capable of giving such a statement, he proceeded to record the dying declaration of the deceased from 7.20 pm. The dying declaration was marked as Ex.P6.

5. On 14.07.2012, PW17, Inspector of Police received intimation from the Tirunelveli Medical College Hospital that the deceased died at 5.30 am. On such intimation, he altered the first information report altering the offences into Sections 294 (b), 324 and 302 of IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1988 and sent the alteration report to the Court. Ex.P12 is the altered report. Thereafter, PW17 proceeded to the hospital at about 8.00 am and conducted inquest over the dead body of the deceased in the presence of Mr. Paulsamy, Head Constable (PW13) and other witnesses. Ex.P13 is the inquest report. On the basis of the requisition letter sent by PW17, the dead body was sent to postmortem. Ex.P7 is the postmortem report issued by PW14 - Dr. Sridharan. In Ex.P7, PW14 has stated as follows:-

"Appearance found at the postmortem.

Well nourished body of a female. Finger and toe nails blue. Intra Venous cut down wound at right ankle.

Ante-mortem Injury: Burns seen all over the body except in both leg and both foot. Peeling and blackening of skin noted over the burnt area. Base of the burnt area is red in colour.

Other findings : Heart normal and coronary vessels are patent. Hyoid bone : Intact.

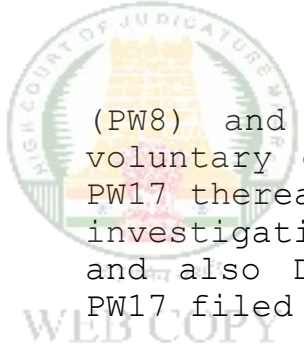
Larynx & Trachea : Soot particles present

Stomach contains 500gm of partially digested cooked rice particles, nil specific smell and mucosa congested. Small intestine contains 100gm of partially digested cooked rice particles, nil specific smell and mucosa congested.

Lungs Liver, Spleen, Kidneys & Brain normal, o/s congested. Bladder empty. Uterus normal, o/s empty.

Opinion as to cause of death: The deceased would appear to have died of complications of burns.

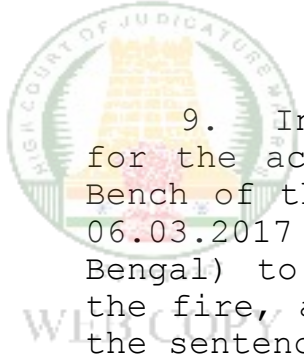
6. PW17, during the course of his investigation, proceeded to record the statement of Navaneetha Krishnan (PW5), Pachammal (PW6), both neighbours of the deceased. He also recorded the statement of Sellammal, Ravi (PW3), Nagaraj (PW2), Mariraj (PW4), Pushpalatha (PW7) and Suresh (PW10). On 04.07.2012, on the basis of a tip-off, PW17 proceeded to New Bus Stand, Tirunelveli, where he arrested the accused near Platform No.4 in the presence of witnesses Murugan



(PW8) and Raj Kumar (PW9). On such arrest, the accused gave a voluntary confession statement and the same was recorded by PW17. PW17 thereafter sent the accused for remand. In continuation of his investigation, PW17 recorded the statement of Dr. Sridharan (PW14) and also Dr. Sasikala (PW15). Upon completion of investigation, PW17 filed charge sheet against the accused on 02.11.2012.

7. In order to prove the guilt of the accused, on behalf of the prosecution, as many as 18 witnesses were examined as Pws 1 to 18, Exs. P1 to P15 were marked, besides Material Objects 1 to 7 were exhibited. When the appellant was questioned under Section 313 of Cr.P.C. with respect to the incriminating materials made available against him, he denied his complicity in the crime. The trial Court, on conclusion of trial, upon appreciating the oral and documentary evidence, by Judgment dated 24.11.2015 convicted and sentenced the accused/appellant for the offence under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for life. As against the same, the present Criminal Appeal is filed.

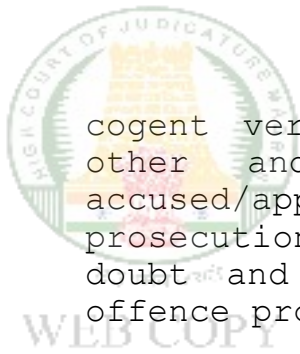
8. The learned counsel appearing for the accused/appellant would contend that the occurrence had taken place at a spur of the moment, during the height of the heated argument between the appellant and the deceased without there being any pre-mediation to cause the murder of the deceased. In other words, it was not the intention of the accused to commit the offence and due to a sudden provocation the occurrence had taken place. In order to lend support to this submission, the learned counsel for the accused/appellant had taken us to the deposition of the deceased, Ex.P1 which was recorded by PW16, Women Sub-Inspector of Police. According to the learned counsel for the accused/appellant, PW1 herself has stated that soon after she went up on flames, the accused himself has attempted to save her by covering her with a blanket. It was further stated that the accused accompanied her to the hospital in the ambulance. Had it been the intention of the accused to cause the murder of the deceased, he would have run away from the scene of occurrence soon after setting the deceased ablaze. The fact that the appellant attempted to save the deceased by accompanying her to the hospital are mitigating circumstances available in his favour and if they are considered, the offence committed by the accused/appellant would fall within the purview of exception 4 to Section 300 of IPC. It is further contended by the learned counsel for the appellant that PW5 and 6 are neighbours and during the course of trial they turned hostile. Similarly, PW8 and 9, who witnessed the confessional statement of the accused, also turned hostile. Except the interested witness of PW1 and PW2, there is no other evidence available to prove the guilt of the accused/appellant. In any event, the occurrence had taken place without any pre-mediation and out of sudden provocation and therefore, the learned counsel for the accused/appellant would pray for modification of the sentence.



9. In order to buttress this submission, the learned counsel for the accused/ appellant relied on the decision of the Division Bench of the Calcutta High Court made in CRA No. 228 of 2009 dated 06.03.2017 in the case of (Prasanta Sil vs. The State of West Bengal) to contend that since the appellant made attempts to douse the fire, after realising his folly in setting ablaze the deceased, the sentence imposed on the appellant may be modified.

10. On the other hand, the learned Additional Public Prosecutor would contend that it is not as though the occurrence had taken place out of a sudden provocation. After pouring the thinner, a substance that would be mixed with paint, on the deceased, the accused would have searched for the match stick and after taking the match stick, he had set the deceased ablaze. In this process, the accused had abundant time to make use of his sense that if the match stick is ignited and thrown on the deceased, she would be set ablaze. Thus, the accused, knowing fully well that igniting the match stick and throwing it on the deceased would cause burn injuries to the deceased, had committed the cruel act. Therefore, this is not a case where the incident had occurred out of a sudden provocation. Further, the testimony of prosecution witnesses namely PW5, 6, 8 and 9 and the version of the deceased herself, which was reduced into writing by PW16, Women Sub-Inspector of Police, are sufficient to prove the guilt of the accused. Further, PW11, the learned Judicial Magistrate No.3 had recorded the dying declaration of the deceased atleast 10 hours prior to her death when the deceased was in a sound and disposing state of mind. The trial Court, keeping the above incriminating materials made available against the accused, has rightly convicted the appellant to undergo rigorous imprisonment for life. Such a well considered Judgment of the trial court, according to the learned Additional Public Prosecutor, needs no interference by this Court and he prayed for dismissal of this appeal and to confirm the conviction and sentence imposed on him.

11. We have carefully considered the submission of counsel for both sides and perused the materials placed on record. On appreciation of the entire evidence made available by the prosecution, at the outset, it has to be mentioned that the prosecution has proved the guilt of the accused beyond reasonable doubt. First of all, the deceased herself has given a statement narrating the manner in which she was set ablaze by the accused and it is the statement of the deceased which formed the basis for registration of a case by PW16 as against the accused. Further, PW1 and 2 have reached the occurrence spot on being intimated by the deceased herself about the manner in which the accused had unleashed violence towards her by pouring Thinner against her and setting her ablaze. Above all, PW11, learned Judicial Magistrate No.3 has recorded the dying declaration of the deceased at 7.20 p.m. on 13.07.2012 after ascertaining from the Duty Doctor as to the mental status of the deceased and her capability to give a dying declaration. Thus, PW1, 2, 11, 16 and 17 have given a clear and



cogent version of the incident which are corroborative with the other and those evidence are sufficient to convict the accused/appellant. In such circumstances, we hold that the prosecution has proved the guilt of the accused beyond reasonable doubt and consequently the accused deserves punishment for the offence proved against him.

12. The main argument advanced by the learned counsel for the appellant is that the occurrence had taken place during a heated quarrel and due to sudden provocation, the accused has lost his senses and committed the offence. According to the counsel for the appellant, the accused, realising his folly, in an act of repentance, attempted to douse the fire on the body of the deceased with a blanket. Further, the appellant accompanied the deceased to the hospital along with PW1 and 2. These acts of the accused, according to the counsel for the accused, are mitigating circumstances available in favour of the accused based on which this Court can modify the sentence imposed on him by the trial Court.

13. In the decision of the Division Bench of the Calcutta High Court in (Prasanta Sil vs. The State of West Bengal) mentioned supra, relied on by the learned counsel for the appellant, it is seen that the appellant therein, under the influence of alcohol demanded the deceased, his wife, to handover the key of the almirah and to give him money for his alcoholic drinks. The wife refused to do so. Enraged by this, under the influence of alcohol, the accused poured kerosene on his wife and set her ablaze, however, he attempted to douse the fire. Taking note of the fact that the appellant therein had committed the cruel act under the influence of alcohol and at a time when he had completely lost his sense, the Division Bench of Calcutta High Court modified the sentence. In the present case, it is contended that there was quarrel between the accused and the deceased 30 minutes prior to the occurrence and in a fit of rage, the accused had committed the offence when his senses have taken the backseat. Keeping the dictum laid down by the Division Bench of the Calcutta High Court, mentioned supra, for the purpose of considering the argument of the counsel for the appellant for modification of sentence, we have perused Ex.P1, complaint given by the deceased herself. In Ex.P1, the deceased, while narrating the sequence of events, has stated that the appellant attempted to douse the fire with the help of a blanket and thereafter, she herself called PW1 and 2 to save her. On such request, PW1 and 2 came to the house and till such time, the accused was present. Even the deceased admitted that the appellant accompanied her to the hospital, which is evident from the Accident Register marked as Ex.P15. Thus, the appellant, soon after the occurrence, attempted to douse the fire after the magnitude of his foolishness dawned on him and he had in fact accompanied the deceased to the hospital. As pointed out by the learned counsel for the appellant, these are mitigating circumstances involved in this case, which in our view, can be taken into consideration for the purpose of modification of the period of sentence as prayed for by the counsel for the appellant.

14. In the result, we confirm the judgment dated 24.11.2015 passed in S.C. No. 116 of 2013 on the file of the III Additional Sessions Judge, Tirunelveli convicting the appellant under Section 302 of IPC, however, we modify the sentence imposed on the appellant by the trial court to undergo imprisonment for life into one to undergo rigorous imprisonment for a period of ten years. The fine amount imposed by the trial Court shall remain unaltered. The Criminal Appeal is disposed of in the above terms.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

- 1 The III Additional Sessions Judge, Tirunelveli.
 - 2 The Principal District Judge, Tirunelveli.
 - 3 The Chief Judicial Magistrate, Tirunelveli.
 - 4 The District Collector, Tirunelveli.
 - 5 The Director General of Police,
Mylapore, Chennai-4.
 - 6 The Judicial Magistrate No.1, Tirunelveli.
 - 7 The Superintendent,
Central Prison, Palayamkottai.
 - 8 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 - 9 The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
 - 10 The Record Keeper,
Vernacular Records/Criminal Records,
Madurai Bench of Madras High Court, Madurai.
- +1cc to M/S.M.Jegadeesha Pandian, Advocate SR.No. 94538

Judgment in
Crl.A. (MD) No. 247 of 2016
21-12-2017