

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.10.2017

Pronounced on: 02.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

Criminal Appeal No.177 of 2015

Kannadasan

... Appellant/Accused

Vs.

The State of Tamil Nadu,
rep. by the Inspector of Police,
Tiruvarur Taluk Police Station,
Tiruvarur.
(Crime No.197/2013)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C to call for the records in S.C.No.31 of 2014, on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thiruvarur and set aside the order dated 19.03.2014 and acquit the appellant.

For Appellant : Mr.K.Ethirajulu

For Respondent : Mr.J.Karuppiah
Additional Public Prosecutor

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JUDGMENT

The instant appeal is preferred as against the judgment of conviction for the offence under section 304(I) of IPC. This is a case of Uxoricide and the husband is the appellant was charged for the offence under section 302 of IPC for the killing of his wife.

2.The case of the prosecution is that on 06.04.2013 at about 10.00 p.m., the wife of the Appellant namely Hemalatha was inflicted burned injuries by the Appellant by pouring kerosene upon her. However, the further case of the prosecution is that the Appellant himself had taken his wife to the Hospital and admitted her by 11.00 p.m. itself. Unfortunately as the wife of the appellant sustained 100% burned injuries, the treatment given to her did not resurrect her, but the said Hemalatha was died by 4.00 p.m., on 07.04.2013. In order to prove the case of the prosecution, PW's 1 to 16 were examined, exhibits P1 to P13 were marked and M.O.s 1 to 4 were marked. By complying with the procedures contemplated under the Code of Criminal Procedure, the case was committed to the file of learned Principal District and Sessions Judge, Tiruvarur. Thereafter, the same

was made over to the file of learned Ist Mahila Court, Tiruvarur. Considering the materials, charge under section 302 of IPC was framed as against the Appellant/Accused.

3.PW-1 is the neighbour of the deceased, who infact on the alarm raised by the son of the deceased, she rescued the deceased by the extinguished the fire by using a blanket upon the victim. According to her evidence, she took the victim out of her residence. PW-2 is the minor son of the deceased who deposed that followed by quarrel between his mother and father, his mother was died due to immolation. In his cross examination he deposed that his father only extinguished the fire by using a blanket upon his mother. PW-3 is the mother of the victim who did not make any specific allegation as against the Appellant. PW-4 is the close relative of the deceased who deposed about the quarrel between the appellant and his wife. PW-5 is the person who arranged the marriage between the Appellant and his wife. PW-6 is known person to the Appellant and his wife. PW-7 is the Observation Mahazar (Exhibit P-1) witness and also stood as witness for the recovery of the material objects. PW-8 is the doctor who gave first aid to the victim and who registered the Accident Register and

found the victim was suffered with 100% burned injuries. PW-9 is the Scientific Officer who conducted the experiment upon the viscera of the deceased. PW-10 is the confession witness. PW-11 is the doctor who conducted Postmortem. PW-12 is the Special Sub-Inspector of Police, attached with Tiruvarur Police Station, who handed over the First Information Report to the jurisdictional Magistrate. PW-13 is the Head Constable who produced the evidence to the Forensic Lab, Chennai. PW-14 is the Cyber Wing Police Constable, PW-15 is the Head Constable who recorded the complaint statement and thereafter registered the First Information Report in Crime No.197 of 2013 under section 307 of IPC. PW-16 is the Investigation Officer, who conducted the investigation and filed the charge sheet as against the accused.

4.It is the case of the prosecution; according to the learned counsel for the Appellant that the Appellant immolate her wife by pouring kerosene and set it fire. At the time of the occurrence the couples had two sons who are in their tender age. Further the occurrence took place after nearly about 9 years of marriage. The victim herself gave complaint statement with PW-15 and the same was recorded and marked as Exhibit P-8. In the complaint statement, the

victim made allegations as against the Appellant as he had illicit intimacy and even on the day of the occurrence (i.e) 06.04.2013 at about 10.00 p.m., he chatted with some person in an intoxication mood when the same was questioned by the victim, there was a quarrel between them and with an intention to kill the deceased, the Appellant poured kerosene and set fire.

5.The learned counsel for the appellant further submitted that it is stated in the complaint statement that PW-1 extinguished the fire and the Appellant took the victim to hospital and admitted her. Whereas, when Exhibit P-3 is perused, it would show that the victim suffered burned injuries up to 100%. The evidence of doctor (PW-8) who recorded the Accident Register, Exhibit P-8 ascertained the fact that when a person suffered with 100% burn injuries there is a chance that the victim would fall into unconscious.

6.According to the learned counsel for the Appellant that the PW-15 Head Constable, did not make any attempt to get the certificate of doctor in respect of the fit state of mind of the victim when she made the complaint statement. The Hon'ble Apex Court and this Hon'ble

Court has time and again repeatedly held that the credibility of the dying declaration of the victim is based on the fit state of mind. Hence, it is imperative on the part of the officer who recorded the dying declaration to get the doctor opinion about the fit state of mind. Admittedly, in the instant case the prosecution has not obtained any certificate from the doctor as to whether the victim was in a fit state of mind to give the complaint statement admittedly she was not in a position to put her signature in the complaint statement, but put her thump impression.

7. Moreover, the counsel for the Appellant further added that though the victim was admitted in the Hospital by 11.00 p.m., and was died on next day at about 04.45 p.m. on 07.04.2013, but the prosecution had not taken any steps to record the dying declaration of the victim in the presence a Judicial Magistrate. It is a major setback on the prosecution case and infact the same would definitely affect the root of the case. When the prosecution has miserably failed to record the dying declaration of the victim that too the victim suffered with 100% of burned injuries, it is unbelievable that in such a health condition the victim gave complaint statement with absolute

consciousness. So, no reliance can be placed upon the complaint statement of the victim and the learned trial judge recorded conviction without proper appreciation of the facts and documents.

8.Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved case with sufficient oral and documentary evidence and the learned trial court has recorded conviction after proper analysis. The learned Additional Public Prosecutor would submit that the evidence of doctor who record the Accident Register categorically deposed that the victim informed him that she was immolated by husband. So, no intervention is required on the judgment of the learned trial Court. Further this version is corroborated with the evidence of PW-2, the minor son of the appellant and the deceased. Therefore considering the totality of the case the appeal is to be dismissed.

9.I heard Mr.K.Ethirajulu, learned counsel for the appellant, Mr.J.Karuppiah, learned counsel for the respondent and all the materials available on records are perused.

10. According to the prosecution, the case is mainly resisting upon the evidence of PW-2 and PW-8. PW-2 is the minor son of the Appellant and the Victim. The total analysis of his evidence does not inspire confidence upon the mind of this court. This witness would depose that though there was a quarrel between the Appellant and the victim, in respect of the pouring of kerosene, the evidence of this witness is not so firm and cogent. Further it is to be looked into and assessed the conduct of the accused immediately after the occurrence. In this case within a period of an hour, the appellant admitted the wife into hospital. He also suffered with burned injuries which would reveal that he would have attempted to rescue the victim from fire. At the same time it is to be analyzed that how the victim suffered with the injuries whether it was on self-immolation or by the appellant. In this regard the perusal of the evidence would clearly show that the victim only quarreled with the appellant. Further the mother of the victim would depose that amidst petty quarrels, the victim and the appellant were living as a normal husband and wife.

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11. On the other hand, it is alleged that the appellant had illegal intimacy with a woman and because of the same quarrel was in

existence between the appellant and the victim, but no effort has taken by the prosecution to prove this vital aspect. The outgoing and incoming call details were produced but no proof is placed that what was the cell phone number of the appellant and his alleged paramour. Under these circumstances, it is not enough to hold that the appellant had illicit intimacy with another woman.

12. Apart from that as pointed out by the learned counsel for the appellant that the failure of the prosecution to take effort to get certificate from the doctor concerned by written requisition either to stand as witness for the complaint statement or to provide certificate with regard to the fit state of mind of the victim to give such a statement. Further, no effort was taken by the prosecution to record the dying declaration in the presence of Judicial Magistrate concerned though the time was available. This aspect would create serious doubt and the suggestion put forth by the counsel for the accused can be taken up for consideration, because the victim has suffered 100% of burn injuries. Apart from that absolutely there is no explanation on the prosecution as to why they did not prefer to bring the Judicial Magistrate to record the dying declaration of the victim. Since even the

admitted case of the prosecution is the injured suffered with 100% of burn injuries, her mental stability, must have been certified by the duty doctor. The explanation given by the prosecution in this regard as if the duty doctor was not willing to be a witness for the recording of the dying declaration by the police is quite unnatural and unbelievable also.

13. In the said circumstances the argument advanced by the learned counsel for the Appellant is acceptable because the prosecution has not given explanation as to why the jurisdictional Judicial Magistrate was not requested to record the dying declaration of the victim. So, for the foregoing discussion the case of the prosecution is suffered with credibility which would affect the root of the case and the same would discredit the evidence of the prosecution case.

14. For the foregoing reason this court is under the compulsion to acquit the accused for the charge under section 304(i) of IPC and accordingly the Appellant is acquitted from the charges framed against him.

15.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant is hereby set aside.

02.01.2018

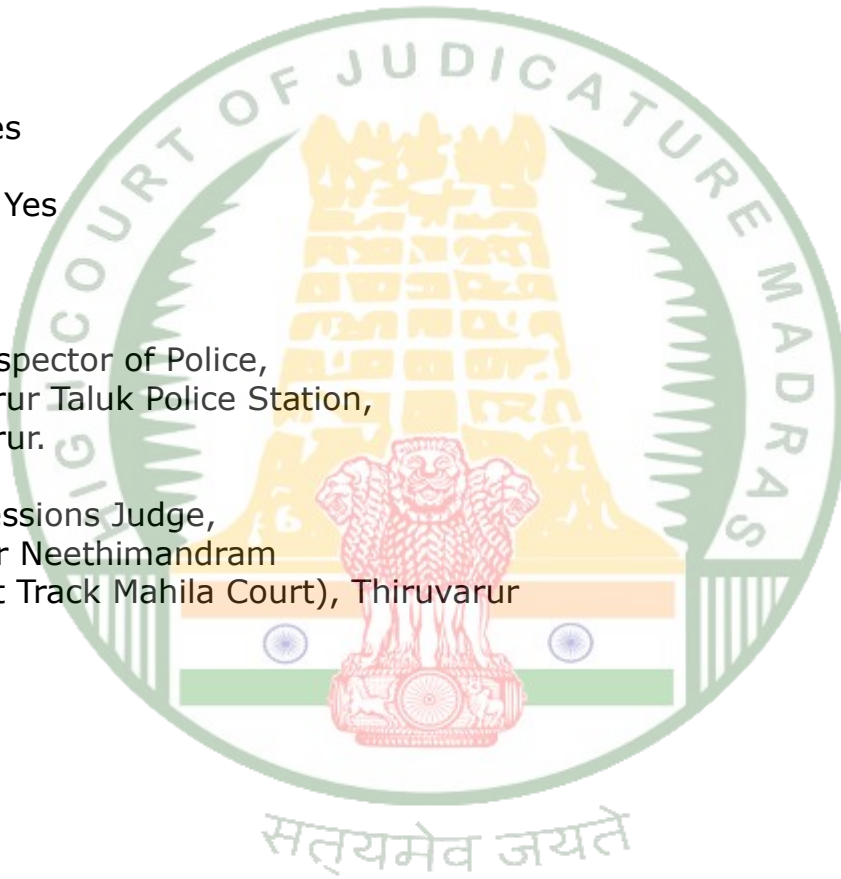
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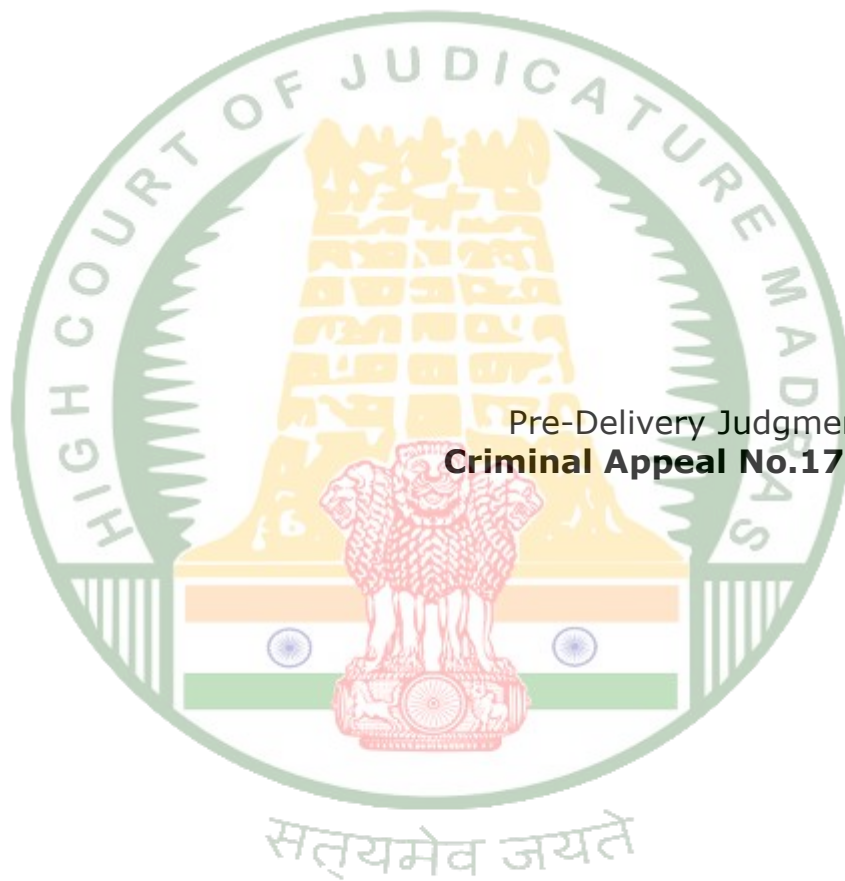
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M.V.MURALIDARAN, J.

VS



Pre-Delivery Judgment made in
Criminal Appeal No.177 of 2015

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