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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.A.NO.23 OF 2019

Pazhaniammal

.. Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police
Pudupettai Police Station
Cuddalore
Cr.No.228/2008

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 10.12.2018 made in S.C.No.220 of 2016 passed by the learned Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.R.Rajasekaran

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

(Delivered by P.N.PRAKASH, J.)

This criminal appeal is directed against the judgment and order of conviction and sentence dated 10.12.2018 passed by the Sessions Judge, Mahila Court, Cuddalore, in S.C.No.220 of 2016.

2. The prosecution story runs thus :

2.1. The deceased Datchayani was married to one Ramesh and was living in her matrimonial home in MGR Nagar, Panapakkam village. Her parents-in-law viz., Kaliyaperumal (P.W.1) and Krishnaveni (P.W.2) were also living in the same house. Ramesh used to go for work and would return very late in the evening. Datchayani and Ramesh were childless.

2.2. Iyyanar (A1) and his wife Pazhaniammal (A2) were living in the opposite house of Datchayani in the same village. Since Datchayani was very friendly with everyone in the neighbourhood,



her friendliness was misinterpreted by Pazhaniammal (A2), who suspected that Iyyanar (A1) was having an affair with Datchayani and very frequently, she used to pick up quarrels with Datchayani. On account of this, Kaliyaperumal (P.W.1) took Datchayani to Puducherry, where he was employed and in the last week of July 2008, he brought Datchayani back to Panapakkam village, in connection with the local temple festivities.

2.3. It is alleged that on 31.07.2008, around 6.00 a.m., a quarrel ensued between Datchayani and Pazhaniammal (A2) and as a sequel, Datchayani went inside her house, doused herself with kerosene and committed self-immolation. She was immediately rushed to the Government Hospital, Panruti by Ramesh, where, she was examined by Dr.Nagaraj (P.W.5) at 07.20 a.m. on 31.07.2008.

2.4. In the evidence of Dr.Nagaraj (P.W.5) as well in the copy of the Accident Register (Ex.P3), it is stated as follows :

"Brought by : Husband (Ramesh)

History of the patient : Kerosene self burn at 06.00 a.m. Today at her home. On examination, conscious."

Since Datchayani was suffering from extensive burns, she was referred to the Government Hospital, Cuddalore, for better treatment and from there, she was shifted to the JIPMER hospital, Puducherry.

2.5. At the request of the police, Mohammed Farook (P.W.7), Judicial Magistrate, Puducherry, went to the JIPMER hospital at 02.30 p.m. on 01.08.2008 and recorded the dying declaration of Datchayani, which was marked as Ex.P5.

2.6. In the said dying declaration (Ex.P5), Datchayani has stated that Iyyanar (A1) and Pazhaniammal (A2) picked up a quarrel with her and thereafter, while she was washing vessels, they came and poured kerosene on her and set fire to her. Datchayani succumbed to the injuries on 05.08.2008 at 02.30 a.m. in the JIPMER hospital.

2.7. On a written complaint (Ex.P1) given by Kaliyaperumal (P.W.1) to Thairiyasamy (P.W.8), Sub Inspector of Police, a case in Pudupet P.S.Crime No.228 of 2008 was registered on 05.08.2008 at 08.15 a.m. under Section 174 Cr.P.C.

2.8. Investigation of the case was taken over by Kalimullah Sha (P.W.9), Inspector of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P8) and rough sketch (Ex.P9). From the place of occurrence, the I.O. (P.W.9) seized an old 5 ltr. plastic can under the cover of a mahazar (Ex.P10). He conducted inquest over the body of Datchayani and



the inquest report was marked as Ex.P7.

2.9. Autopsy on the body of Datchayani was performed by Dr.Mukundan (P.W.6), who in his evidence as well in the post-mortem certificate (Ex.P4), has stated as follows :

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

2.10. After examining some witnesses, the I.O. (P.W.9) altered the case from one under Section 174 Cr.P.C. to Section 306 IPC vide alteration report (Ex.P11) dated 21.08.2008. After examining witnesses and collecting various reports, including the dying declaration (Ex.P5), the I.O. (P.W.9) completed the investigation and filed a final report in P.R.C.No.15 of 2016 on 31.08.2016 in the Court of the Judicial Magistrate No.II, Panruti, for the offence under Section 306 IPC against Iyyanar (A1) and his wife Pazhaniammal (A2).

2.11. When the committal Magistrate issued process to Iyyanar (A1) and Pazhaniammal (A2), it came to the notice of the Magistrate that Iyyanar (A1) had died four years prior to 31.08.2016, despite which, the police appear to have filed the final report against Iyyanar (A1) also.

2.12. Be that as it may, on the appearance of Pazhaniammal (A2), the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Cuddalore in S.C.No.220 of 2016 and was made over to the Mahila Court, Cuddalore, for trial.

2.13. The trial Court ploughed through the records and framed two charges viz., one under Section 306 IPC and the other under Section 302 IPC against Pazhaniammal (A2). When questioned, Pazhaniammal (A2) pleaded "not guilty".

2.14. To prove the case, the prosecution examined 9 witnesses and marked 11 exhibits. When Pazhaniammal (A2) was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against her, she denied the same. No witness was examined on the side of Pazhaniammal (A2) nor any document marked.

2.15. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.12.2018, in S.C.No.220 of 2016, acquitted Pazhaniammal (A2) of the offence under Section 306 IPC, but, convicted her of the offence under Section 302 IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.20,000/-, in default to undergo 2 years rigorous imprisonment. Aggrieved by



the said conviction and sentence Pazhaniammal (A2) has preferred this appeal.

3. Heard Mr.R.Rajasekaran, learned counsel for Pazhaniammal (A2) and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. The short point that falls for consideration is, whether the conviction and sentence of Pazhaniammal (A2) for the offence under Section 302 IPC can be sustained.

5. Pertinent it is to state here that the State has not challenged the acquittal of Pazhaniammal (A2) of the offence under Section 306 IPC.

6. Kaliyaperumal (P.W.1) and Krishnaveni (P.W.2), in their evidence, have stated that Iyyanar (A1) and Pazhaniammal (A2) used to frequently harass their daughter-in-law Datchayani by making lewd comments about her morality; therefore, they took Datchayani to Puducherry, where Kaliyaperumal (P.W.1) was employed; in the last week of July 2008, Kaliyaperumal (P.W.1) brought Datchayani back to the village, in connection with the local temple festival; while that being so, on 31.07.2008, Datchayani committed self-immolation in their house, after she had a quarrel with Iyyanar (A1) and Pazhaniammal (A2).

7. Kaliyaperumal (P.W.1) and Krishnaveni (P.W.2) have not stated that it was Iyyanar (A1) and Pazhaniammal (A2) duo, who had set fire to Datchayani.

8. From the evidence of Dr.Nagaraj (P.W.5) and from the copy of the accident register (Ex.P3), it is evident that Datchayani was taken to the Government Hospital, Panruti, by Ramesh. At the time of admission in the hospital, they clearly stated that Datchayani had committed self-immolation. Strangely, Ramesh was not examined by the prosecution for the reasons best known to them.

9. Now, coming to the dying declaration (Ex.P5) that was recorded on 01.08.2008, it is true that Datchayani has implicated her neighbours viz., Iyyanar (A1) and Pazhaniammal (A2). She has also stated in the dying declaration (Ex.P5) that this incident is known to her husband (Ramesh), one Subramani, Jayakodi and driver Siva.



10. Strangely, except Jayakodi (P.W.3), the other persons named by Datchayani in the dying declaration (Ex.P5), were not examined. Jayakodi (P.W.3), in her evidence, has clearly stated that after Datchayani had a quarrel with Pazhaniammal (A2), she (Datchayani) went inside her house and set fire to herself and thereafter, she (Jayakodi-P.W.3) accompanied her (Datchayani) to the hospital; she (Jayakodi-P.W.3) has not stated that it was the accused, who has set fire to Datchayani.

11. Though corroboration is not always required for sustaining a dying declaration, yet, when there are other collateral evidences to dispel the veracity of the dying declaration, the dying declaration need not be accepted as a gospel truth. Admittedly, Datchayani was alive from 31.07.2008 to 05.08.2008. In such view of the matter, we are afraid that we cannot confirm the conviction and sentence of Pazhaniammal (A2) for the offence under Section 302 IPC.

12. Coming to the charge under Section 306 IPC, this is not a case where presumptions under Section 113-A and 113-B of the Evidence Act, 1872, could be invoked. Even according to the testimonies of Kaliyaperumal (P.W.1) and Krishnaveni (P.W.2), Pazhaniammal (A2) used to connect her husband Iyyanar (A1) with Datchayani and quarrelled with her. This, by itself, is not enough for mulcting criminal liability on Pazhaniammal (A2), for the offence of abetment of suicide without anything more. Therefore, the evidence on record is insufficient to alter the conviction to Section 306 IPC.

In the result, this criminal appeal is allowed and the judgment and order of conviction and sentence dated 10.12.2018 passed by the Sessions Judge, Mahila Court, Cuddalore, in S.C.No.220 of 2016, is set aside. Pazhaniammal (A2) is directed to be released forthwith unless her detention is required in connection with any other case. Fine amount, if any, paid by her shall be refunded.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge
Mahila Court, Cuddalore
2. Do Through The Principal Sessions Judge,
Cuddalore.
3. The Judicial Magistrate-II,
Panruti, Cuddalore District.
4. Do Through The Chief Judicial Magistrate,
Cuddalore.
5. The Inspector of Police
Pudupettai Police Station
Cuddalore
6. The Superintendent,
Central Prison for Women,
Puzhal, Chennai.
7. The District Collector,
Cuddalore.
8. The Director General of Police,
Mylapore, Chennai-4.
9. The Public Prosecutor,
High Court, Madras-104.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.R.Rajasekaran, Advocate, S.R.No.44113

CRL.A.No.23 of 2019

GJ(CO)
CS/03/09/2021