



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.09.2021

DELIVERED ON: 27.09.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CRL.A.No.466 of 2017

Kaatturan @ Ravi

.. Appellant/ Accused Single

Vs.

State rep. by
The Inspector of Police
Mettupalayam Police Station
Coimbatore District
Crime No.844/2012

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment passed in Spl.S.C.No.1 of 2014 dated 21.10.2016 by the Principal Sessions Judge, Coimbatore.

For Appellant : Mr.R.Balakrishnan

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

J U D G M E N T

P.N.PRAKASH, J.

This criminal appeal is directed against the judgment and order of conviction and sentence dated 21.10.2016 passed by the Principal Sessions Judge, Coimbatore, in Spl.S.C.No.1 of 2014.

2. The prosecution story runs thus :



2.8. Investigation of the case was taken over by Sivakumar, Inspector of Police (P.W.14) (hereinafter referred to as "the 1st I.O."), who altered the case from one under Section



307 IPC to one under Section 302 IPC vide alteration report (Ex.P14).

2.9. The 1st I.O. went to the place of occurrence and prepared an observation mahazar (Ex.P2) and a seizure mahazar (Ex.P3) under which, he seized some burnt pieces of apparel (M.O.3), a 2 litre plastic can (M.O.1) and a match box (M.O.2). After the case was altered to Section 302 IPC, the 1st I.O. went to the mortuary and conducted inquest over the body of Lakshmi and the inquest report was marked as Ex.P15.

2.10. Dr.Jeya Singh (P.W.10) performed autopsy over the body of Lakshmi and issued the post-mortem certificate (Ex.P8) and after getting the viscera report, gave final opinion (Ex.P9), wherein, he has opined as follows :

"Name of the deceased : Lakshmi

Age : 42 yrs Sex : Female

OPINION : The deceased would appear to have died of burns and its complication. Viscera does not contain any poison."

2.11. The accused was arrested on 16.11.2012 at 11.00 a.m. Since Lakshmi was found to be a Dalit, further investigation was carried on by Mohan, Assistant Commissioner of Police (P.W.16), who obtained the community certificates of Lakshmi and the accused, collected the various reports, completed the investigation and filed a final report against the accused in P.R.C.No.15 of 2013 in the Court of the Judicial Magistrate, Mettupalayam, for the offences under Sections 302 IPC and Section 3(2)(v) of the SC/ST (PoA) Act, 1989.

2.12. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in Spl.S.C.No.1 of 2014 and was tried by the Principal Sessions Judge, Coimbatore.

2.13 The trial Court framed charges under Section 302 IPC and Section 3(2)(v) of the SC/ST (PoA) Act, 1989, against the accused.

2.14. When questioned, the accused pleaded "not guilty".



2.15. To prove the case, the prosecution examined 16 witnesses and marked 17 exhibits and 6 material objects.

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

2.17. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.10.2016, in Spl.S.C.No.1 of 2014, acquitted the accused of the charge under Section 3(2)(v) of the SC/ST (PoA) Act, 1989 and convicted him under Section 302 IPC and sentenced him to imprisonment for life and fine of Rs.1,000/-, in default, to undergo six months simple imprisonment, aggrieved by which, the accused has preferred this appeal.

3. Heard Mr.R.Balakrishnan, learned counsel for the appellant and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. Karthik (P.W.1), in his chief-examination, has stated that he was working as a room boy in C.S.Lodge and knows the appellant; on 10.12.2012, he was sleeping with his mother (Lakshmi) and brother (Muthuveeran-P.W.2) beneath the peepal tree near the railway station; Nagaraj (P.W.3) and Priya (P.W.4) were also sleeping nearby; around 11'o clock in the night, the appellant woke up his mother and asked her to come, for which, she replied that she is not of that type and refused to come; getting angry at that, the appellant hit his mother with a beer bottle and ran away; again, on 13.11.2012, while they were sleeping, the appellant came to their place and called his mother and when she refused, he poured kerosene on her and set fire to her; when they tried to catch him, he ran away; his mother was taken to the Mettupalayam hospital from where, she was sent to the Government Hospital, Coimbatore, for better treatment; after that, he gave a complaint to the police, which was marked as Ex.P1; he also identified the kerosene can (M.O.1) and the burnt pieces of apparel (M.O.3).

5. In the cross-examination, he (Karthik-P.W.1) has stated that he has studied up to 7th standard and can read Tamil,



but, cannot write. He admitted that the complaint was scribed by a person known to him in the lodge where he was working. He also candidly admitted that his mother used to take liquor, once in a while. When he was asked as to why, his mother was not immediately taken to the hospital, he stated that they decided to take her after sunrise.

6. Muthuveeran (P.W.2), who was 12 years old, has corroborated the evidence of his brother Karthik (P.W.1). Similarly, the other pavement dwellers viz., Nagaraj (P.W.3) and Priya (P.W.4) have substantially corroborated the evidence of Karthik (P.W.1).

7. In fact, Priya (P.W.4), has, in her cross-examination, stated that she is a beggar and that she used to normally beg near mosques and temples. It may be pertinent to state here that no suggestion was put to any of these witnesses, as to why, they are falsely implicating the appellant.

8. Be that as it may, we have the dying declaration of Lakshmi (Ex.P6), which was given to Dr.Lakshmanakumar (P.W.9) at the Government Hospital, Mettupalayam.

9. Mr.R.Balakrishnan, learned counsel for the appellant, contended that in the dying declaration, Lakshmi is said to have told Dr.Lakshmanakumar (P.W.9) that the appellant had poured petrol on her, whereas, the prosecution case is that kerosene was poured on Lakshmi. In our view, this is not a serious discrepancy. We should bear in mind the social status of Lakshmi. Lakshmi, a pavement dwelling Dalit, was from the marginalised section of society and with 60% burns on her body, her statement to Dr.Lakshmanakumar (P.W.9) that petrol was poured on her, instead of saying that kerosene was poured on her, would have least significance. It is not the defence case that she committed self-immolation.

10. Mr.R.Balakrishnan contended that the complaint in this case was not immediately lodged and that there was a delay of more than five hours. It is true that there was a delay in lodging the complaint. But, that by itself cannot lead to the inference that a false case has been slapped on the appellant. As alluded to above, Lakshmi was a pavement dweller and was living with her two young children viz., Karthik (P.W.1) and



Muthuveeran (P.W.2) under a roadside peepal tree. Their life would have been one of struggle for existence in this oppressive and feudalistic society. They would be even scared to enter the police station because of their previous bad experiences with the minions of law. For a young boy of 19 years who had witnessed his mother in flames, it would have taken a little longer time for him to get over from the trauma and gather courage for going to the police station.

11. At this juncture, it is profitable to allude to the judgment in Ravinder Kumar and another vs. State of Punjab, wherein, the Supreme Court has categorically held that a delayed FIR is not illegal and in fact, has also gone to the extent of holding that even an FIR registered with promptitude and dispatch is not an unreserved guarantee for it being genuine. The relevant passage from the said judgment reads as under:

"13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein."

(emphasis supplied)

12. Mr.R.Balakrishnan contended that the forensic report (Ex.P16) shows that kerosene was not detected in the cloth pieces (M.O.2) and therefore, the prosecution story is not credible. A perusal of the forensic report (Ex.P16) shows that kerosene has been detected in the kerosene can (M.O.1), which has been identified by Karthik (P.W.1). Though kerosene was not



detected in the cloth pieces (M.O.2), that cannot, by itself, be a reason to discard the prosecution case, because, these cloth pieces (M.O.2) were recovered from the place of occurrence only on the next day, that too in the night hours. Thus, the absence of kerosene in those cloth pieces (M.O.2) that was gathered from the pavement, after a considerable period of time, is not fatal to the case of the prosecution, especially in the light of the dying declaration (Ex.P6), the evidence of the post-mortem doctor (Jeya Singh-P.W.10) as to the cause of the death of Lakshmi and the eye-witness account, viz., P.W.s.1 to 4.

13. The trial Court has rightly acquitted the appellant of the offence under Section 3(2)(v) of the SC/ST (PoA) Act, 1989, on the ground that the offence of setting fire to Lakshmi was not committed by him because she was a Dalit. The appellant wanted to satisfy his sexual appetite and when she firmly spurned his invitation, he set fire to her.

14. For all the foregoing reasons, the judgment and order of conviction and sentence dated 21.10.2016 passed by the Principal Sessions Judge, Coimbatore in Spl.S.C.No.1 of 2014, is confirmed.

In the result, this criminal appeal is dismissed.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Sessions Judge, Coimbatore

2.The Inspector of Police
Mettupalayam Police Station
Coimbatore District

3.The Public Prosecutor, High Court, Madras

+1CC to Mr.R.Balakrishnan, Advocate, SR.No. 50153

CrI.A.No.466 of 2017

SR(CO)

B.VC (20/10/2021)