



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2019

CORAM:

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**THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CRL.A. [MD] .No.444 of 2017

and

Cr1.MP(MD) .No.9899 of 2017

Ramajayam : Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Kurumbur Police Station,
Thoothukudi District,
Crime No.95 of 2015. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 22.10.2016 made in S.C.No.73 of 2016, on the file of the learned Sessions Judge, Mahalir Neethimandram [Fast Track Court Mahila Court], Thoothukudi.

For Appellant : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
For Mr.R.Venkateswaran

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **The Hon'ble Chief Justice**]

This appeal is directed by the appellant - original accused against the Judgment and order dated 22nd October 2016 passed by the learned Sessions Judge, Mahalir Neethimandram [Fast Track Court Mahila Court], Thoothukudi, in Sessions Case No.73 of 2016. By the said Judgment and order, the learned Sessions Judge convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment. In the said order, the learned Sessions Judge directed the appellant to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for a further period of six months.



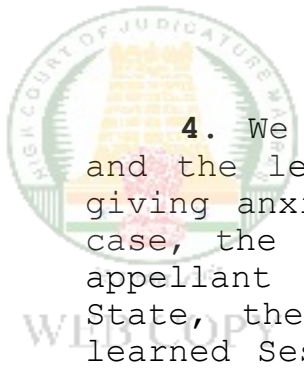
2. The case of the prosecution, briefly stated, is as under:-

2.1. Deceased Dhanalakshmi was the wife of Ramajayam, the appellant herein. They were married about 20 years ago and they were residing at Puraiyoor Village, Tiruchendur Taluk, Tuticorin District. PW-1 - Lakshmanan, the brother of Dhanalakshmi and PW-2 - Thangapushpam, the mother of Dhanalakshmi, were also residing in the same village. The incident occurred on 08.06.2015, at 01.30 p.m, on which day, it is alleged that the appellant poured petrol on his wife - Dhanalakshmi and set her on fire. The motive for the appellant to pour petrol and set her on fire was on account of frequent quarrels, that took place between the appellant and Dhanalakshmi. After the incident, Dhanalakshmi went to the house of her brother with burn injuries. At that time, PW-2 - Thangapushpam, the mother of Dhanalakshmi, was also present. Dhanalakshmi informed them that her husband poured petrol on her and set her on fire. Thereafter, Dhanalakshmi was taken to the Government Hospital, Tiruchendur, where she was admitted. The police came to the hospital at Tiruchendur, where the statement of Dhanalakshmi was recorded by the police, at 04.30 p.m., and the said statement was treated as the complaint [EX-P1]. Thereafter, Dhanalakshmi was shifted to the Government Hospital, Tuticorin.

2.2. PW-14 - Samuvel Benjamin, learned Judicial Magistrate, No.I, Tuticorin, received requisition from the Government Hospital, Tiruchendur, at 18.18 hours, on 08.06.2015, for recording the dying declaration of Dhanalakshmi. Accordingly, in the Government Hospital, at Tuticorin, he recorded the dying declaration of Dhanalakshmi, which is at EX-P13. As both the hands of Dhanalakshmi had burn injuries and thumb impression could not be taken, PW-14 - Samuvel Benjamin obtained the impression of the toe of the right leg of Dhanalakshmi on her dying declaration. Dhanalakshmi expired on 09.06.2015 at 03.00 a.m., in the Government Hospital, Tuticorin. The dead body of Dhanalakshmi was sent for postmortem.

2.3. Dr.T.Mathan Pandian [PW-11] conducted postmortem on the body of Dhanalakshmi and found that she had sustained burn injuries all over the body, except, both the feet. He opined that Dhanalakshmi would appear to have died due to complication arising due to burn injuries. The postmortem certificate has been marked as EX-P12. After completion of the investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Session.

3. Charge came to be framed against the appellant under Section 302 IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is of total denial and false implication. To support its case, the prosecution examined PW-1 to PW-19 and marked EX-P1 to EX-P25 and four material objects. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in Paragraph No.1, above, hence, this appeal.



4. We have heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor for the State. After giving anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor for the State, the evidence on record and the judgment delivered by the learned Sessions Judge, for the reasons stated hereinbelow, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt.

5. In order to prove its case, the prosecution has mainly relied on the evidence of PW-1 - Lakshmanan, the brother of Dhanalakshmi, PW-2 - Thangapushpam, the mother of Dhanalakshmi, PW-3 - Jeyakala, the daughter of Dhanalakshmi and PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin. PW-1 - Lakshmanan has stated that Dhanalakshmi is his younger sister and the appellant is his brother-in-law. They were married about 20 years prior to the incident. About 15 days prior to the incident, Dhanalakshmi and her husband came from Angola situated in Karnataka State, where they were doing business. On the date of incident, at about 02.00 p.m., his sister came to his house with burn injuries. At that time, his mother - PW-2 - Thangapushpam was also present at home. His sister told them that her husband poured petrol on her and set her on fire. They immediately called an Ambulance and took Dhanalakshmi to the Government Hospital, Tiruchendur and admitted her. The police came to the hospital and recorded the statement of his sister in the hospital.

6. As far as PW-1 - Lakshmanan is concerned, he has admitted that he had not told the doctor as to how his sister - Dhanalakshmi sustained burn injuries. He has further stated in the cross-examination that neither his mother - PW-2 - Thangapushpam nor his sister have told about this. He has also admitted that his sister - Dhanalakshmi told him that she was cooking on firewood stove. Had it been the case that Dhanalakshmi had told either her brother or her mother that her husband had poured petrol on her and set her on fire, PW-1 - Lakshmanan would have informed the doctor or if not, her mother - PW-2 - Thangapushpam would have informed the doctor. However, PW-1 - Lakshmanan has admitted that neither he nor his mother nor his sister have informed the doctor as to how the incident occurred. The evidence of PW-2 - Thangapushpam is on similar line as that of PW-1 - Lakshmanan.

7. We would now advert to the evidence of PW-9 - Dr.Aravindh Dhasarathan, who was attached to the Government Hospital, Tiruchendur. He has stated that on 08.06.2015, at about 04.00 p.m., a woman patient - Dhanalakshmi was brought to the hospital in Ambulance and she had sustained burn injuries. He, then, informed the Tiruchendur Police Station regarding this fact. The Accident Register [EX-P6] was recorded by PW-9 - Dr.Aravindh Dhasarathan. He is the first doctor, who examined Dhanalakshmi, when she was brought to the hospital and he is the very same doctor, who had recorded the



Accident Register [EX-P6]. It is pertinent to note that there is no mention in the Accident Register [EX-P6] of homicidal burns or that the husband of Dhanalakshmi had set her on fire. This aspect is totally silent in the Accident Register, [EX-P6], which raises a serious doubt about the veracity of the prosecution case.

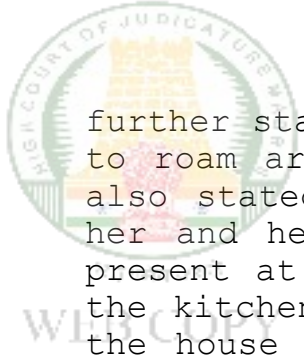
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8. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, placed strong reliance on the evidence of PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin. The learned Additional Public Prosecutor pointed out that PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin, has stated that he received requisition from the Government Hospital, Tiruchendur, at 18.18 hours, on 08.06.2015, for recording the dying declaration of Dhanalakshmi. At that time, PW-10 - Dr.Dalton Jebaraj was on duty. The learned Judicial Magistrate has stated that he got patient - Dhanalakshmi examined by the doctor and certified that she was in a fit state of mind to give dying declaration. Accordingly, PW-10 - Dr.Dalton Jebaraj gave the said certificate. Thereafter, he recorded the dying declaration of Dhanalakshmi. As both the hands of Dhanalakshmi had burn injuries and as the thumb impression could not be taken, he obtained the impression of left leg of the patient with the help of nurse - Renganayagi.

9. No doubt, PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin, has stated that he recorded the dying declaration of Dhanalakshmi, which is marked as EX-P13. In this dying declaration, Dhanalakshmi has stated that her husband had poured petrol on her and set her on fire. However, in relation to the evidence of PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin, we would like to refer to the evidence of PW-2 - Thangapushpam, who is the mother of Dhanalakshmi. She has stated in the cross-examination that six months prior to the occurrence, her daughter was suffering from illness and she was not able to speak. She has further stated that it is correct to state that she speaks only by action. She has also stated that since five or six years back, she was mentally ill. In such case, the evidence of PW-14 that Dhanalakshmi gave a statement before him, which he recorded, appears unreliable.

10. Moreover, in view of the above categorical statement made by PW-2 - Thangapushpam, the mother of Dhanalakshmi, that Dhanalakshmi was mentally ill, we find much merit in the submission made by the learned Senior Counsel for the appellant that Dhanalakshmi was not in a sound mental condition, hence, there is every possibility that she was suffering from some illusion or hallucination due to which, she might have informed that her husband had poured petrol on her and set her on fire.

11. We would also like to advert to the evidence of PW-3 - Jeyakala, who is the daughter of Dhanalakshmi. PW-3 - Jeyakala has stated that she was aged 16 years at the time of incident. She has



further stated that her mother's body was always trembling. She used to roam around the house without sitting in single place. She has also stated that when her mother was cooking, kerosene spilled on her and her mother caught fire. At that time, her father was not present at home. On hearing the sound, she saw her mother lying in the kitchen, hence, she poured water on her and took her mother to the house of her grandmother - PW-2 - Thangapushpam. Thereafter, her father came to the house of grandmother and called the Ambulance. Thereafter, her mother was taken to the hospital.

12. Had it been the case that the appellant had set Dhanalakshmi on fire, Dhanalakshmi would have certainly told her daughter - PW-3 - Jeyakala about this fact. Even if Dhanalakshmi would not have informed her daughter - PW-3 - Jeyakala about this, her daughter would have certainly enquired from her mother as to how she sustained burn injuries, whereupon Dhanalakshmi would have informed her daughter that her husband had poured petrol on her and set her on fire. It is to be noted that PW-3 - Jeyakala has not been declared hostile. Thus, it is seen that first in point of time either in the evidence of PW-3 - Jeyakala or PW-9 - Dr.Aravindh Dhasarathan, who first treated Dhanalakshmi, there is no mention at all of the appellant setting Dhanalakshmi on fire.

13. The prosecution, thereafter, has placed reliance on the complaint [EX-P1], which, according to the prosecution, is another dying declaration given by Dhanalakshmi to the police. PW-1 - Lakshmanan, the brother of Dhanalakshmi, has stated that Dhanalakshmi put her signature on the dying declaration/complaint [EX-P1]. However, the evidence of PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin, clearly shows that both the hands of Dhanalakshmi had burn injuries and therefore, her thumb impression could not be taken. The evidence of PW-11 - Dr.Mathan Pandian also shows that except both the feet, there were burn injuries all over the body of Dhanalakshmi and in such a case, the evidence of PW-1 - Lakshmanan that Dhanalakshmi put her signature on the dying declaration/complaint [EX-P1] cannot be believed. Looking to the evidence of PW-14 - Samuvel Benjamin, Judicial Magistrate No.I, Tuticorin and PW-11 - Dr.Mathan Pandian, we do not find it at all believable that Dhanalakshmi would have given such a statement and thereafter, put her signature thereon. Thus, we find that EX-P1 is also suspect, hence, we are not inclined to take it into consideration.

14. Thus, looking to all the above facts, we are of the view that the prosecution has not proved its case against the appellant beyond reasonable doubt, hence, we are inclined to acquit the appellant.



15. In the result,

- this Criminal Appeal is allowed;
- the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahalir Neethimandram [Fast Track Court Mahila Court], Thoothukudi, in S.C.No.73 of 2016, dated 22.10.2016, is set aside and the appellant is acquitted of the charge framed against him.
- Since the appellant is in jail, he is directed to be set at liberty forthwith, unless his custody is required in connection with any other case.
- Fine amount, if any paid, shall be refunded to him.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

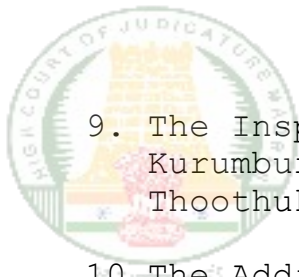
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Sub Assistant Registrar(CS-)

NB/RSB

To

- 1.The Principal District Judge,
Thoothukudi.
- 2.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahila Court,
Thoothukudi.
- 3.The Chief Judicial Magistrate,
Thoothukudi.
- 4.The Judicial Magistrate,
Srivaikundam.
- 5.The District Collector,
Thoothukudi.
- 6.The Director General of Police,
Mylapore, Chennai-4.
- 7.The Commissioner of Police,
Thoothukudi.
- 8.The Superintendent,
Central Prison, Palayamkottai.



9. The Inspector of Police,
Kurumbur Police Station,
Thoothukudi District.

10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

11. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai. (**2copies**)

+1 CC to M/s.R.VENKATESWARAN, Advocate
(SR-63052[F] dated 26/04/2019)

**JUDGMENT MADE IN
CRL.A. [MD].No.444 of 2017
25.04.2019**

ES/02.07.2019/7P/14C