

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. A.No.108 of 2015

T.Bharathiraja

... Appellant

Vs.

State represented by
Inspector of Police,
Vellimedupettai Police Station.

... Respondent

Prayer: Criminal Appeal filed under Section 374 Cr.P.C. praying to set aside the conviction and sentence imposed vide judgment and order dated 10.04.2013 in S.C.No.312 of 2012 on the file of the I Additional District and Sessions Court, Tindivanam, convicting and sentencing the appellant to undergo 7 years rigorous imprisonment.

For Appellant : Mr.P.Anbalagan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed by the appellant/accused to set aside the conviction and sentence imposed on him, vide judgment and order dated 10.04.2013 passed in S.C.No.312 of 2012 on the file of the I Additional District and Sessions Court, Tindivanam.

2. The brief facts leading to the filing of this Criminal Appeal are as follows :

2.1. The case of the prosecution is that, on 09.05.2012, around 08.30 p.m., the appellant came drunk and picked up quarrel with his wife Seethalakshmi for not cooking. In the course of the quarrel, his wife stated that she would commit suicide and poured kerosene on herself. At that juncture, the appellant lighted a match stick and threw it at her, on account of which, she caught fire and was admitted in hospital with 80% burn.

2.2. Her dying declaration (Ex.P.4) was recorded by Mr.V.Damodharan (P.W.2), Judicial Magistrate No.I, Puducherry. Based on the statement (Ex.P.1) given by Seethalakshmi, the police registered a case in Crime.No.183 of 2012 on 10.05.2012 under Section 307 IPC. Seethalakshmi succumbed to the injuries on 11.05.2012 at 11.30 a.m.

2.3. Inquest was conducted by Pradeep Kumar (P.W.14), Inspector of Police and the inquest report was marked as Ex.P.18. The case was altered to one under Section 302 IPC vide alteration report (Ex.P.15).

2.4. Dr.Thilagam (P.W.3) conducted autopsy on the body of the deceased Seethalakshmi and in her evidence, as well in the postmortem certificate (Ex.P.5), she has opined that the death was due to 80% burns and burn shock.

2.5. The appellant was arrested by the police. After completing the investigation, the police filed a final report in P.R.C.No.23 of 2012 before the Judicial Magistrate No.I, Tindivanam, for the offence under Section 302 IPC, against the appellant.

2.6. The case was committed to the Court of Session in S.C.No.312 of 2012 and was made over to the I Additional District and Sessions Court, Tindivanam, for trial. The trial Court framed a charge for the offence under Section 302 IPC against the appellant and the appellant, when questioned, pleaded "not guilty".

2.7. To prove the case, the prosecution examined 15 witnesses, marked 18 exhibits and 5 material objects. No witness was examined on the side of the appellant nor any document marked. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

2.8. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.04.2013 in S.C.No.312 of 2012, acquitted the appellant of the charge under Section 302 IPC, but, convicted him of the offence under Section 304(II) IPC and sentenced him to undergo 7 years rigorous imprisonment.

3. Challenging the aforesaid conviction and sentence, the appellant is before this Court.

4. Heard Mr.P.Anbalagan, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing on behalf of the respondent police.

5. The learned counsel for the appellant contended that the prosecution has not proved that it was the appellant, who had thrown the match stick at the deceased and that it was the deceased, who set fire to herself. The learned counsel further contended that in the requisition given by the Sub-Inspector to the Magistrate for recording the dying declaration (Ex.P.4), he had stated that the deceased had set fire to herself. It was further contended that even in the accident register (Ex.P.13), it is stated that Seethalakshmi had suffered accidental burns at her residence and therefore, the prosecution case stood belied.

6. Per contra, the learned Government Advocate (Crl.Side) refuted the contentions put forth by the learned counsel for the appellant.

7. This Court gave its anxious consideration to the rival submissions.

8. It is true that in the Accident Register (Ex.P.13), it is stated that Seethalakshmi had suffered accidental burns. However, it is seen that Seethalakshmi was brought to the hospital by the appellant and in the presence of the appellant, she would not have had the courage to implicate him. However, in the dying declaration (Ex.P.4), Seethalakshmi has stated (free English translation): "My husband will come drunk every day and quarrel with me; for the last one week, we are quarreling; last night, at 08.30 p.m., he came drunk and quarreled with me; I asked him as to why he spent so much money for drinking; for that, he said to me "go and die"; therefore, I poured kerosene on me; I thought that my husband will not do anything, but, he took match box, lighted it and threw it at me; on seeing me, people came there, but, did not come near me; my husband and another person admitted me in the hospital." She has given the same version in her statement (Ex.P.1) that was given to the police, based on which, F.I.R was registered on 10.05.2012 at 16.00 hrs. In other words, dying declaration (Ex.P.4) was recorded by the Magistrate on 10.05.2012 at 11.00 a.m. and only thereafter, the police had registered the F.I.R at 04.00 p.m. While so, it is not known as to how the police sent the intimation to the Magistrate saying that Seethalakshmi committed self-immolation. Thus, the two dying declarations, one given to the Magistrate (Ex.P.4) and another given to the police (Ex.P.1) are indeed very consistent and do inspire the confidence of this Court.

9. On the proved facts, the trial Court should have convicted the appellant under Section 302 IPC, but, strangely has convicted him under Section 304(II) IPC by invoking Exception 4 to Section 300 IPC. Exception 4, *ibid*, will apply only when the offence is committed without premeditation or in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

10. In this case, after Seethalakshmi poured kerosene on herself, the appellant had no business to take undue advantage of the situation and act in a cruel or unusual manner, by throwing a lighted match stick at her. Since the State has not chosen to file any appeal, this Court has no other alternative, but to record its opinion of disagreement with the interpretation proffered by the trial Court.

In the result, this appeal is dismissed as being devoid of merits.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The District and Sessions Judge,
I Additional District and Sessions Judge
Tindivanam
2. The Judicial Magistrate, Tindivanam
3. The Superintendent, Central Prison, Cuddalore
4. The Inspector of Police,
Vellimedupettai Police Station.
5. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

Cr1. A.No.108 of 2015

MP (CO)
SP (07/11/2019)