

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2019

Pronounced on : 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.746 of 2016 and

Crl.M.P.No.11515 of 2016

Palanisamy ... Appellant

Vs.

The State represented by,
The Inspector of Police,
Valapady Police Station,
Salem District.

[Crime No.513 of 2009]

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order dated 10.03.2016 passed by the Mahila Sessions Court at Salem in S.C.No.383 of 2012.

For Appellant : M/s.S.Udayakumar for
M/s.Karan & Uday

For Respondent : M/s.P.Kritika Kamal
Government Advocate [Crl.Side]

JUDGMENT

This appeal arises out of the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.383 of 2012 dated 10.03.2016, wherein the appellant was tried for the offence punishable under Sections 498(A) and 306 of IPC. The learned trial Judge convicted the appellant for offence under Section 498(A) of IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment and for the offence under Section 306 of IPC, the appellant was sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.2,000/- in default, sentenced to undergo six months of rigorous imprisonment. The sentences were ordered to run concurrently.

2.The facts, as projected by the prosecution are as follows:

2.1.The appellant is a resident of Singipuram Colony. He married the deceased Saratha about seven years prior to occurrence i.e., 24.06.2009. They were blessed with a daughter Kaviya and a son Kathirvel. The appellant doubted the fidelity of his wife and harassed her very often by scolding her using filthy language. On 23.06.2009 during the evening hours the appellant scolded the deceased in obscene words. The deceased could not tolerate his persistent torture and decided to end her life. On 24.06.2009 at about 11.30 a.m at the house of the appellant at Singipuram Colony, the deceased poured kerosene over her body and set fire to herself and died on 02.07.2009 at about 12.50 p.m at Government Mohan Kumaramangalam Medical College Hospital, Salem, due to the burn injuries sustained. Since the appellant abetted the commission of suicide by his persistent torture on his wife, a case came to be registered for offence under Sections 306 IPC in Crime No.513 of 2009. On completion of investigation, charge sheet filed and the case was tried in S.C.No.383 of 2012 by the file of the Sessions Judge, Mahila Court, Salem.

3.Before trial Court, prosecution examined 10 witnesses, marked 20 exhibits and one material object was seized. None were examined, nor any exhibits marked on the side of the defence.

3.1.PW1 is the father of the deceased. He stated that he and his wife/PW2 performed marriage of the deceased with the appellant, prior to seven years from the date of occurrence. PW1 received information that the deceased had attempted to commit suicide by pouring kerosene and setting fire herself and was admitted in the Government Hospital, Salem. On receiving information, PW1, PW2 and another daughter and son rushed to the hospital and saw his daughter/deceased Saratha taking treatment and she was unable to speak. Thereafter, within one week, she died on 02.07.2009 at about 12.30 p.m due to burn injuries. Thereafter, PW1 attested his signature in the statement of the deceased [Ex.P1]. PW1 has not supported the case of the prosecution, treated hostile.

3.2.PW2 the mother of the deceased stated that her daughter was suffering from acute stomach pain. Unable to bear the pain, she had committed suicide and on

getting information about the same, she visited the hospital. PW2 has not supported the case of the prosecution, treated hostile.

3.3.PW3 and PW4 are the witnesses for the observation mahazar [Ex.P2] and their signatures found in the Seizure Mahazar [Ex.P10] were marked as Ex.P3 and Ex.P4. PW3 and PW4 not supported the prosecution case and hence they were treated hostile.

3.4.PW5, the doctor conducted Autopsy on the body of the deceased on 03.07.2009 and recorded the followings-

"THE BODY WAS FIRST SEEN BY THE UNDERSIGNED AT 11.15 AM ON 03.07.2009. IT'S CONTUSION THEN WAS RIGOR MORTIS PRESENT ALL OVER THE BODY. POST MORTEM COMMENCED AT 11.15 A.M ON 03.07.2009. IT WAS A MODERATELY NOURISHED BOYD OF A MALE PERSON.

INJURIES:

DERMO EPIDERMAL BURNS WITH REDDISH AREA OF INFLAMMATION SEEN OVER WHOLE OF THE FACE FRONT SIDES AND BACK OF NECK, FRONT BACK AND LATERAL ASPECT OF THE CHEST FRONT OF UPPER ABDOMEN BOTH UPPER LIMBS BOTH GLUTEALS, FRONT AND BACK OF BOTH THIGHS, FRONT AND BACK OF UPPER PART OF BOTH LEGS. AXILLARY HAIR, PUBIC HAIR AND SCALP HAIR SINGED. (ANTEMORTEM BURNS).

OTHER FINDINGS:

1.O/D HEAD: SCALP INTACT, CRANIAL VAULT - INTACT, BRAIN C/S CONGESTED. BASE OF SKULL - INTACT.

2.O/D NECK: NECK STRUCTURES- NORMAL HYOID BONE:INTACT SOOT PARTICLES SEEN IN THE CONGESTED MUCOSA OF TRACHEOBRONCHIAL TREE.

3.O/D THORAX: NO RIB FRACTURE. LUNGS C/S CONGESTED. HEART NORMAL IN SIZE CHAMBERS CONTAINED FLUID BLOOD. MYOCARDIUM NORMAL CORONARIES PATENT.

4.O/D ABDOMEN: STOMACH CONTAINS 100 ML OF BROWNISH FLUID WITH NO SPECIFIC ODOUR MUCOSA C/S-CONGESTED LIVER, SPLEEN AND BOTH KIDNEYS- C/S CONGESTED BLADDER- EMPTY UTERUS -NORMAL IN SIZE CAVITY- EMPTY GENITALIA -NO OTHER INJURIES MADE OUT. PELVIS AND SPINAL COLUMN -INTACT.

OPINION : DIED DUE TO THE EFFECTS OF BURNS."

3.5.PW6, the Head Constable on receipt of the information from the police, visited the hospital on 24.06.2009 at about 03.30 p.m, recorded the statement of the deceased [Ex.P7], in which it is seen that on 24.06.2009 due to the fight between the appellant and the deceased, the deceased self immolated by pouring kerosene and setting fire on her own. On seeing her wife in fire, the appellant attempted to save her and put off the fire by hugging her and thereafter he took her in an ambulance to the hospital and admitted for treatment.

3.6.PW8, Sub Inspector of Police registered F.I.R in Crime No.513 of 2009 for the offence under Sections 309 r/w 511 of IPC [Ex.P8], visited the scene of occurrence, prepared Observation Mahazar [Ex.P2], seized the articles [MO1] from the scene of occurrence and forwarded the same through Form 95 [Ex.P14] to the concerned Court, examined the witnesses/PW1, PW2, PW3, PW4 and other witnesses Karthick, Selvam and Selvakumar and recorded their statements.

3.7.PW9, Casualty Medical Doctor on 24.06.2009 examined the victim as well as the appellant and sent the intimation to the police [Ex.P16]. The Accident Register of the deceased is Ex.P5, in which it is recorded that the deceased had sustained 85% burn injuries. The Accident Register of the appellant is Ex.P17 and the appellant has sustained 35% burn injuries while he was attempting to save the deceased.

3.8.PW10, Judicial Magistrate No.I, Salem on receipt of the death information [Ex.P18] from the hospital on 24.06.2009, visited the hospital at about 02.45 p.m, recorded dying declaration of the deceased [Ex.P19] in the presence of one Doctor Rajasekar and forwarded Ex.P19 to the Judicial Magistrate No.VI, Salem through Ex.P20.

3.9.PW7, investigation officer took up investigation from Ex.P8, examined the witnesses, prepared Rough Sketch [Ex.P9], seizure mahazar [Ex.P10], seized the material object Kerosene stove [MO1]. Thereafter, on receipt of death intimation from the hospital, PW7 prepared alteration report [Ex.P12], conducted inquest, made request for postmortem, collected medical records and other records, arrested the appellant on 04.09.2009 from his house. On completion of the investigation he filed the charge sheet before the learned Judicial Magistrate No.VI, Salem.

4.The appellant was charged for offences under sections 498(A) and 306 of IPC. On questioning under Section 313 Cr.P.C, appellant denied the charges. On appreciation of evidence, oral and documentary, the trial Court by Judgment dated 10.03.2016, convicted the appellant. Hence, the present appeal.

5.The learned counsel for the appellant submitted that the appellant is not the cause and reason for the deceased committing suicide by self immolation. PW1 and PW2 the father and mother of the deceased and PW3 and PW4 have not implicated the appellant in this case. They have categorically stated that the victim was suffering from acute stomach pain, due to which she has committed suicide. It is seen from the evidence of PW9 that the appellant had sustained 35% burn injuries, while he attempted to save the deceased, as could be seen from Ex.P17. It is seen from the statement [Ex.P7] of the deceased recorded by PW6 that the appellant had attempted to save the deceased and taken her to the hospital, due to which he had sustained burn injuries. Hence, it is proved that the appellant took her to the hospital for treatment.

6.The learned counsel for the appellant further submitted that though PW1 to PW4 were treated, hostile their statement in entirety have not been put to investigation officer to draw his attention in proper and right forum to elicit contradictions. It is admitted by PW1 that his daughter was brought by the appellant to the hospital for treatment. After her death PW1 and PW2 took the body of the deceased. The lower Court placed heavy reliance on the dying declaration of the deceased [Ex.P19] and statement of the deceased [Ex.P7] and convicted the appellant in this case. Ex.P1 is the attesting signature of PW1 in Ex.P7. PW1 stated that he was not aware of what is written in Ex.P7 and he has only affixed his signature. PW1 categorically stated in his statement that the victim was not in a position to speak, which is in conformity to the burn injuries and the injuries found in the Accident Register/Ex.P15 and postmortem report [Ex.P5]. The nature of the injuries is such that it is not possible for her in such a position to speak as projected. Further, in Ex.P7 the statement recorded by PW6 is taken as complaint and it was not attested by a doctor that the deceased was in a fit state of mind to give such a statement. It is also to be seen from the dying declaration [Ex.P19], one Doctor Rajasekar has attested his signature. The said Doctor Rajasekar has not been examined to prove the fact. The Dying

Declaration is not in conformity to the requirements as per law. Thus on a wrong premise, the lower Court placed heavy reliance on Ex.P19 and convicted the appellant. Hence, he prayed for acquittal.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the dying declaration [Ex.P19] has been recorded by the learned Judicial Magistrate No.I, Salem/PW10 and there is nothing to doubt the veracity of Ex.P19. In Ex.P19 the victim has clearly stated about the appellant's continuous harassment and torture which led her to self-immolation. Non examination of the Doctor Rajasekar the certifying and attesting Doctor will not make Ex.P19 in admissible. From the scene of occurrence, the Kerosene stove [MO1] was seized. Though the witnesses/PW1 and PW2 being the close relatives have not supported the case of the prosecution, the other collected materials would prove that the appellant is the cause for the deceased being pushed to commit self-immolation. The lower Court had rightly appreciated the evidences let-in by the prosecution and convicted the appellant.

8.Considering the rival submissions and on perusal of the materials it is seen that PW1 and PW2 father and mother of the deceased and PW3 and PW4 the neighbours have not supported the case of the prosecution. On the other hand PW2 categorically stated that her daughter was suffering from unbearable acute stomach pain and she had committed suicide unable to bear the pain. PW5 has stated that the victim had committed suicide by setting fire herself. PW9 the Casualty Medical Doctor stated that when the deceased was admitted in the hospital, she had sustained 80 to 85% burn injuries. From the medical records, it is seen that "dermo epidermal burns are there and total body surface of the area had been burnt and the inflammation seen over whole of the face". PW1 admitted that when she visited the victim at the hospital, she was unable to speak. Hence, Ex.P7 the complaint itself becomes doubtful and further no doctor attesting the same. It is also admitted that the appellant attempted to save his wife, due to which he had sustained 30 to 35% burn injuries.

9.The other materials against the appellant is the dying declaration [Ex.P19] recorded by PW10. It is found that the victim had committed suicide by self-immolation since the appellant used to pick up fight with her often and suspected her fidelity. This cannot be considered as

an abetment in the absence of date, time and its proximity. The facts will show that the appellant is not the cause for the committing of suicide by the victim.

10. Further, the dying declaration cannot be taken as a whole basis. In view of the other attending circumstance of the case, positive act of the appellant to save the deceased and admitting her in the hospital and also sustaining burn injuries, this Court is unable to take the dying declaration without any corroboration. The doctor who attested the dying declaration [Ex.P19] has not been examined. Hence, the dying declaration suffers from infirmity and cannot form basis of conviction in the absence of any material corroboration.

11. In the result, the conviction and sentence imposed by the trial Court against the appellant cannot be sustained. As such, the conviction and sentence imposed on the appellant in S.C.No.383 of 2012 by the learned Sessions Judge, Mahalir Court, Salem are set-aside and the Criminal Appeal is allowed. The appellant is acquitted of all the charges levelled against him 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, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court,
Salem.
2. Do thro the Principal sessions Judge, Salem
3. The Inspector of Police,
Valapady Police Station,
Salem District.
4. The Superintendent, Central Prison, Coimbatore
(In Duplicate for communication to the Detenue).

5.The District Collector,Coimbatore

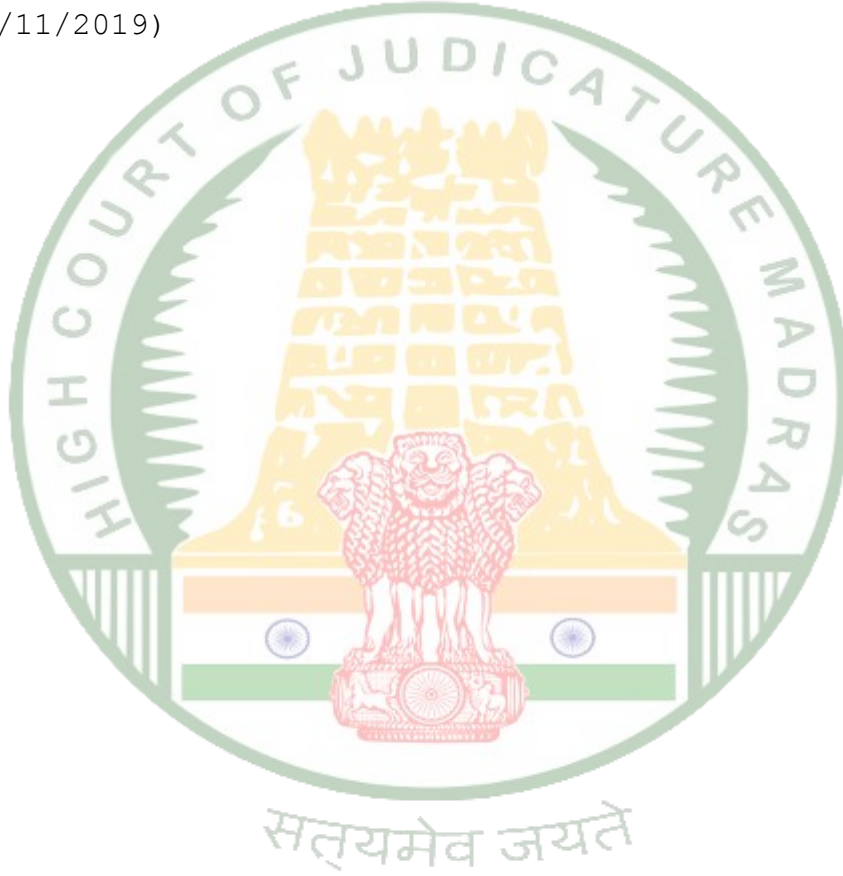
6.The Director General of Police, Chennai

7.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.Karan & Uday, Advocate SR.No. 91211

Crl.A.No.746 of 2016

A.SK(04/11/2019)



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