



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.11.2017
Pronounced on : 06.12.2017

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CORAM:

THE HONOURABLE MR .JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.[MD].No.398 of 2016

Sundarrajan

.. Appellant/Sole accused

Vs.

State rep. by the
Inspector of Police,
K.K.Nagar Police Station,
Trichy City.
(Crime No.745 of 2012)

.. Respondent/Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 25.06.2014, made in S.C.No.137 of 2013, by the learned II-Additional District and Sessions Judge, Tiruchirappalli.

For appellant	: Mr.M.Karunanithi
For respondent	: Mr.C.Ramesh, Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 25.06.2014, made in S.C.No.137 of 2014 by the learned II-Additional District and Sessions Judge, Tiruchirapalli.

2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.



3. The case of the prosecution is consciously narrated below:

(a) The accused and the deceased are husband and wife. Their marriage was a love marriage. They were blessed with one son (PW5) and one daughter (PW6). The accused was addicted to alcohol. The accused used to consume alcohol, pick up quarrel with the deceased and beat her. The deceased used to inform about the harassment given by the accused to her family members. On several occasions, they came and pacified both the accused and the deceased. Even then, the accused was harassing the deceased and saying "you die". While so, on 08.09.2012 at 8.00 p.m. the accused came to the house and questioned the deceased as to why she is still alive. By saying so, he pushed her inside the bathroom and poured kerosene and set her on fire. Due to burn injuries, she raised a hue and cry. On hearing the same, neighbours came there. As the deceased was suffering with severe burn injuries, they took her in a van to the Trichy Government Hospital.

(b) On the same day at 8.50 p.m., PW17 - Dr. Mahalakshmi, attached to Trichy Government Hospital, admitted the deceased in the hospital. The deceased informed her that at 8.00 p.m. her husband poured kerosene and set fire on her. PW17 recorded the same in the accident register - Ex.P11. Thereafter, she gave an intimation to the Judicial Magistrate for recording the dying declaration and also informed the Police.

(c) PW16 - the then Judicial Magistrate No.III, Trichy, came to the hospital on the same day at 10.15 p.m. and PW19 - Dr. Mohandass gave a certificate that the patient is conscious, well oriented and is in a fit state of mind to give the dying declaration. Then, after satisfying himself with the reply given by the deceased, he recorded the dying declaration of the deceased. Ex.P8 is the handwritten dying declaration and Ex.P9 is the typed copy of the dying declaration.

(d) On receipt of intimation from the Government Hospital, PW12 - the Sub Inspector of Police attached to K.K.Nagar Police Station at 11.15 p.m. came to the hospital, found the deceased was conscious and hence, recorded her statement - Ex.P4. On returning to the Police Station at 11.50 p.m., PW12 registered a case in Crime No.745 of 2012 under Section 307 IPC against the accused. Then, PW12 forwarded Ex.P4 - complaint and Ex.P5 - FIR to the Court as well as to the Inspector of Police - PW20.

(e) PW20 took up the investigation on 09.09.2012 at 1.30 a.m. and went to the place of occurrence. As there was no sufficient light, he returned to the Police Station. On receipt of intimation from the hospital that the deceased succumbed to the injuries, PW20 altered the FIR into one under Section 302 IPC and forwarded the alteration report to the Court. At 6.00 a.m., PW20 rushed to the place of occurrence, prepared an Observation Mahazar and Rough Sketch in the presence of PW11 and one Raja. PW20 recorded the



statement of witnesses and seized a five litre capacity plastic can in which half litre kerosene was available, a semi burned pant, a match box and a half burned stick. Thereafter, he rushed to the hospital, conducted inquest on the body of the deceased in the presence of panchayatars and forwarded the body for postmortem.

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(f) PW18 - Dr.Renugadevi has conducted postmortem on the body of the deceased on 09.09.2012 at 12.20 p.m. She found the following injuries on the body of the deceased:

"1. Superficial burns wound present on the head, face, front, sides and back of the neck, front and back of the trunk, both upper limb, perineum and both lower limb sparing both foot, peeling and carbonisation of cuticle present. Base of the burnt area is reddish. Singeing of hairs present. 2. Intravenous cut down wound on both leg near and ankle - surgical treatment."

PW18 gave opinion that the deceased would appear to have died of burn injuries. Ex.P13 is the postmortem certificate.

(g) During the course of investigation, PW20 recorded the statement of witnesses. Thereafter, at 12.00 noon on 09.09.2012, PW20 arrested the accused at K.K. Nagar auto stand. On such arrest, the accused gave a voluntary statement. PW20 forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. Then, he handed over the investigation to PW21. PW21, during the course of investigation, recorded the statement of PW5, PW6 and others. Due to transfer, PW21 handed over the investigation to PW22. PW22, during the course of investigation, collected the medical records and enquired the medical witnesses and recorded their statements. After completion of investigation, he laid charge sheet against the accused under Section 302 IPC.

4. Based on the above materials, the trial Court had framed a charge under Section 302 IPC against the accused. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the the prosecution, as many as 22 witnesses were examined as PWs.1 to PW22 and Exs.P1 to P22 were exhibited, besides four Material Objects (MOs.1 to 4). The discharge summary of the accused is marked on the side of the Court as Ex.C1.

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary



evidence, has found the accused guilty of the charge and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

7. The learned counsel appearing for the appellant / accused would further submit that there are three dying declarations ie., (a) Accident Register - Ex.P11, (b) Complaint - Ex.P4 and (c) dying declaration before the Magistrate - Ex.P8. Though in Ex.P4 the deceased has stated about the place of occurrence, in Ex.P8 she did not state about the place of occurrence. PW4, who made attestation in Ex.P4, has turned hostile and therefore, Ex.P4 cannot be believed. In view of the above material contradictions, the dying declarations are liable to be rejected.

8. The learned counsel for the appellant would submit that in this case, the deceased committed suicide by setting herself on fire, after pouring kerosene and when the accused attempted to save her life, he also sustained burn injury. Hence, the accused along with the deceased went to the hospital and took treatment. The discharge summary was very much available in the case diary. Though PW20 has admitted in the chief examination that the accused after taking treatment escaped from the hospital, he has failed to mark the discharge summary as well as to examine the doctor who treated the accused. However, the discharge summary of the accused is marked as Ex.C1, from which it is clear that the accused also sustained burn injuries and took treatment. MO.2 - Semi burned pant seized in the house also strengthened the said submission. Thus, the prosecution has not come to the Court with clean hands. The genesis of the occurrence has been suppressed. Further, as per Section 114 (g) of the Indian Evidence Act adverse inference can be drawn against the prosecuting agency for non-production of medical records and non examination of the Doctor who treated the accused.

9. In support of the above submissions, the learned counsel for the appellant relied upon the following decisions:

(a) In **Kumaresan Vs. State reported in (2017) 2 MLJ (Cr1.) 387**, a Division Bench of this Court at paragraph No.8 has held as follows;

"8. It is a settled law that when there are cases in counter, both the cases should be investigated by the same investigating officer; the truth should be found out and accordingly final report should be filed. But, in this case, the said course has not been adopted. In our considered view, on the ground that since the prosecution has not approached this Court with the true version of the occurrence, the accused is entitled for acquittal. Apart from that, the injuries sustained by the accused have not been explained. As held by the Hon'ble Supreme Court, in *Lakshmi Singh v. State of Bihar* - AIR 1976 SC 2263, the failure of the

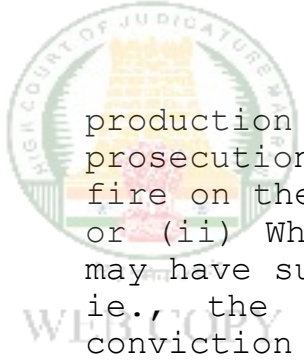


prosecution witnesses to explain the injuries sustained by the accused would give rise to a presumption that the prosecution party is suppressing an important part of the occurrence and thus, they have rendered themselves unbelievable. Applying the same yardstick to the present case, we have to necessarily hold that though PWs.1 to 4 are injured witnesses, since they have not whispered anything about the injuries sustained by the accused, we cannot give full credence to their evidences. There is no other independent witness also. For these reasons, we are of the view that the accused is entitled for acquittal, more particularly because the prosecution has not come forward with the true version of occurrence. In such view of the matter, the appeal deserves to be allowed and the accused is entitled for acquittal."

(b) In a decision in **Velavan Vs. State rep. by the Inspector of Police, Thirumullaivoil Police Station, Chennai** reported in (2016) 2 MLJ Cr1. 428, a Division Bench of this Court has held in paragraph No.10 as follows:

"10. P.W.2 has stated that at 3.00 a.m. on 18.01.2005 when she examined the deceased at the Kilpauk Medical College and Hospital, she was disoriented and she was also highly depressed. This is found in Ex.P5. This evidence of P.W.2 would go to show that the deceased would not have been in a position to make such a dying declaration at all in a fit state of mind. So far as the evidences of PWs.1 and 5 are concerned, P.W.5 is a friend of P.W.1 and P.W.1 was not happy with the accused. Therefore, we cannot attach much importance to the evidences of these two witnesses. Above all, the injury sustained by the accused has not been explained. It is not explained as to why the medical records, pertaining to the treatment given, have not been produced and why the Doctor, who treated him, has not been examined. This would also create enormous doubt in the case of the prosecution. In view of these anomalies found in the case of the prosecution, which create enormous doubt, we are unable to sustain the conviction and we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal."

10.The learned counsel for the appellant/accused would further submit that from Ex.C1, it is clear that the accused took treatment for the burn injury sustained on his right side leg. In view of the non explanation of the injury sustained on the accused and non



production of the medical records relating to the accused by the prosecution, there are two views possible ie., (i) While setting fire on the deceased, the accused may have sustained the said injury or (ii) While extinguishing the fire on the deceased, the accused may have sustained injury. Hence, the view in favour of the accused ie., the second view can be taken into consideration and the conviction and sentence passed by the trial Court may be set aside and this appeal may be allowed.

11. Per contra, the learned Additional Public Prosecutor submitted that in this case, the deceased has given three dying declarations ie., (a) Accident Register - Ex.P11, (b) Complaint - Ex.P4 and (c) dying declaration before the Magistrate - Ex.P8, wherein it has been clearly stated by the deceased that it was this accused who set fire on her. Further, PW1 to PW8 have categorically stated in their evidences that the accused used to pick up quarrel with the deceased under the influence of alcohol and beat her, which would further strengthen the case of the prosecution. The accused has not sustained any injury in the incident. Ex.C1 would go to show that the accused has sustained injury only subsequent to the incident. The prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

12. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

13. According to the prosecution, it is a case of murder. According to the accused, it is a case of suicide. The trial Court has come to the conclusion that it is a case of murder and accordingly, imposed the conviction and sentence against the accused.

14. From the evidences of PW1 to PW8, the prosecution has clearly proved that the accused was addicted to alcohol and he used to pick up quarrel with the deceased under the influence of alcohol and beat the deceased. PW1 has stated in her evidence that on the fateful day of the occurrence, the accused and the deceased alone were in their house and she heard the quarrel between the accused and the deceased. PW1 has further stated that the accused called her to come out of the house and save the deceased; when she along with PW2 went to the house of the accused, the deceased came out of the house with fire on her body raising a hue and cry, and "save me"; and then, she was taken to the hospital through 108 ambulance. PW2 and PW3 have stated in their evidence that on hearing the hue and cry, they came out of the house and there was fire on the body of the deceased. When the deceased was brought to the Trichy Government Hospital within one hour of the occurrence, the deceased informed to PW17 - Dr.Mahalakshmi that the accused set her on fire



by pouring kerosene. PW17 recorded the same in Ex.P11 - Accident Register and deposed so in her evidence.

15. PW16 - the then Judicial Magistrate No.III, Trichy, has stated in his evidence that on receipt of intimation from the hospital - Ex.P7, he rushed to the hospital and recorded the dying declaration of the deceased (Ex.P8), after getting certificate of a doctor (Ex.P17) and satisfying himself that the deceased is conscious, well oriented and is in a fit state of mind to give dying declaration. The very same doctor, who gave fitness certificate (Ex.P17, has also given another certificate (Ex.P18) that till the completion of recording the dying declaration, the deceased was conscious and in a fit state of mind. The deceased has categorically stated in her dying declaration before PW16 that today (on 08.09.2012) at 7.00 p.m. the accused fought with her and set fire on her after pouring kerosene.

16. PW12 - the Sub Inspector of Police has stated in his evidence that on receipt of intimation from the hospital authority, he went to the hospital and as the deceased was conscious and speaking, he enquired about the occurrence and recorded the statement of the deceased (Ex.P4), in which PW4 had put her signature. In Ex.P4 the deceased has stated that the accused used to consume alcohol, pick up quarrel with the deceased and beat her; The deceased used to inform about the harassment given by the accused to her family members; On several occasions, they came and pacified them; Even then, the accused was harassing the deceased and saying "you die"; While so, on 08.09.2012 at 8.00 p.m. the accused came to the house and questioned the deceased as to why she is still alive; By saying so, he pushed her inside the bathroom, poured kerosene and set her on fire; Due to burn injuries, she raised a hue and cry; and On hearing the same, neighbours came there and brought her to the hospital.

17. More over, PW7, who is the brother of the deceased, has also categorically stated in his evidence that on hearing the information that the deceased was admitted in the hospital with burn injuries; He passed on the said information to PW5 and PW6, who are son and daughter of the deceased respectively; Then, he rushed to the hospital; The deceased was conscious, but she could not open her eyes; the deceased has informed him that while she was sleeping in the house, the accused poured kerosene and set fire on her; the deceased has further stated that she informed the same to the Judicial Magistrate in the dying declaration mentioning that the accused should be punished. Further, PW18 - Dr.Renugadevi, who conducted postmortem on the dead body of the deceased, has opined that the deceased died due to burn injuries.

18. From the above categorical evidences of PW1 to PW3, PW17, PW16, PW12, PW7, PW18 and Exs.P11, P7, P8, P17, P18, P4 and P13, the prosecution has clinchingly proved that it was this accused who set fire on the deceased and caused her death.

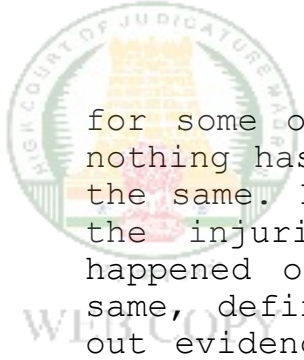


19. Though the learned counsel appearing for the appellant / accused submitted that in Ex.P4 - the deceased has pointed out the place of occurrence, in Ex.P8 - she has failed to say about the same, this Court is of the view that it cannot be stated to be a material contradiction. Admittedly, the deceased was admitted with severe burn injuries and she was in death-bed. The omission to mention about the exact place of occurrence viz., bath room of the house in the dying declaration did not create any flaw in the case of the prosecution, as the intention of every one while recording the dying declaration would be only to record as to who caused the said occurrence. In this case, PW16 has rightly recorded the dying declaration and the same inspired the confidence of the Court.

20. The next submission of the learned counsel for the appellant is that PW4, who is the attested witness to Ex.P4, has turned hostile and hence, Ex.P4 cannot be believed. Admittedly, PW4 is a relative of the deceased. PW4 admitted that she had put her signature in Ex.P4. But, she has stated that before her arrival to the hospital, she came to know that the statement of the deceased was recorded and as per the request of the Police, she put her signature without reading the same. In view of the fact that PW4, who is the attested witness to Ex.P4, has turned hostile, Ex.P4 cannot be thrown away. As stated by the prosecution, it may be for the reason that due to the request of the accused, she may have turned hostile. However, in the cross examination, PW4 admitted that the deceased was conscious and in a fit state of mind in giving reply, which would strengthen the case of the prosecution that while recording the statement of the deceased - Ex.P4, she was conscious and in a fit state of mind.

21. The next submission of the learned counsel for the appellant is that the accused also sustained injury in the occurrence and the recovery of MO.2 and Ex.C1 has clearly proved the same and that the non explanation of the injury on the accused is fatal to the case of the prosecution. PW1 to PW3, who are neighbours of the accused and the deceased, and who saw the deceased and the accused immediately after the occurrence, did not state in their evidence that the deceased also sustained injury in the occurrence. They did not even state as to whether the accused had made any attempt to save the deceased. But, PW2 and PW3 have stated in their evidence that the accused went along with the deceased to the hospital, for which it cannot be presumed that the accused also had sustained injury.

22. PW20 has stated in his evidence that when he went to arrest the accused, the accused, who was taking treatment, escaped from the Government Hospital. From the above evidence of PW20, somehow it could be inferred that the accused was under treatment. But, it is not clear as to whether the accused was taking treatment only for the injuries sustained by him in the occurrence while attempting to save the deceased or whether it was due to his ill-health or it was

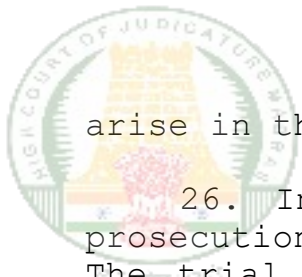


for some other reason. Though PW20 was cross-examined at length, nothing has been brought out in favour of the accused in respect of the same. If really, the accused took treatment in the hospital for the injuries sustained by him during the occurrence that had happened on 08.09.2012 and if the prosecution has suppressed the same, definitely the accused would have taken some steps to bring out evidences like, doctor's prescription, medicine bills, etc. to the Court. But, the accused has failed to mark any document on his side. Even otherwise, the accused can very well bring to the notice of the learned Judicial Magistrate about the injury sustained by him at the time of his remand or even while recording the statement under Section 313 of Cr.P.C., he could bring to the notice of the trial Court about the injuries sustained by him. But, the accused has failed to do so. The accused, who has abruptly failed to avail the opportunity of bringing out about the injury sustained by him to the notice of the Court and to produce any document before the Court, now cannot expect any favour through the unspecific statement of the prosecution witness.

23. Though it is stated by the learned counsel for the appellant that the prosecution has recovered semi burnt pant - MO.2 from the place of occurrence, from which it is clear that the accused has also sustained injury, this Court is not inclined to accept the same as it is not proved by the defence that it was the same pant which was worn by the accused at the time of occurrence. Further, as the occurrence was in the house, the chances of such burning for some other reasons cannot be ruled out.

24. It is also submitted by the learned counsel for the appellant that Ex.C1 - discharge summary would go to show that the accused has also sustained deep burn injury on his right leg and the same was suppressed by the prosecution. The occurrence had happened on 08.09.2012 at 8.00 p.m. Though in Ex.C1 it is stated that there is a deep burn injury on the right leg of the accused, in the very same document, the date of admission is mentioned as 06.10.2012 i.e., about one month after the occurrence and the date of discharge is mentioned as 07.11.2012. Thus, it is clear that the accused had sustained burn injury on his right leg only at a latter point of time and not at the time of occurrence on 08.09.2012. Even assuming that the accused had sustained the said injury only in the occurrence that happened on 08.09.2012, as stated earlier, nothing has been brought to the notice of the Court by the accused as to whether he took treatment immediately after the occurrence for the said injury and as to why he again admitted himself in the hospital on 06.10.2012. Thus, it is clear that the argument advanced by the learned counsel for the appellant / accused with regard to non-explanation of the injury sustained by him has no legs to stand and hence, it is rejected.

25. As stated above, the prosecution has clinchingly proved that it was this accused who set fire on the deceased and caused the death of the deceased. Hence, the possibility of two views does not



arise in this case. Hence, this contention is also rejected.

26. In view of the foregoing discussions, we hold that the prosecution has clearly established the charge against the accused. The trial Court has also rightly convicted the accused under the said charge and imposed the quantum of punishment, and the same do not warrant any interference at the hands of this Court.

27. In the result, this criminal appeal fails and the same is accordingly dismissed; the conviction and sentence passed by the trial Court in S.C.No.137 of 2013 are confirmed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge,
Tiruchirapalli.
2. The Judicial Magistrate No.II, Tiruchirappalli.
3. -do- through the Chief Judicial Magistrate,
Trichy.
4. The Inspector of Police,
K.K. Nagar Police Station,
Trichy City.
5. The Superintendent, Central Prison,
Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
7. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.M.KARUNANITHI, ADVOCATE IN SR No. 91178

GCG

TE/MR-KKR/SAR-4 : 20/12/2017 : 10P/9C