



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
28.09.2021

Date of Pronouncing Order
04.10.2021

WEB COPY

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.268 of 2016

Packirisamy

...Appellant

Vs.

The State rep.by
The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.
(Crime No.40 of 2013)

...Respondent

PRAYER : Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records in S.C.No.68 of 2013 on the file of Sessions Judge, (Fast Track Mahila Court, Nagapattinam) dated 09.02.2016 and set aside the same.

For Appellant : Mr. B. Harish
for M/S.K.M. Vijayan Associates

For Respondent : Mr. S. Vinoth Kumar,
Government Advocate

J U D G M E N T

The matter is heard through "Video Conference".

2. Convicted sole accused is the appellant herein. The appellant is in custody. It is a jail appeal.

3. The respondent-police filed a charge sheet against the accused stating that the first accused is father-in-law of victim/Usha and second accused is his concubine. Two years before the death of victim, first accused being widower, tried to misbehave with victim. So that the victim has lived with her parents. But, at the request of first accused, the victim has come back to her matrimonial home. Two days prior to date of occurrence, the first accused has tried to sexually harass the victim.



4. On 15.02.2013, at about 05.00 p.m., when the victim and her husband were standing in front of their house, due to abetment of second accused, the first accused made quarrel with the victim and poured kerosene on her and set fire with the criminal intention to cause death to her. Thereby, due to severe burn injuries, on 06.02.2013, the victim has succumbed. Hence, the first accused is charge sheeted under Section 302 of IPC and second accused is charge sheeted under Section 302 r/w 109 of IPC.

5. On the above charge sheet, the learned Judicial Magistrate No.2, Mayiladuthurai has taken up cognizance of the offence and after appearance of the accused persons, copies of all material documents were furnished to them under Section 207 of Cr.P.C. Then, the case was made over and charges under Section 302 of IPC as against first accused and under Section 302 r/w 109 of IPC as against the second accused have also been framed.

6. To prove the guilt of the accused persons, on the prosecution side 18 witnesses have been examined and 17 documents and 3 material objects have been marked for proving their case.

7. P.W.1 is the father of the victim girl. P.W.2 is the sister of the deceased. While P.W.3 is the husband of the deceased and P.W.4 is the neighbour and P.W.5 is the attester of the observation mahazar and other neighbours viz., P.W.6, P.W.7 and P.W.8 are turned hostile, so also attester of the seizure mahazar viz., P.W.10, P.W.11, P.W.12 and P.W.15 are turned hostile. P.W.14/Dr.Senthilkumar, who has conducted post-mortem on the dead body of the victim girl issued Ex.P3/Post-mortem certificate, wherein, the cause of death is described as burn injuries and P.W.17/Dr.Sowmithyabanu, who has recorded the injuries in the accident register which was marked as Ex.P6 and case history is marked as Ex.P7. P.W.16/T.Thirumal, Judicial Magistrate had recorded the dying declaration of the deceased, the requisition is marked as Ex.P4 and dying declaration is marked as Ex.P5. P.W.17/Dr.Sowmithiya Banu, also deposed that during her presence, during recording of dying declaration and certified that she was conscious and orientation during recording of dying declaration.

8. In view of the private prosecution witnesses having turned hostile, the case of the prosecution is entirely requisition for recording dying declaration viz., Ex.P4. Ex.P3/post-mortem report issued by P.W.14 is to the effect that the death was caused due to nuerogenic shock due to burn injuries. So, the cause of death is due to burn injuries. Thus, the prosecution has let in positive evidence to show,



whether the burn injuries are caused by accused persons. Since private prosecution witnesses viz., P.W.6, P.W.7 P.W.8, P.W.9, P.W.11 and P.W.3 have turned hostile, the Sessions Court has taken into consideration the dying declaration coupled with the accident register. The first one is accident register entry.

9. As per the prosecution case, the occurrence occurred at 05.00 p.m. She was admitted in the hospital by her husband at 10.15 p.m. on the same day. P.W.17, duty Doctor had admitted her in the hospital, when she had examined the deceased, she had stated her that on 15.02.2013 at 05.00 p.m. in the door steps of their house, her father-in-law has poured kerosene on her and set fire. So is the entry Ex.P6-Accident Register by P.W.17, so also the evidence of P.W.17/Doctor. So as per the earliest statement of deceased to duty doctor, P.W.17, it is crystal clear about the overtact of the first accused.

10. Taking into consideration, the evidence of P.W.1 and P.W.4 and the due corroboration with regard to admitting the deceased in the Government Hospital for treatment and up to the time of recording of dying declaration, it is seen from the evidence of P.W.6/Judicial Magistrate, after satisfying the mental fitness about the victim to give her statement and the certificate issued by P.W.17/Doctor, was duly incorporated in the dying declaration and by the learned Judicial Magistrate/P.W.16. Thereafter, he recorded dying declaration. P.W.17/Doctor who gave certificate of mental fitness that the deceased was fully conscious, oriented and in fit state of mind during recording of dying declaration. I find that the procedure completed there for is duly complied with.

11. On analysing this aspect, as per the prosecution case, the occurrence was at 05.00 p.m., she was admitted in the hospital by her husband at 10.15 p.m. It is evidenced by accident register report, Ex.P6. So, during the hours from the occurrence to admission in hospital, the deceased was in custody of her husband. So, the husband, P.W.3 who has turned hostile is not possible to tutor her as against his own father, first accused assumes significance.

12. The possibility of tutoring by P.W.1, naturally, minutes is not at all possible, besides she is undergoing pain on severe burn injuries. Moreover, at the time of her admission in hospital the P.W.1 and P.W.2 are absent, she was accompanied by her husband and her statement to Doctor was, it was committed by first accused. So, before arrival of P.W.1 and P.W.2 in hospital, she has stated to Doctor about the overtact of first accused. So, on analysing the above aspects, I find that that the possibility of tutoring by P.W.1 and P.W.2 is cannot countenanced.



13. It remains to be stated that before admitting her in the Government Hospital, Mayiladuthurai, she was under the care and custody of the P.W.3/husband of the victim. So, in the meantime, there is no possibility for tutoring the deceased by P.W.1 who is absent at that time. In fact within, one hour from the admission in the Government Hospital, the Judicial Magistrate has recorded dying declaration. As per the admission of P.W.1 in his cross examination by defence that within, 15 minutes from his arrival, Judicial Magistrate has come and recorded dying declaration. So, within this time also, it is not at all possible to tutor the deceased by P.W.1. So, on analysing from any angle, I am of the view that the dying declaration is voluntarily given by the deceased without tutoring.

14. Thus, the finding rendered by the learned Sessions Judge in Ex.P5/dying declaration recorded by the learned Magistrate is voluntary and the same is without tutoring and due to the necessary endorsement, mental fitness and held that Ex.P5/dying declaration can be relied on in respect of charge.

15. The contents of the dying declaration are to the effect that two years before the occurrence, first accused has tried to misbehave with her. So that she had resided in her parents house and after the request of her husband, she had resided with her husband in Kumarakudi in Tsunami House allotted by Government. Four days before the occurrence also, the first accused has tried to misbehave with her. On the day of occurrence, at 10.00 a.m, when they have returned from the hospital in which P.W.3, her husband has taken treatment, first accused has locked the house and scolded by filthy words. He has also beaten her husband. On 15.02.2013 at 05.00 p.m., first accused has poured kerosene on her and set fire at the instigation of second accused. First accused has tried to misbehave with her as should have treated her as his own daughter. So, she prayed that he has to be punished.

16. On analysing the contents of dying declaration, she has narrated the conduct of the first accused from two years before the occurrence and on the day of occurrence also. At the time of occurrence i.e., 05.00 p.m, on 15.02.2013, the first accused has poured kerosene on her and set fire. Before the occurrence on the same day, after they returned from the hospital, first accused has locked their house and scolded by filthy language and beaten her husband also. On the development of this, at 05.00 p.m. he has poured kerosene on her and set fire. So, the occurrence was clearly stated by the deceased in her own dying declaration.



17. Thus, I find that the dying declaration has been properly recorded by the learned Judicial Magistrate after observing necessary mental fitness and also satisfies himself about the mental fitness of the deceased Usha and her statement to the effect that the accused locked the house and scolded by filthy language and the first accused poured kerosene on her and set fire and hence, I find that the prosecution has proved that the evidence of P.W.17/ Doctor who attended the deceased, has noted 100% burn injuries and she died due to the homicidal value and the dying declaration given by the deceased is clear, cogent and trustworthy and hence, the learned Sessions Judge has rightly come to the conclusion that though the charge under Section 302 of IPC was framed. However, the prosecution has not satisfy under Section 300 of IPC. However, due to sudden provocation, the said act appears to have been committed and accordingly, held that the act of the first accused did not come under Section 300 of IPC. However, the accused had acknowledge that if the kerosene poured on her body and burnt her, it will result her death, so the act of the first accused fall within, the definition of Section 299 of IPC and has convicted the accused under Section 304(i) of IPC.

18. Hence, for the reasons recorded herein above, I find that the finding of the Sessions Court that the act of the accused fall under Section 304(i) of IPC is just and proper. The trial Court has already acquitted A.2. On the quantum of sentence, both the learned counsel were heard. I find that the accused is in jail since the date of conviction passed by the learned Sessions Judge for nearly 6 years. Seven years conviction has been laid by the learned Sessions Judge. Besides the above said period, the appellant was also in custody during the investigation as also during trial and hence, taking into consideration the fact that he has nearly completed substantial part of sentence and now, he is aged about 66 years, the sentence is reduced to the period already undergone.

19. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/accused in the judgment dated 09.02.2016 in S.C.No.68 of 2013 passed by the learned Sessions Judge, (Fast Track Mahila Court, Nagapattinam), is set aside. The fine amount paid by the appellant shall be kept intact.

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar



To

1. The Sessions Judge,
(Fast Track Mahila Court, Nagapattinam).

2. Do Through The Principal Sessions Judge
Nagapattinam District

3. The Judicial Magistrate II
Mayiladuthurai

4. Do Through The Chief Judicial Magistrate
Nagapattinam District

5. The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.

6. The Public Prosecutor,
High Court of Madras.

7. The Superintendent of Prison,
Central Prison, Cuddalore. (01/11/2021)

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s. K.M. Vijayan Associates sr 52681.

Crl.A.No.268 of 2016

NK(CO)
SP(26/10/2021)