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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
05.04.2019	30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Cr1. A(MD)No.237 of 2017

Manikandan : Appellant/Sole Accused

Vs.

State represented by the
Inspector of Police
Vijanarayanam Police Station
Vijayanarayanam
Tirunelveli District
in Crime No.175/2011
Respondent/Complainant

:

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 08.09.2016 in S.C.No.362/2012 on the file of the IV Additional Sessions Judge, Tirunelveli.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

P.N. PRAKASH, J.

This criminal appeal is filed against the judgment dated 08.09.2016 in S.C.No.362/2012 on the file of the IV Additional Sessions Court, Tirunelveli.

2. By Judgment dated 08.09.2016, the trial Court convicted and sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant has come up in this Criminal Appeal.

3. The prosecution story is short but sour:

The deceased Ishwarya and the appellant were in love and got married against the wishes of their parents. They were blessed with two children. The appellant suspected the fidelity of Ishwarya and quarreled, abused and battered her. On 15.12.2011, around 7 p.m., the appellant made snide remarks touching upon the morality of Ishwarya and picked up a quarrel with her. He poured hot milk over her and not satisfied with that, he doused her with kerosene and set fire to her. Ishwarya came burning out of the house and fell into a stream that was flowing near her house. On seeing this, her neighbours Chinnadurai [P.W.-1] and his son Marimuthu [P.W.-2] came to her rescue and put off the fire. 108 ambulance was called and Ishwarya was sent to the hospital along with her mother-in-law Suseela [not examined].

3.1. Ishwarya was rushed to the Government hospital, Tirunelveli, where she was examined by Dr.Mahalingam [P.W.-8] at 9.00 p.m., on 15.12.2011. Dr.Mahalingam [P.W.-8], in his evidence as well in the accident register [Ex.P-6], has stated that when enquired, Ishwarya stated that her husband (appellant) had intentionally poured hot milk on her. Ishwarya was conscious at the time of examination by Dr.Mahalingam [P.W.-8], as could be seen from the Accident Register [Ex.P-6]. The following injuries have been noted in the Accident Register [Ex.P-6]:

"2.Superficial burns over face, front and back of abdomen

O/E Patient conscious oriented

L/E Superficial burns over Right and Left upper limb, front and back of chest.

Treatment given

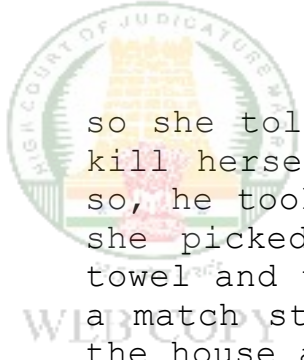
Vital stable

CVS RS - NAD

Admit in Burns Ward DAS"

Ishwarya was admitted as inpatient, where Dr.Sulaiman [P.W.-9] examined her and sent a requisition [Ex.P-7] for recording her dying declaration, pursuant to which, Mr.Palpandian [P.W.-7] Judicial Magistrate No.III, Tirunelveli, came to the hospital at 10.00 p.m. on 15.12.2011 and recorded her dying declaration [Ex.P-4].

3.2. In the dying declaration [Ex.P-4], Ishwarya has stated that her husband would come every day drunk and pick up quarrel with her; he (appellant) would suspect even if she speaks to her neighbour; he would frequently say that she is being kept by this person and that person; on 15.12.2011, around 7.00 p.m., when she was at home, her husband came drunk; her mother-in-law Suseela had gone to the house of her other son; she was boiling milk; her two children had gone with her aunt; there was no one in the house and she; at that time, her husband asked her as to why she has not gone to meet her erstwhile lover; she remained silent; however, again and again, he was repeating the same words;



so she told her that if he continues to speak like that she would kill herself; for that, he said "Now itself you can die"; saying so, he took the hot milk from the stove and poured it on her head; she picked a towel and wiped her body; her husband pulled the towel and took a kerosene bottle and poured kerosene over her, lit a match stick and set her on fire; she hollered and came out of the house ablaze and fell into the stream that was flowing nearby.

3.3. In the dying declaration [Ex.P-4], Dr.S.Vinothkumar [P.W.-10], has certified as follows:

"This is to certify that, the patient was fully conscious and in a fit state of mind, through out the entire recording of dying declaration."

After recording the dying declaration [Ex.P-4], Kanagaraj [P.W.-14] Sub Inspector of Police, came to the hospital and recorded the statement of Ishwarya [Ex.P-1], based on which, he [P.W.-14] registered a case in Vijayanarayanam Police Station Crime No.175/2011 on 16.12.2011 at 01.30 hrs. under Section 307 IPC against the appellant.

3.4. Investigation of the case was taken over by Lingathirumaran [P.W.-15], who went to the place of occurrence and prepared observation mahazar [Ex.P-2] and rough sketch [Ex.P-12]. From the place of occurrence, he seized the following items under the cover of mahazar [Ex.P-3] in the presence of witnesses Chidambaram [P.W.-4] and Subbiah (not examined):

(i) Nissan match box [M.O.-1];

(ii) 375 ml brandy bottle with a little kerosene [M.O.-3];

He [P.W.-15] recorded the statement of Ishwarya in the hospital. After he [P.W.-15] went on leave, the investigation was continued by Radhakrishnan [P.W.-16], Inspector of Police.

3.5. Ishwarya succumbed to the injuries at 18.15 hrs. on 23.12.2011 vide death intimation [Ex.P-8]. Hence, the case was altered from one under Section 307 IPC to one under Section 302 IPC. The body was sent for postmortem and Dr.Selvamurugan [P.W.-13] performed autopsy and issued the postmortem report [Ex.P-10]. In his evidence as well in the postmortem report, he has stated as follows:

"Appearance found at the postmortem:

Moderately nourished body of a female. Finger and toe nails pale.

Infected burns seen over face, neck, both upper limbs, front of chest, upper abdomen and back of chest and abdomen. Burnt area is coated with pus material. Base of burnt area is red in colour. Intra venous treatment wound seen in both ankles.

<https://hcservices.ecourts.gov.in/hcservices/> Findings:

Heart: normal and coronary vessels patent.

Hyoid bone : Intact.



Stomach: Contains 20 ml of mucosal fluid. No specific smell and mucosa pale.

Lungs: Consolidation present in both c/s. pale.

Liver, Spleen, Kidneys, & Brain: normal c/s. Pale.

Small Intestine contains 20ml of yellow colour fluid. No specific smell and mucosa pale.

Bladder: contains 20 ml of urine.

Uterus: normal c/s. empty.

Viscera preserved for chemical analysis.

3.6. After receiving the viscera report, Dr. Selvamurugan [P.W.-13] gave the final opinion vide Ex.P.10 as follows:

"The deceased would appear to have died of complications of antemortem burns."

3.7. Since the death of Ishwarya was within seven years of marriage, Elango [P.W.-12], the Revenue Divisional officer conducted inquest over the body and found that the death of Ishwarya was not on account of dowry harassment vide Ex.P-9 Inquest report. After completing the investigation, Jeya Princess [P.W.-18] Inspector of Police filed the final report in PRC No.56/2012 before the Judicial Magistrate, Nanguneri under Section 302 IPC against the appellant.

3.8. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.362/2012 and was made over to the IV Additional Sessions Court, Tirunelveli for trial. The trial Court framed the charge under Section 302 IPC and when questioned, the appellant pleaded not guilty. To prove the case, the prosecution examined 18 witnesses, marked 14 exhibits and 3 material objects.

3.9. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document was marked on the side of the appellant.

3.10. After considering the evidence on record and on hearing either side, the trial Court, by judgment, dated 08.09.2016, has convicted and sentenced the appellant under Section 302 IPC as stated in paragraph No.2 above, aggrieved by which, the appellant is before this Court with this appeal.

4. Heard Mr.R.Alagumani, learned counsel for the appellant and Mr.R.Anandaraj, learned Additional Public Prosecutor for the respondent State.

<https://hcservices.courts.gov.in/hcservices> 5. The following facts have been proved beyond cavil:

- (a) the deceased Ishwarya was the wife of the appellant;
- (b) they have two children;

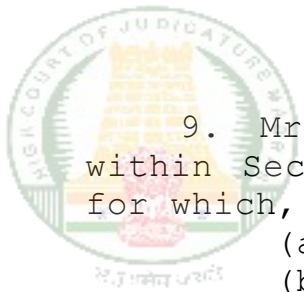


(c) Ishwarya's death was homicidal and occurred due to the burn injuries which were suffered by her on 15.12.2011;

6. To link the appellant with the crime, we have the dying declarations of the deceased Ishwarya given to the Judicial Magistrate and to the police. Her dying declaration is generally corroborated by the evidence of her neighbours Chinnadurai [P.W.-1] and Marimuthu [P.W.-2]. Chinnadurai [P.W.-1] and Marimuthu [P.W.-2] in their evidence have stated that Ishwarya and her husband were living on the western side of their house; Manikandan [appellant] fell in love with Ishwarya and got married to her; the parents of Ishwarya did not come for the wedding; on 15th December 2011, around 8.00 p.m., while they were at home, they saw Ishwarya rushing out of her house in flames; immediately, water was poured on her from a nearby stream and the fire was put off; at that time, the appellant ran out of the house; 108 ambulance was called and Ishwarya was sent along with her mother-in-law Susseela to the hospital. The defence was not able to make any dent in the testimony of these two witnesses. In fact, Marimuthu [P.W.-2] has stated that he also suffered some burn injuries in his hand, but, did not go to the hospital for treatment and instead, got himself treated at home. It was suggested to them that they have not seen the incident and that they only saw Ishwarya coming out of the house with burns. Admittedly, it is not the case of Chinnadurai [P.W.-1] and Marimuthu [P.W.-2] that they witnessed the act of the appellant. It is their evidence that they saw Ishwarya coming out of the house burning and helped her to put off the fire by taking water from the stream that was flowing nearby.

7. Mr. Alagumani, learned counsel for the appellant, contended that Ishwarya did not tell Dr. Mahalingam [P.W.-8] that her husband had poured kerosene and set fire to her and had only stated that he [appellant] had poured hot milk over her.

8. It is true that in the Accident Register copy [Ex.P-6], there is no specific reference to pouring of kerosene and setting fire. It is seen that Ishwarya's mother-in-law Suseela was present with her. That apart, Dr. Mahalingam [P.W.-8] has noticed superficial burns over her face, front and back. Had hot milk alone been poured, there would be scalds and not burns. To the Magistrate, she has clearly stated the sequence of events and when the police came to record her statement, she has given the same version. In Paragraph No.3.2 above, we have given the free English translation of the Dying Declaration [Ex.P-4] given to the Magistrate, which was recorded in Tamil. It may be necessary to state that in this case FIR itself came to be registered only after the dying declaration was recorded by the Magistrate. Hence, the prosecution has proved the case beyond reasonable doubts.



9. Mr.R.Alagumani submitted that the case would not fall within Section 302 IPC, but, would fall within Section 304 IPC, for which, he placed the following submissions:

(a) for eight days, the deceased was alive;

(b) the postmortem report [Ex.P-10] shows that there was only 50% burns;

(c) the final opinion shows that she would have died of complications due to antemortem burns, which means that had she been given proper medical treatment, she would have survived;

(d) the appellant did not have the intention to murder her. It all happened in a sudden quarrel, because, the deceased said that she would kill herself; and

(e) the appellant was arrested immediately and had not absconded;

10. In our opinion, none of the above factors would bring the case within the fold of culpable homicide not amounting to murder. There are overwhelming materials to show that the appellant was continuously suspecting the fidelity of his wife and was indulging in wife battering. Even on the fateful day, he abused her and called her unchaste. When she remained silent, he [appellant] first poured hot milk over her. While she was wiping it with a towel, he took kerosene and poured it over her and set fire to her. The fact that she was seen burning has been clearly established vide the evidence of Chinnadurai [P.W.1] and Marimuthu [P.W.-2], who came to her rescue and put off the fire. It would be preposterous to say that he had no intention to murder her. Even otherwise, his act would fall within Fourthly of Section 300 IPC.

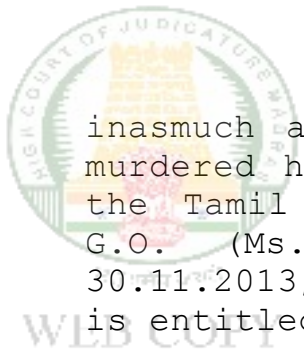
11. As regards the contention of Mr.R.Alagumani that the incident had taken place in a sudden quarrel, we are unable to countenance the same, because, the quarrel was picked up by the appellant and he used it as a pretext to pour hot milk over her and thereafter, poured kerosene over her and set fire to her.

In the result, the criminal appeal is devoid of merits and the same is dismissed and the conviction and sentence imposed by the trial Court vide judgment dated 08.09.2016 in S.C.No.362/2012 are hereby confirmed.

Sd/

30.04.2019

After the judgment was pronounced in this matter, the learned counsel for the appellant brought to the notice of this Court that the appellant has two children, viz., Banusri, aged 10 years and Kavyasri, aged 8 years, who are now studying in Gandhi Gram Children's Home for Boys and Girls, run by Gandhigram Trust in Dindigul and that they have no means to take care of themselves,



inasmuch as, the appellant has been in incarceration for having murdered his wife. He also brought to the notice of this Court the Tamil Nadu Victim Compensation Scheme, 2013, notified vide G.O. (Ms.) No. 1055, Home (Police XII) Department dated 30.11.2013, under which, for loss of life, the victim of the crime is entitled to a maximum of Rs.3 lakhs as compensation.

2 Having carefully considered the submissions of the learned counsel for the appellant, we direct the Government of Tamil Nadu to sanction a sum of Rs.3 lakhs under the Tamil Nadu Victim Compensation Scheme, 2013, in favour of minors, viz., Banusri and Kavyasri, the children of the appellant, within eight weeks from the date of receipt of a copy of this judgment. The said sum of Rs.3 lakhs shall be placed at the disposal of the District Legal Services Authority, Dindigul, in whose jurisdiction, the two children are now residing. The District Legal Services Authority, Dindigul, shall deposit the said amount in a fixed deposit account and spend the quarterly interest arising therefrom for the education and other necessities of the two daughters of the appellant from time to time, without any further reference to this Court. After both the children attain the age of majority, the amount of Rs.3 lakhs shall be equally divided and given to each of them.

3 Apart from the above, under Rule 481 of the Tamil Nadu Prison Rules, 1983, 20% of the wages of a prisoner is required to be credited to the Prison Fund, payable to the victims. Accordingly, we direct the Director General of Prisons, Chennai, to deposit from the Prison Fund, the amount that is due to the two children, viz., Banusri and Kavyasri, within a period of eight weeks from the date of receipt of a copy of this judgment before the District Legal Services Authority, Dindigul, who shall, in turn, spend the same for the welfare of the two children, without any further directions from this Court. If the Prison authorities have already complied with the direction of this Court issued on 21.02.2018 in *E.Athisayakumar vs. The State of Tamil Nadu, through the Secretary to Government, Home (Prison) Department, Secretariat, Fort St. George, Chennai and 7 others (W.P.(MD) No.16822 of 2016)*, it is not necessary for them to comply with the above direction. In any event, they shall send a report to this Court with copies to the District Legal Services Authority, Dindigul, Gandhi Gram Trust, Dindigul and the Child Welfare Committee, Dindigul. The Child Welfare Committee, Dindigul, is also directed to visit the two children periodically and ensure that they get the monetary and all other entitlements given by the State, be it Central Government or State Government, from time to time.

<https://hcservices.hcscourts.gov.in/hcservices/> aware that the appellant's two children are being given Rs.2,000/- per month by the Government of Tamil Nadu, pursuant to the initiatives taken by the Child Welfare Committee,



Dindigul, for which, we record our profound appreciation. The directions given above shall be implemented without prejudice to the grant of Rs.2,000/- per child which is in vogue now.

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sd/
Assistant Registrar(writs)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Nanguneri
2. The Chief Judicial Magistrate,
Tirunelveli
3. The Principal District Judge,
Tirunelveli.
4. The Director General of Police,
Mylapore, Chennai
5. The IV Additional Sessions Judge,
Tirunelveli
6. The Inspector of Police,
Vijayanarayanam Police Station,
Tirunelveli District
7. The Superintendent,
Central Prison,
Palayamkottai
8. The District Collector,
Tirunelveli District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
10. The Record Keeper,
Criminal Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai

Copy to:

<https://hcservices.chus.gov.in/hcservices>
The Chief Secretary
Government of Tamil Nadu
Fort St. George, Chennai 600 009



2 The Home Secretary
Government of Tamil Nadu
Fort St. George, Chennai 600 009

3 The Director General of Prisons
Whannels Road
Egmore, Chennai 600 008

4 The District Legal Services Authority, Dindigul

5 The Child Welfare Committee, Dindigul

6 The Correspondent
Children's Home for Boys and Girls
Sowbaghya Illam
Gandhigram, Dindigul

7. The Gandhigram Trust,
Dindigul

8. The Secretary to Govt.,
Home (Prison) Department,
Secretariat,
Fort St. George, Chennai 9

judgment in
Cr1.A. (MD) No.237 of 2017
30.04.2019

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