

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2019
Delivered on : 26.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE RMT. TEEKAA RAMAN

Criminal Appeal No.147 of 2018
& Crl.M.P.No.3629 of 2018

Thangarasu Appellant/sole Accused

Vs.

The State, represented by
The Inspector of Police,
Manalurpet Police Station,
Villupuram District,
Crime No.206 of 2016 ... Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code as against the judgment made in S.C.No.43 of 2017 dated 17.01.2018 on the file of Sessions Judge, Magalir Neethi mandram, Fast Track Mahila Court, Villupuram, convicting the appellant for the offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.5,000/- with a default sentence of one year simple imprisonment while acquitting the appellant under Section 498-A IPC.

For Appellant : Mr.G.Arul Murugan
For respondent : Mr.K.Prabhakar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, being the sole accused in S.C.No.43 of 2017 dated 17.01.2018 on the file of Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Villupuram, has been convicted for the offence punishable under Section 302 IPC, while securing acquittal under Section 498-A IPC and thus, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- with a default sentence of one year simple imprisonment, seeks reversal before us.

2. Facts in brief:-

2.1. The appellant/accused is the husband of the deceased-Vasanthi. Two children were born out of their wedlock. It was a love marriage. The appellant developed an intimacy with one Manimegalai, who has not been examined. In view of the said relationship, he demanded the deceased-Vasanthi to sign the blank divorce papers. On her refusal, on 07.08.2016 at about 12.30p.m., he poured Kerosene and set her on fire and thereafter, locked the house and left with the children. On hearing the noise, P.W.1, the father of the deceased came to the house and took the deceased to the Government Hospital, Thiruvannamalai, and admitted her at about 2.50p.m. A complaint statement given by the deceased in the hospital was registered by P.W.16-Akilan, the Sub Inspector of Police at 3.30p.m. Thereafter, at 7.30 p.m., he came to the police station and registered a case in Crime No.206 of 2016 of Manalurpet Police Station under Section 307 IPC and the complaint statement was marked as Ex.P15. On receipt of the requisition from P.W.16-Sub Inspector of Police, P.W.9, Judicial Magistrate No.II, Thiruvannamalai, has recorded Ex.P5-dying declaration of the deceased at 6.40p.m. On the same day, at about 8.15 p.m., on receipt of the First Information Report-Ex.P16 from P.W.16-Sub Inspector of Police, P.W.17-Jeyavel-Inspector of Police, took up the investigation further and recorded the statement of the deceased, which was not marked. The deceased succumbed to the burn injuries and died in the hospital on 08.08.016 at 7.20a.m. After completion of the investigation, P.W.17-Investigating Officer filed a charge sheet altering the offence punishable under Sections 302, 342 and 498-A IPC.

2.2. P.W.1-Azhagappan is the father of the deceased-Vasanthi. After hearing the noise, P.W.1 and the appellant-Thangarasu went inside the house and took the deceased to the Government hospital, Thiruvannamalai. P.W.1 gave the statement under 164 Cr.P.C., before the Judicial Magistrate, Sankarapuram, in which, he has stated that he was informed by the deceased that she poured Kerosene by herself. The statement given by him has been marked as Ex.P11.

2.3. P.W.2-Pandian is the cousin of the deceased. P.W.3-Ravi is the neighbour of the deceased. P.W.4-Kannan is the paternal uncle of the deceased as so also P.W.5-Harikrishnan.

2.4. P.W.6-Elumalai is also cousin of the deceased. It is the statement given by P.W.6 under 164 Cr.P.C., marked as Ex.P12 before the Judicial Magistrate, Sankarapuram, that the deceased had informed him that the appellant has set fire on her. However, he had also turned hostile.

2.5. P.W.7-Ramakrishnan is the maternal uncle of the deceased. P.W.8-Govindan is the witness, who knows the deceased. All these witnesses ventured above (P.Ws.1 to 8) have turned hostile.

2.6. P.W.9-Viswanathan is the Judicial Magistrate, No.II, Thiruvannamalai District, who recorded the dying declaration under Ex.P5. He has stated to have got the intimation from P.W.16 at about 6.15p.m., and arrived at the hospital at 6.40p.m., and recorded the dying declaration of the deceased. In his evidence he has admitted that no crime number was mentioned and the written request was not marked. In this connection, it is to be noted that P.W.16-Sub Inspector of Police has deposed that he has not intimated P.W.9-Judicial Magistrate No.II, Thiruvannamalai, for recording the dying declaration and the intimation has been given from the Hospital itself.

2.7. P.W.10-Sakthivel is the Village Administrative Officer, Vilanthai Village, before whom, the appellant has stated to have given the confession statement under Ex.P6 followed by Ex.P7-siezure mahazar. He has deposed that he did not see the appellant or P.W.17-Investigating Officer, signing the confession Statement-Ex.P6 given by the appellant. He further deposed that Exs.P6 and P7 were signed by him in his office and no one has signed along with him. P.W.11 is the Village Assistant, who also attested Exs.P6 and P7.

2.8. P.W.12-Gowri, who was the duty Doctor, has deposed that while she was on duty on 07.08.2016 at 2.50p.m., the deceased was admitted in the emergency ward by her father, who is P.W.1. She deposed that the deceased informed her that the appellant/accused had set fire by pouring Kerosene on her at about 12.30p.m., at her house. On examination, she found that the deceased was subjected to 85% burn injuries and had also given Ex.P8-Accident Register. It is to be noted that Ex.P8-Accident Register was recorded at 2.50p.m.

2.9. P.W.13-Dr.G.Puviyarasan is the Doctor working as Assistant Surgeon in the Government hospital, Thiruvannamalai. He was on duty on 07.08.2016 from 7.30p.m. He had not deposed anything about Ex.P5-dying declaration. He further deposed that while he was on duty, nobody sought permission to meet the deceased. He declared the death of the deceased at about 7.20 a.m., on 08.08.2016.

2.10. P.W.14 is the Doctor, who conducted post-mortem of the deceased. He deposed that the death could have been occurred by committing suicide. He is the author of Ex.P9-Post Mortem Certificate.

2.11. P.W.15 is the Judicial Magistrate, Sankarapuram, who recorded the statements of P.Ws.1, 6, 7 and 2 under 164 Cr.P.C., which were marked as Exs.P11 to P14 respectively. P.W.15, while acknowledging the factum of recording Exs.P11 to P14, deposed that P.W.1 has stated that the deceased has told him that she poured Kerosene by herself.

2.12. P.W.16-Akilan is the then Sub Inspector of Police, Manalurpet. While he was on duty on 07.08.2016, he went to the Government Hospital, Thiruvannamalai, at about 3.30.p.m. and received a complaint given by the deceased-Vasanthi, who was under treatment. In his cross examination, he deposed that he had not given intimation to P.W.9-Judicial Magistrate, Thiruvannamalai, to record the dying declaration under Ex.P5. It is his evidence that intimation had been given to P.W.9 by the Hospital. He has further stated that upon receiving the statement of the deceased at about 3.30 p.m., he registered the complaint in Crime No.206 of 2016 of Manalurpet Police Station under Section 307 IPC only at 7.30p.m., and the same was marked as Ex.P15. Thereafter, he sent the same along with the complaint to the P.W.17-Inspector of Police for further investigation. In his cross-examination, he had stated that he recorded the complaint statement at about 6.30p.m., and thereafter registered the same at 7.30p.m. He accepted the fact that in column No.12 of the First Information Report about the time of intimation received from the Government Hospital as 6.30p.m. He admitted in his evidence that in the complaint statement recorded, the signature of the duty Doctor has not been obtained. He has further deposed that the dying declaration was recorded by P.W.9 after getting intimation from the Hospital, which is contrary to the evidence of P.W.9. P.W.16 further deposed that in the dying declaration, the time of intimation to P.W.9 has been recorded as 6.15 p.m. It is his further admission that P.W.9 has been informed even before recording Ex.P15-complaint statement of the deceased. Thus, from the evidence of P.W.16, it is clear that he has not obtained any permission from the Doctor to record Ex.P5-Dying Declaration.

2.13. P.W.17 is the Investigating Officer, who conducted further investigation and filed a Final Report. It is his evidence that the intimation was received on 07.08.2016 at about 6.30.p.m. He deposed that in pursuant to the death of the deceased on 08.08.2016 at about 7.15 a.m., he sent the First Information Report to the Court after making alteration of Section from 307 IPC to 302 IPC under Ex.P21. It is to be noted that Ex.P16-FIR dated 07.08.2016 was received by the Court at about 11.00am on 08.08.2016 and he has acknowledged the fact that it is the typographical mistake that the alteration has

been made on 07.08.2016. The confession statement has also been recorded using the Laptop and printer. The trial Court convicted the appellant by placing reliance upon the confession statement given, dying declaration of the deceased and the injuries suffered coupled with recoveries made and rendered conviction for the offence punishable under Section 302 IPC, while acquitting him for the offence charged under Section 498-A IPC as not proved.

3. The trial Court, after framing charges, questioned the appellant with the incriminating materials under Section 313 of the Criminal Procedure Code, who denied it by a mere refusal. Thereafter, the trial proceeded with 17 witnesses on behalf of the prosecution, who also marked Exs.P1 to P26 along with M.Os.1 to 8. The appellant did not choose to either examine the witness nor marked any document.

4. The trial Court, upon hearing the arguments and after considering the materials available on record, found that the charge levelled against the appellant is proved beyond reasonable doubt. Questioning the abovesaid verdict of the trial Court, this criminal appeal is before us.

5. Submissions of the learned counsel for the appellant:

Learned counsel appearing for the appellant submitted that the motive has not been proved. The person with whom the appellant was alleged to have relationship has not been examined. All the witnesses starting from P.W.1 to P.W.8 had turned hostile. P.W.1 even stated in his statement recorded under Section 164 of Cr.P.C., that the deceased told him that she herself poured kerosene. The dying declaration stated to have been given by the deceased is highly doubtful. There is no clear finding with respect to the intimation given to the Judicial Magistrate No.II, Thiruvannamalai by P.W.16-Sub Inspector of Police. Though P.W.13-Dr.Puviyarasan joined duty at 7.30p.m., on 07.08.2016, the dying declaration has been recorded by the Judicial Magistrate No.II, Thiruvannamalai District, at 6.40p.m., itself with his signature and prior certification about her consciousness. If the appellant had locked the deceased inside, it was not known as to how she came out from the house. It is improbable that after the occurrence, the appellant had taken the two children and left. Though the children are aged about 6 and 3 years, there was no evidence to show that P.W.17-Investigating Officer had examined them. The entire occurrence is highly improbable. Certainly, the children would have shouted on seeing the occurrence. They never seen while their mother was dying. There is unexplained delay for giving intimation to the police by P.W.12-duty Doctor, though the time of admission has been mentioned as 2.50p.m., in Ex.P8 Accident Register but the was

intimation given to the police only at 6.30p.m. There is material contradiction between the evidence of P.W.9-Judicial Magistrate No.II, Thiruvannamalai and P.W.16-Sub Inspector of police. The evidence of P.W.14-Dr.Kamalakannan has not been taken into consideration by the trial Court. The confession statement has been given in the presence of the police. The recovery made is also doubtful. While P.W.10-Village Administrative Officer has stated that Ex.P6-admissible portion of confession statement of the appellant/accused dated 08.08.2016 and Ex.P7-Seizure Mahazar dated 08.08.2016 were signed in his office, P.W.11-Village Assistant has stated he signed in Ex.P6 in the police station. The trial court has not considered these discrepancies. Therefore, the appeal has to be allowed.

6. Submissions of the learned Additional Public Prosecutor:

The learned Additional Public Prosecutor appearing for the State submitted that the trial Court convicted the appellant after having found that Ex.P5-dying declaration of the deceased inspires full confidence of the Court. Further, the trial Court rightly relied upon the recoveries made. Such recoveries are permissible under Section 27 of the Indian Evidence Act, 1872 coupled with the evidence of P.W.14-Dr.Kamalakamman, who is the author of the Post Mortem Certificate. The conviction has been rightly rendered against the appellant and thus, the appeal has to be dismissed.

7. Discussion:-

7.1. As stated above, P.Ws.1 to 8 turned hostile. P.W.1, the father of the deceased, even in his 164 statement has clearly stated that it is the deceased, who committed suicide and had informed to him.

7.2. There is no reason for not examining the person with whom the appellant was allegedly having illicit relationship. Not only that, even the children, who were in the scene of occurrence, have not been examined. It appears to be highly improbable, that the appellant, after setting fire on the deceased, left the scene of occurrence along with the children while bolting the house from the outside. If the appellant had locked the deceased from outside, it is impossible for the deceased to come out from the house by herself.

7.3. Much reliance has been made on the dying declaration. We find very many contradictory statements available in the evidences of P.W.9- Judicial Magistrate No.II, Thiruvannamalai, P.Ws.12 and 13-Doctors and P.W.16-Sub Inspector of Police. P.W.9 has deposed that he got information from P.W.16 at 6.15p.m. However, P.W.16 has deposed that he has not intimated P.W.9 and the intimation was given only by the hospital.

P.W.16 has further stated that the information has been received by him from the hospital only at 6.30p.m. It is not known as to how P.W.9-Judicial Magistrate No.II, Thiruvannamalai District, could have recorded the dying declaration at 6.40p.m., by receiving information at 6.15p.m., from P.W.16, when P.W.16 himself received the information from the hospital only at 6.30.p.m., as per Ex.P17-First Information Report. P.W.16 has also not obtained any permission from P.W.13-duty Doctor, viz., Dr.Puviyarasan, who joined duty at 7.30p.m., on 07.08.2016. However, in Ex.P5-Dying Declaration, which has been recorded at 6.40p.m., his signature appears. Strangely, P.W.13-Dr.Puviyarasan has not spoken anything about the dying declaration and stated that nobody came to the hospital to meet the deceased.

7.4. Both P.W.16 and P.W.17 have stated that after the alteration, the First Information Report has been received by the Court only on 08.08.2016 at 11.00a.m. On a perusal of Ex.P5, it is clear that the intimation has been received from P.W.16-Sub Inspector of Police. Therefore, there are substantial material contradiction on the date, timing and recording of Ex.P5-Dying Declaration. It is also noted that, P.W.17 has stated that there is some mistake committed while preparing the recovery mahazar. The alteration has stated to have been made earlier. Only after such alteration, the First Information Report has been sent to the Court. Thus, we are unable to place reliance upon Ex.P5-Dying Declaration as the basis for rendering conviction against the appellant.

7.5. Nothing much can be stated about the evidence of P.Ws.10-Village Administrative Officer and 11-Village Assistant. Even here, we find some contradiction between the evidence given by them. While P.W.10 had stated that he did not see the accused or P.W.17 signing Ex.P6. It is also stated by him that he did signed them only in his office while no other person signed. Further, P.W.11, who is the Village Assistant, has stated that he signed Ex.P6, which is the confession statement, in the police station and Ex.P7-seizure mahazar, in the place of recovery.

7.6. The trial Court has not made reliance upon the evidence of P.W.14. PW.14 is the doctor, who conducted post mortem. From his evidence, the appellant cannot be convicted as it is also his statement that death could have been caused by suicide when Kerosene was poured by the deceased on her body. P.W.17 has also given a contradictory statement. The statement of the deceased recorded by P.W.17 has not been marked. He also spoke about the recording of Ex.P5-Dying Declaration. He has stated in clear terms that intimation has been received by P.W.16 at 6.30p.m., on 07.08.2016. We find the evidence of

P.W.17 also does not inspire confidence. We also note that from the place of occurrence, there was no semblance of any other material being burnt.

7.7. We find that the trial Court has not considered the discrepancies as stated by us. It has to take into consideration the Ex.P5-dying declaration along with other materials available, while ignoring the evidence of P.Ws1 to 8. Though the trial Court eschewed the evidence of P.Ws.1 to 8, while relying substantially on Ex.P5, it has not appreciated the other evidences. The trial Court is duty bound to consider the circumstances before rendering conviction based upon dying declaration. After all, the person, who deposed was not before the Court. When it creates severe doubt from the circumstances available, the Court will have to clear them before placing reliance.

7.8. The evidence of P.W.17 with respect to the justification on Ex.P19-recovery mahazar prepared on 07.08.2016, recording the offence punishable under Section 307 @ 302 IPC, when the deceased died only on 08.08.2016 and thereafter, alteration was taken cannot be brushed aside as a mere typographical error.

7.9. It is brought to our notice that Ex.P8-Accident Register is concerned, what was marked before the trial Court is only attested true copy. When the same was confronted with the Doctor, who issued the said Accident Register copy, she deposed that the original was handed over to

the Police during the investigation. Subsequently, at request, the investigation Officer had issued the true copy. On a perusal, what was marked before the trial Court is only a certified copy of the Accident Register. The original Accident Register was not produced. For non production of the original Accident Register also caused serious doubt as to the earliest version said to have been given to the doctor, which goes to the root of the issue to disbelieve the prosecution case.

8. Thus, for the aforesaid reasons, we are unable to confirm the judgment of the trial Court in rendering conviction against the appellant for the offence punishable under Section 302IPC. We feel that the appellant is certainly entitled for the benefit of doubt as prosecution has not proved its case beyond reasonable doubt.

9. Accordingly, the conviction and sentence imposed on the appellant-Thangarasu in S.C.No.43 of 2017 dated 17.01.2018 on the file of Sessions Judge, Magalir Neethi mandram, Fast Track Mahila Court, Villupuram, are set aside and the Criminal Appeal

stands allowed. The appellant is acquitted of the charge under Sections 302 I.P.C., and the fine amount if any paid, shall be refunded to him. The appellant is directed to be released forthwith, unless his custody is required in connection with any other case. Consequently. Connected criminal miscellaneous petition stands closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

raa
To

- 1.The Inspector of Police,
Manalurpet Police Station,
Villupuram District,
- 2.The Public Prosecutor,
High Court, Madras 104.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Judicial Magistrate
Thirukovilur

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.G.Arul Murugan, Advocate sr 98796.

WEB COPY Criminal Appeal No.147 of 2018

VD(CO)
SP(07/01/2020)