

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2019

DELIVERED ON : 25.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.97 of 2018
and
Crl.Mp.No.2257 of 2018

Veeran ...Accused-1 / Appellant

Vs.

State rep. by
The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.
(Crime No.560 of 2015)

...Complainant / Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to set aside the Judgment dated 07.09.2016 of the Sessions Judge, Mahila Court, Cuddalore passed in SC.No.240 of 2015, convicting and sentencing the appellant under Section 307 and Section 302 of IPC (2 counts).

For Appellant : Mr.K.Amirthalingam

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

J U D G M E N T

Judgment of the Court was delivered by R.HEMALATHA, J.

The appeal arises out of the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore in SC.No.240 of 2015. The appellant / accused Veeran is charged by the Inspector of Police Virudhachalam police station, in Crime No.560 of 2015 for the offences punishable under Sections 307, 302 (2 counts) IPC, in that on 06.07.2015, at about 09.40 pm, the accused poured kerosene on his wife Deivanai (since deceased),

his minor daughter Sabita (since deceased) and his minor son Dinesh in his residence at Thoravallur and set his wife and daughter on fire. Dinesh, his son had fled the scene sensing danger after kerosene was poured on him. Both of them were rushed to the Government Hospital, Vridhachalam in 108 Ambulance from where they were referred to JIPMER Hospital, Pondicherry, for further treatment. However, Deivanai succumbed to burn injuries on 12.07.2015, at 10.45 am and Sabita on 14.07.2015, at 10.45 pm.

2. In order to establish the guilt of the accused, the prosecution examined 12 witnesses and adduced Ex.P1 to Ex.P21. MO1 to MO9 were also marked. The chemical analysis report of MO1 to MO9 were marked as Ex.C1.

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows.

4. Dinesh (PW1), minor son of the accused, aged 12 years is an eye witness to the occurrence. He had deposed that his parents used to quarrel very frequently and that his father was planning to marry second time, regarding which his father had spoken in his presence and the same was communicated by him to his mother. It was also deposed by him that they had arrived from Mumbai only on 06.07.2015 and his father had beaten his sister Sabita in the morning causing swelling in her eye and it was on the same day, in the night that his father who was fully drunk verbally abused his mother and poured kerosene on his mother, his sister and him and that fortunately before the appellant / accused could light the fire, PW1 had escaped from the scene when his mother shouted at him to alert the neighbours and save them. According to him, he had accompanied his mother and his sister to the hospital in 108 ambulance.

5. Dr.Savitha (PW6) who was on duty on 06.07.2015, examined Deivanai and Sabita and made relevant entries in the Accident Register, copies of which are marked as Ex.P7 and Ex.P8 and also admitted both of them in the Government hospital, Virudhachalam, as inpatients with high percentage of burn injuries. She also medically examined the accused Veeran with 18% burn injuries and made entries in the Accident Register (Ex.P9). All the three (including the accused) informed the Doctor that the accused Veeran poured the kerosene on his wife and two children and set his wife and daughter ablaze.

6. Thiru Anbarasu (PW-9), the then Sub Inspector of Police, Virudhachalam Police Station, after receiving intimation from the Police Out post in Government Hospital, went over to the hospital at 23.00 hrs and recorded the statement of Deivanai (Ex.P12) on 06.07.2015, and registered FIR (Ex.P13) on

07.07.2015 at 02.00 am in Crime No. 560 of 2015 for the offences under Sections 294 (b) and 307 IPC and sent the FIR to the Judicial Magistrate-I, Virudhachalam.

7. Mr.Sadiq Basha (PW5), the Judicial Magistrate-I, Virudhachalam went over to the Government hospital after receiving information and recorded the dying declarations (Ex.P4 and Ex.P6) of both the victims after following prescribed procedures and formalities. Dr.Savitha (PW-6) certified that both the victims,Deivanai and Sabita were fit and in conscious state of mind to make statements. Both the victims in their dying declarations had narrated the sequence of events and had clearly stated that the accused poured kerosene on them and set fire on them. While Deivanai died on 12-07-2015, Savitha succumbed on 14-07-2015.

8. Thiru Tamilmaran (PW.11), Inspector of Police (IC), Virudhachalam Police Station conducted inquest (Ex.P16) on the body of Deivanai in the presence of panchayatdhars and prepared an inquest report (Ex.P16) and then sent the body for autopsy.

9. Dr.Senthilkumaran (PW-7) conducted autopsy on 13-07-2015 on the body of the victim Deivanai. In the opinion of the doctor, the deceased died due to septicemia caused by deeply infected thermal burns. The post-mortem certificate is marked as Ex.P10.

10. Dr.Kusakumarsha (PW-8) conducted autopsy on Sabita, aged 9 years and in his opinion the child died due to septic shock as a result of thermal burn. The post-mortem certificate is marked as Ex.P-11.

11. Thiru.Senthilkumar (PW-12), the then Inspector of Police, Virudhachalam, took up investigation in Crime no.560/2015 of Virudhachalam police station, went over to the scene of occurrence on 07-07-2015 and prepared an observation mahazar and a rough sketch (Ex.P13) in the presence of Gnanadevan (PW3) and Ayyadurai (PW4). He also seized old kerosene stove (MO-7), broken lid of the stove (MO-8) and a match box (MO-9) from the house of the accused at 04.20 am, on 07.07.2015, in the presence of the same witnesses PW-3 and PW-4 under the cover of a mahazar Ex.P-18. On the same day he examined Deivanai, Sabita and Dinesh in the Hospital and other witnesses and recorded their statements. He arrested the accused at 01.00 pm, on 07.07.2015, near Virudhachalam Railway Station and recorded his confession statement in the presence of the witnesses Murugan (PW-10) and Sakthivel. On the basis of the confession statement he recovered a torn pant with kerosene smell MO-6 from the house of the accused under the cover of a

mahazar P-14. The portion of the confession statement leading to the recovery of the torn pant with kerosene smell was marked as Ex P-15.

12. Murugan (PW.10) brother of Deivanai, who signed as a witness in the seizure mahazar (Ex.P14) and the confession statement of the accused also deposed that when he met his sister Deivanai on the morning of 07.07.2015, he came to know that his brother-in-law / accused Veeran set fire on his sister and niece stating that he could re-marry only if his wife and his children are killed.

13. Subsequent to the death of Deivanai and Sabita, the offences were altered to 302 and 307 of IPC and alteration reports (Ex.P19 and Ex.P20) were filed before the concerned Magistrate.

14. Chellapangi (PW2), the mother of the deceased Deivanai deposed that she received a call from her son Murugan (PW-10) at 10.00 pm, on 06.07.2015, stating that her daughter and grand daughter were admitted in the Government hospital, Virudhachalam, with burn injuries caused by her son-in-law. She also identified MO-1 to MO-4, the dresses worn by both the victims.

15. Thiru.Senthil Kumar(PW-12) after concluding investigation laid a final report before the Judicial Magistrate -I , Virudhachalam, who in turn committed the case to the Court of Sessions.

16. The accused was questioned under Section 313 of the Code of Criminal Procedure, with regard to the circumstances appearing in evidence against him for which he had stated that his wife had an illicit affair with one Babu and when the same was known to everyone she committed suicide by self immolation.

17. The learned Sessions Judge, Mahila Court, Cuddalore after analysing the oral and documentary evidence adduced on the side of the prosecution, found the accused guilty of the offences punishable under Sections 307, 302 (2 counts) IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to pay the fine amount, to undergo Rigorous Imprisonment for 6 months for the offence punishable under Section 307 IPC. The accused was also sentenced to undergo life imprisonment (2 counts) and to pay a fine of Rs.1,000/- for each count and in default to pay the fine amount to undergo Rigorous imprisonment for 6 months. The Sessions Judge further directed that the sentence of imprisonment shall run concurrently.

18. Aggrieved over the conviction and sentence made by the learned Sessions Judge, Mahila Court, Cuddalore, the present appeal is filed.

19. This appeal amongst other grounds relies mainly on the following grounds:

(i) There is no motive or intention to cause death.

(ii) The evidence of PW1, who is a child, alone is not sufficient to convict the accused.

(iii) When there were other workers present in the building, they have not been examined on the side of the prosecution.

(iv) Even as per the version of PW1, there was a dispute between the accused and his wife resulting in a sudden and grave provocation and therefore the accused cannot be punished for the offence under Section 302 IPC.

20. It is understood that the couple had a strained relationship and the deceased Deivanai in order to safeguard and ensure the education of her children, got them admitted in a school in Mumbai where her parents were living. Reportedly when the daughter Sabita had a tumor for which she was undergoing treatment, the mother Deivanai had brought both her children to her husband's place at Thoravallur, Virudhachalam. That the accused was not in favour of the children studying in Mumbai and his wife not being with him continuously was one of the reasons for dispute between the husband and wife. He had many times gone over to Mumbai to bring her back. The accused, it appears, was also an alcoholic and had no independent source of income causing unrest in the family. It can be also seen from the deposition of the witnesses that the accused was also pressing for a second marriage thereby further deepening the marital discord. In such circumstances, the accused who was drunk on the day of the murder, picked up quarrel with his wife and while committing the murder had told the victims that he is not allowed to live peacefully and only by eliminating them, he would be able to settle down in life, by marrying a second time.

21. The sequence of events as narrated by PW1, the sole eye witness to the occurrence and also the contents of the dying declaration by the victims are totally corroborative. The two contentious issues between the husband and wife were:

(i) The wife living with her parents in Mumbai and the children continuing their education in Mumbai.

(ii) The accused planning to remarry.

The deposition of PW1 and the contents of the dying declarations of both the victims were similar in nature. On the fateful day, what started as a verbal altercation ended up in the gruesome murder.

22. Mr.K.Amirthalingam, learned counsel appearing for the appellant / accused had contended that there was no motive for the appellant to commit a murder and if at all he has committed, it will not fall under the purview of Section 302 since he had done it under grave and sudden provocation. It was also contended that the verbal abuse was mutual and the accused alone cannot be blamed for that. The foul language used by the wife of the accused led to the grave and sudden provocation.

23. However, what is conspicuous is the date of occurrence itself. PW1 had deposed that on the 1st day of their arrival itself his sister was beaten up by his father, in the morning. This clearly shows his state of mind. It was in the same night the fatal attack took place. The accused, it appears, had such grouse against his wife and children that he poured kerosene on them and set them ablaze. The presence of mind of PW1 saved him and also made him crucial eyewitness in the episode. The version of the PW-1 that he fled away from the scene of offence at that point of time when his father, the accused was about to lit the flame on his wife and daughter, is convincing. In such circumstances, the contention of Mr.K.Amirthalingam, learned counsel appearing for the appellant, that there was no motive for the brutal attack is unacceptable. The incident of beating his daughter on the same day in the morning clearly shows that the accused had extreme hatred and animosity against his own kith and kin and therefore his final fatal attack cannot be construed as a grave and sudden provocation. The Learned Counsel for the accused has no convincing reason to substantiate his theory of 'sudden provocation'

24. Secondly, the reliability of the child as a witness was doubted by the learned counsel for the appellant. This court opines that a competent child, who deposes to the facts of a case could be the basis of conviction under Section 118 of the Indian Evidence Act provided that he is able to understand the questions and give the rational answers to those questions. The only precaution the court should bear in mind while assessing the evidence of a child is that the evidence must be a reliable one and his demeanor must be like other competent witness. This precaution is necessary because the child witnesses are amenable to tutoring and are pliable and liable to be influenced easily as they live in a world of make-believe.

25. In the instant case, PW1 lost his own mother and sister to the violent act of his father. The scope of either tutoring him or making him depose something untrue is practically improbable. Moreover, whatever he deposed were the same as narrated by the victims in their dying declarations. Therefore, the contention of the learned counsel for the appellant that PW-1 is not reliable as he is a child, is not acceptable. It is also pertinent to mention at this juncture, the clarity of the deposition of PW1 is significant. In the instant case, all the three family member including the appellant were taken to the Government Hospital, Virudhachalam and were treated by the same Doctor. In their statements made to Doctor Savitha (PW6) who had treated them, they had stated that kerosene was poured by the accused on both the victims causing severe burn injuries to them and in the resultant melee, minor burn injuries were caused to the accused also. Their statements were also recorded in the Accident Register. These statements made by the victims and the accused are similar and have been made at the earliest point of time immediately after the occurrence.

26. Besides all the evidence discussed above, the dying declarations of the victims turned out to be the last nail in the coffin. Dying declaration is a statement of the person who had died explaining the circumstances of his death and is based on the maxim 'Nemo moriturus praesumitur mentire' meaning that 'a man will not meet his maker with lie on his mouth'. The dying declarations are an exception to the rule against the admissibility of the hearsay evidence. Therefore, like any other substantive evidence, dying declaration also requires no corroboration for forming the basis of conviction of an accused. In the instant case, the dying declaration of Deivanai is elaborate giving the reasons for the dispute resulting in the offensive language used by the accused before setting them ablaze. The dying declaration of the minor daughter did not go into the details, but was precise and brief just narrating the incident. This is understandable considering the age of the child. The contents of these dying declarations were found to be totally in consonance with the deposition of PW1 causing no room for any iota of doubt to tilt the case in favour of the accused. Moreover, the Judicial Magistrate - I followed all the procedures and formalities before recording the dying declarations. Dr. Savitha (PW-6) had also certified that the victims were fit and in a conscious state of mind to make statements. This is an open and shut case in which the appellant's guilt is proved beyond reasonable doubt.

27. The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore in SC.No.240 of 2015 are perfectly in order and do not warrant any interference by this Court.

28. In the result,

(i) The Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore dated 07.09.2016 in SC.No.240 of 2015 is confirmed.

(iii) The accused shall surrender before the learned Sessions Judge, Mahila Court, Cuddalore and serve the sentence within 15 days from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Mahila Court,
Cuddalore.

2.The Judicial Magistrate No.I,
Vridhachalam.

3.The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.

4.The Public Prosecutor,
High Court, Madras.

+2cc to M/s.K.Amirthalingam, Advocate Sr.89820

Cr1.A.No.97 of 2018
and
Cr1.Mp.No.2257 of 2018

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srg 25/11/2019