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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL.A (MD)No.88 of 2018

R.Selvaraj .. Appellant/Defacto Complainant

-vs-

1. Edwin Arockiaraj1st Respondent/Accused

2. State represented by
The Inspector of Police
Thanjavur East Police Station
[in Cr.No.126/2010] .. 2nd Respondent/Complainant

Criminal Appeal filed under proviso to Sections 397(3) and 401 of the Code of Criminal Procedure against the judgment passed by the Additional District & Sessions Judge cum Essential Commodities Special Court, Thanjavur in S.C.No.211 of 2010 dated 31.01.2011.

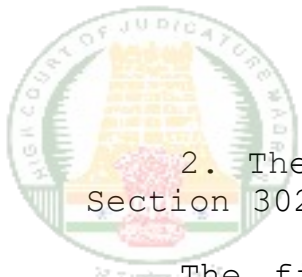
For Appellant : Mr.Calvin Christopher for
M/s S.P.Samuel Raj

For Respondents : Mr.A.Arun Prasad for R1
Mr.R.Anandaraj
Additional Public Prosecutor
for R2

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The appellant herein is the de-facto complainant and aggrieved by the judgment of acquittal dated 31.01.2011 passed in favour of the first respondent, who was absolved of the charge under Section 302 of IPC, by the learned Additional District & Sessions Judge cum Essential Commodities Special Court, Thanjavur in S.C.No.211 of 2010, he originally filed the Criminal Revision Case (MD) No.665 of 2011. This Court, by order dated 17.1.2018, converted the criminal revision case into criminal appeal by virtue of the proviso inserted to Section 372 of Cr.P.C. by way of amendment with effect from 31.12.2009, which gives right of appeal to the victim. Accordingly, the Criminal Revision Case (MD) No.665 of 2011 stood converted as Criminal Appeal (MD) No.88 of 2018 and the same has been taken up for final hearing.



2. The first respondent was tried on a charge of murder under Section 302 of IPC based on the following prosecution case:-

The first respondent/accused is the husband of the deceased. P.W.1 and P.W.2 are the father and mother of the deceased. P.W.3 is the brother of P.W.2. After the deceased was given in marriage to the first respondent/accused in the year 2000, frequent quarrels arose between them and they were mediated. While so, on 8.3.2010, at about 12.30 P.M., when the deceased was preparing food, one Arivu @ Punniyamurthi, a financier, came to the house of the deceased and demanded repayment of the loan amount from the deceased, for which the deceased replied that the money would be given on the next day. However, doubting the fidelity of his wife, the first respondent/accused poured kerosene on her body and set her on fire.

2.2. On the basis of telephonic message received by P.W.1 from Karthiga-P.W.4, who is the brother's wife of the accused that the deceased was set on fire, P.Ws.1, 2 & 3 came to Thanjavur Vinodagan Memorial Hospital and saw the deceased and at that time, they found the deceased unable to speak. Immediately P.W.1 went to the Thanjavur East Police Station and gave a complaint, Ex.P1. P.W.15-Tmt.Jayanthi, Sub Inspector of Police, Thanjavur East Police Station, on receipt of the complaint, Ex.P1 from P.W.1 on 8.3.2010, registered the First Information Report, Ex.P10 in Crime No.126 of 2010 for the offence under Section 498-A of IPC on the same day. Thereafter, P.W.15 visited the place of occurrence and prepared the Observation Mahazar, Ex.P11 and also drew a rough sketch, Ex.P12 in the presence of P.W.6-Saravanan & P.W.7-Kshtriyam, who also appended their signature in Exs.P2 to P5.

2.3. P.W.15-Sub Inspector of Police also recovered one yellow colour five litre kerosene can along with two match sticks, one match box, burnt piece of cloth, cotton lungi, burnt wire bag from the scene of occurrence marked as M.Os.2 to 6 under Ex.P13 mahazar and also sent the seized material objects under Form-95 through Ex.P14 for chemical analysis. On the basis of the statement given by the deceased at Vinodagan Memorial Hospital, P.W.15 altered the offence from Section 498-A IPC to Section 307 IPC and handed over the investigation to the Inspector of Police.

2.4. P.W.17-Inspector of Police, Thanjavur East Police Station, after taking up further investigation of the case from P.W.15, proceeded to Thanjavur Vinodagan Memorial Hospital and recorded the statement of the deceased. Thereafter, he also examined P.Ws.1, 2, 4, 5, other witnesses and the Sub Inspector of Police, P.W.15 and recorded their statements. In the meanwhile, on the basis of information received from Thanjavur Vinodagan Memorial Hospital about the passing of the deceased on 20.3.2010 at 5.30 P.M., he altered the offence to one under Section 302 IPC and sent the express First Information Report, Ex.P16 to the Court through the Head Constable No.788-Murugesan. Thereafter, he conducted inquest



over the body of the deceased in the presence of P.Ws.1,2,3 and panchayatdars and prepared the inquest report, Ex.P17. He also sent the body to the Thanjavur Government General Hospital for conducting post-mortem through the Head Constable No.1452-Baskaran, P.W.14.

2.5. P.W.10-Dr.Arulselvi, on receipt of the requisition from P.W.17, conducted post-mortem on the body and opined that the deceased would appear to have died due to effects and complications of extensive burns.

2.6. In the meanwhile, P.W.17, after recovering the dhoti, M.O.1 under Ex.P9 forwarded the same to the Court under Form-95 through Ex.P18 and handed over the body to the relatives. On 24.3.2010 near Thanjavur New Bus Stand, P.W.17 arrested the accused in the presence of P.Ws.11 and 12 and also recorded the confession statement from the accused. Thereafter, he remanded the accused to judicial custody under Ex.P21. After completion of investigation, P.W.17-Inspector of Police laid the charge sheet against the accused under Section 302 IPC.

3. To prove their case, the prosecution examined P.W.s 1 to 17, marked Exs.P-1 to P-22 and M.O.s 1 to 6. When the accused was questioned under Section 313(1)(a) of Cr.P.C., as to the incriminating materials appearing against him in the case projected by the prosecution, he denied the same as false. He also submitted that the police personnel have brought him from the hospital and he is having the witness to speak in his favour regarding the same. On the side of the accused, one Dr.A.R.Sampath was examined as A.W.1 and the Accident Register pertaining to the accused was marked as Ex.A1.

4. The trial Court, on consideration of the entire evidence, both oral and documentary, held that the prosecution has miserably failed to establish its case beyond reasonable doubt and giving the benefit of doubt in favour of the accused, acquitted him of the charge under Section 302 IPC. Challenging the said judgment of acquittal, the appellant/de facto complainant/father of the deceased, is before us.

5. Learned counsel appearing for the appellant, finding fault with the findings recorded by the trial Court, argued that the trial Court has committed a serious error in acquitting the accused under Section 302 IPC when the ingredients of offence have been proved with overwhelming evidence let in by the prosecution. It was further pleaded that the trial Court ought to have seen that when P.Ws.1, 2, 3, being the father, mother and maternal uncle of the deceased have rightly spoken that the accused only was responsible for causing the death of his wife, as entertaining a stale doubt that she was having an illicit relationship with one Arivu @ Punniyamurthi, the accused poured kerosene and set her on fire. It is the further submission of the learned counsel that the dying declaration as recorded by the Judicial Magistrate, P.W.16 has pointed the finger on the accused, which has been completely brushed aside by the trial



Court. Moreover, when the occurrence took place in the house of the accused, presumption under Section 114 of the Evidence Act always goes against the accused, unless he proves the same to the satisfaction of the Court. When the evidence of P.Ws.1 to 3 are reliable and inspire confidence, which unerringly points to the guilt of the accused, the trial court is bound to return a verdict of conviction in the absence of materials disproving the prosecution case. Therefore, the judgment of acquittal passed by the trial Court is liable to be set aside.

6. We have heard the learned counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for the second respondent and also carefully perused the materials available on record.

7. The prosecution case, as per the deposition of P.W.1, was that on 8.3.2010, P.W.4-Karthiga, the brother's wife of the accused, telephonically informed him that the deceased was set on fire and when P.Ws.1 and 2 came to Thanjavur Vinodagan Memorial Hospital at 6.30 P.M., to see their daughter, she was not in a condition to speak due to the burn injuries and suspecting foul play, P.W.1 went to the police station and gave the complaint, Ex.P1. When he enquired his daughter on the next day at 7.00 P.M., after the Judicial Magistrate left the hospital along with P.W.2, they were informed by their daughter that at about 3.00 P.M., on 8.3.2010, when her husband, the first respondent herein, in an inebriated condition, was quarelling with her, P.W.8, financier came to the house and demanded the repayment of the loan amount and that she had informed him that his money would be repaid on the next day. However, suspecting her fidelity, the first respondent tried to assault her and also poured kerosene on her body and set her on fire. The said version of P.W.1 was supported by P.W.2. Although the learned counsel appearing for the appellant heavily relied upon the evidence let in by P.Ws.1 to 3 to support the case of the prosecution, it has to be mentioned herein that they are related to the deceased and as such are interested witnesses. They have not witnessed the occurrence and no independent witness has been produced to support the evidence of P.Ws.1 and 2. Though it was the version of the prosecution that there used to be frequent quarrel between the first respondent and the deceased over the last ten years, however, no substantial piece of evidence was let in before the trial Court to support the said version.

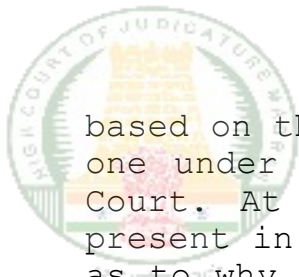
8. As per the version of P.W.3, who is the maternal uncle of the deceased, when he enquired the deceased on 9.3.2010 at 9.00 P.M., as to what had happened, she informed him that when she was cooking food around noon on the previous day, her husband came to the house after consuming liquor and informed that her services were not required any more and that he can take care of his children, as he was in a relationship with another woman and when the deceased



was called upon by the money lender relating to the repayment of the loan, the first respondent/husband, after shouting at her as to who he was, poured kerosene on her and set her on fire. In the case on hand, in respect of the alleged occurrence, P.Ws.1 and 2 have projected one story at 8.00 P.M., and P.W.3 has projected another story at 9.00 P.M., within a span of one hour difference, which is totally unbelievable, creating a doubt in the mind of the Court as to whether the deceased would have stated about the occurrence at all to P.Ws. 1 to 3. Therefore, the trial Court was justified in rejecting the said story of the prosecution.

9. Coming to the reliance placed by the learned counsel appearing for the appellant on the dying declaration, Ex.P15 recorded by Mrs.Jayanthi, learned Judicial Magistrate, P.W.16 on 9.3.2020 at 7.00 P.M., at the Thanjavur Vinodagan Memorial Hospital, as per the deposition made by the doctor-P.W.9, the deceased was brought to the hospital with burn injuries by her mother-in-law Sagaya Mary, who was not examined, and when he examined the patient at 5.10 P.M., on 8.3.2010, she was in a conscious state of mind and she informed him that she had poured kerosene onto herself and committed self immolation and that she was brought with 90% second and third degree burn injuries and that he admitted her as an in-patient and issued the Accident Register, Ex.P6. It is also his evidence that he immediately sent a requisition under Ex.P7 to the police for making arrangements for recording her dying declaration. However, it is not known as to why no steps were taken by the prosecution to record the dying declaration of the deceased immediately on receipt of the requisition, Ex.P7 from the doctor-P.W.9 on 8.3.2010. At the same time, it may not be proper for this Court to brush aside the contents of Exs.P6 and P7 also, as they were recorded on 8.3.2010 itself before the alleged dying declaration came to be recorded by the Judicial Magistrate, P.W.16 on 9.3.2010 at 7.25 P.M. Moreover, according to the deposition of P.W.16, on receipt of information from the Vinodagan Memorial Hospital at 8.00 P.M., on 8.3.2010, she immediately rushed to the hospital, but she could not get any answer from the deceased, therefore, she came back to her place. Therefore, much credence cannot be given to the alleged dying declaration said to have been recorded by P.W.16 on the next day, ignoring the evidence let in by the doctor, P.W.9 requesting the police to make arrangements for recording the dying declaration of the deceased through Ex.P7. But the prosecution has miserably failed to take immediate steps to record the dying declaration on the same day of occurrence.

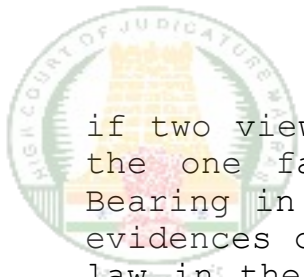
10. Even the evidence of P.W.15, Sub Inspector of Police does not corroborate with the evidence of P.W.16 in this regard. According to the deposition of P.W.15, Sub Inspector of Police, when she visited the Vinodagan Memorial Hospital on 9.3.2010 between 5.30 P.M. and 6.00 P.M., she was informed by the deceased that her husband only poured kerosene on her body and set her on fire and



based on the said confessional statement, she altered the offence to one under Section 307 IPC and sent the report under Ex.P15 to the Court. At the time of enquiry by P.W.15, P.Ws.1 and 2 were also present in the hospital. Again the prosecution has failed to explain as to why they have not got the dying declaration recorded from the deceased when she was in a conscious state of mind. Moreover, when the deceased on the previous day had informed the doctor P.W.9 that she only poured kerosene onto herself and committed self immolation, it can be safely presumed that without the advice given by P.Ws.1, 2 and other relatives, she could not have changed her mind to implicate her husband.

11. It may not be out of context to mention herein that according to the deposition of P.W.1, when the father of the first respondent attempted to prevent his son from quarrelling with his daughter-in-law, he had pushed his father away and poured kerosene on his wife's body. But the prosecution, for reasons best known, has failed to examine the father of the first respondent as a witness in this case, who is said to have witnessed the occurrence according to the evidence of P.W.1. However, when the first respondent was questioned under Section 313(1)(a) of Cr.P.C., he had stated before the trial Court that his wife was a sensitive person and when he came to the house on 8.3.2010 and went to bed without taking lunch, his wife scolded him for such an act and immediately poured kerosene onto herself and committed self immolation. When the first respondent and his father went to rescue her, both of them sustained burn injuries and they were admitted to the Thanjavur Government Hospital as in-patients. To support the said version of the first respondent, Dr.Sampath, who was examined as A.W.1, has deposed that while he was on duty on 8.3.2010 in the Thanjavur Government Hospital at about 4.45 P.M., the deceased was brought in 108 ambulance to the hospital and he was informed by the first respondent that when he attempted to save his wife from committing suicide, he sustained burn injuries. Based on his statement, he admitted the first respondent as in-patient and also issued the Accident Register, Ex.A1 opining that the injuries found on the body of the first respondent could have been sustained while attempting to save a person. The prosecution having not examined the father and the children of the first respondent as witnesses to the case, for reasons best known, the story projected by the prosecution has been rightly rejected by the trial Court holding that the contradictions in the evidence of the prosecution witnesses coupled with the documentary evidence clearly show that the prosecution has not proved the case beyond reasonable doubt and the trial Court, rightly giving the benefit of doubt in favour of the first respondent, had acquitted him of the charge under Section 302 IPC.

12. The Apex Court has time and again restated the settled principles that under normal circumstances, the order of acquittal cannot be interfered with by the appellate court, on the ground that



if two views are possible on the evidence adduced in the case, then the one favourable to the accused may be adopted by the Court. Bearing in mind these well settled principles, when we analysed the evidences on record, we find that there is no perversity of facts or law in the judgment, therefore, we are unable to take any contrary view. Useful reference can be had from the judgment of the Hon'ble Supreme Court in *Tota Singh v. State of Punjab*, (1987) 2 SCC 529, wherein it has held as follows:-

"6...The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

Again the Hon'ble Supreme Court in yet another judgment in *Bhagwan Singh & others v. State of M.P.*, (2002) 4 SCC 85, while reiterating one of the fundamental principles of criminal jurisprudence that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, has held as follows:-

"7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

13. This Court, keeping in mind the settled principles, on a careful consideration of the evidence adduced in the case on hand, finds that the judgment of acquittal passed by the trial Court in favour of the first respondent requires no interference.



Accordingly, finding no merits whatsoever, the criminal appeal fails and it is dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Additional District &
Sessions Judge cum Essential
Commodities Special Court
Thanjavur.
- 2.The Chief Judicial Magistrate, Thanjavur District.
- 3.The Principal District Judge, Thanjavur.
- 4.The Judicial Magistrate No.1, Thanjavur.
- 5.The District Collector,
Thanjavur District.
- 6.The Director General of police,
Mylapore, Chennai-4.
7. The Inspector of Police
Thanjavur East Police Station
Thanjavur
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court
Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

Criminal Appeal No.(MD) No.88 of 2018
06.02.2020

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