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Crl.A.No.74 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.A.No.74 of 2016

Ayisha

... Appellant

Versus

State by the Inspector of Police,
Berigal Police Station,
Krishnagiri District.
(Crime No.269/2012).

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records in connection with the S.C.No.82/2014 on the file of the Learned Additional District/Sessions Judge, Hosur, Krishnagiri District, Hosur and set aside the judgment, dated 04.01.2016.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

JUDGMENT

The appellant/accused preferred this Criminal Appeal aggrieved by judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Hosur, Krishnagiri (trial Court) convicting and sentencing the appellant to undergo Rigorous Imprisonment for a period of five years for offence under Section 304(ii) IPC.



2.The facts of the case are as follows:-

(i)The deceased Abdul Rasheeth and the appellant are husband and wife, PW1 is the elder brother of the deceased. On 05.12.2012, PW1, elder brother of Abdul Rasheeth (deceased) lodged a complaint (Ex.PI) before the respondent Police that the deceased married appellant 13 years before and they were leading happy married life for one year. Since the appellant did not like deceased in doing agriculture work, there was frequent quarrel and panchayat was held several times to pacify them. After the marriage, from morning to evening, the deceased worked at Roja Factory, and from evening to night, he worked at a chicken shop. The relationship between the appellant and her husband was not cordial. She always complained that the appellant used to harass her questioning her fidelity and further not allowing her to sleep. The deceased alleged to have acted in a physis manner.

(ii)On 07.11.2012, the appellant came out from his house screaming and seeking help. PW3, the house owner enquired the deceased. The deceased informed that his wife/appellant poured boiling oil on him and sought for medical help. Kaleemullah and Amzath took the deceased to Ashok Hospital, Berigal. On getting information, PWI went to the hospital, where the deceased revealed that he and his wife had some fight, while he



was having dinner, the deceased asked for roasted pappad, which got delayed. When he questioned the same, the appellant poured boiling oil all over his body.

(iii)PW10, the Doctor gave first aid treatment to the deceased, referred him for further treatment to Government Hospital, Hosur, where he passed away on 05.12.2012, at about 03.30 a.m. On receipt of the complaint (Ex.P1), PW11, the Sub Inspector of Police registered a case in Crime No.269 of 2012 (Ex.P8), for offence under Section 302 IPC, forwarded the same to PW12. PW12, the Investigating Officer took up the investigation, visited the scene of occurrence, enquired witnesses, recorded their statement, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P9) in presence of PW6, recorded the confession statement (Ex.P3) and on conclusion of investigation, filed the charge sheet before the learned Judicial Magistrate No.I, Hosur which was taken on file as P.R.C No.22 of 2013. On committal, the case was transferred to the file of trial Court and renumbered as S.C.No.24 of 2014.

3.To prove the guilt of the appellant, on the side of the prosecution, as many as 12 witnesses examined as PW1 to PW12 and 10 documents marked



as Exs.P1 to P10 and one Material Object marked as MO1. On the side of the accused, no witness examined and no document marked.

4. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against her, she denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the appellant as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed.

6. The learned counsel appearing for the appellant submitted that in this case, all the witnesses examined by the prosecution, are relatives of the deceased, added to it, they are all hearsay witnesses and none saw the alleged occurrence. He further submitted PW3, the house owner, is the first person, who came to the scene of occurrence. In his evidence, PW3 stated that he enquired the son of the appellant and deceased, who was present at the time of occurrence. The son of the appellant informed that a cat stepped on the vessel (MOI) contained boiling oil, which fell on the deceased, due to which, he sustained burn injuries. In this case, strangely, the son of the deceased was not examined as witness on the side of the prosecution. Added to it, no



Accident Register or medical records collected from the Doctor of Ashok Hospital, Berigal. Likewise, no medical record in respect of treatment given to the deceased in the Government Hospital, Hosur for twenty eight days collected. He further submitted that PW8, the Postmortem Doctor, confirmed that the cause of death is '*septicemia due to burn injuries*' and death had taken place 28 days after the occurrence. The finding of the trial Court is that the appellant had no intention to do away the deceased and it was only due to provocation. Thus, the prosecution has failed to prove the case beyond all reasonable doubt and the trial Court, without considering the evidence and materials, had rendered judgment of conviction, which needs interference of this Court.

7.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the occurrence had taken place inside the house of the appellant and the deceased. Admittedly, in this case, apart from the appellant, deceased and their son, none were present at the time of occurrence. PW3, the house owner is the first person, who enquired the deceased after he came out from the house with burn injuries. PW3 informed that it was the deceased, who poured the boiling oil on him. The deceased came running out from the house seeking help. PW3 made arrangements,



sent the deceased along with Kaleemullah and Amzath to Ashok Hospital, Berigal for treatment. In the meanwhile, PWI was informed about the incident, who visited his brother/deceased in the hospital, who informed him it was the appellant, who poured the boiling oil on him. Likewise, PW2, cousin of the deceased, PW3, the house owner, PW4, the relative and PW5, the co-worker of the deceased in the chicken shop, are the persons visited the deceased in the hospital while he was taking treatment and were informed about the incident to them. PW6 is the neighbour, a witness to the Observation Mahazar (Ex.P2). PW7 is the VAO, in whose presence, the appellant was arrested, her confession statement was recorded (Ex.P3). Based on the confession statement, the vessel (MOI) was recovered under the Recovery Mahazhar (Ex.P4). PW8, Postmortem Doctor conducted autopsy on the body of the deceased and collected viscera and sent for test. The viscera report marked as Ex.P5. Ex.P6 is the opinion for the death and Ex.P7 is the postmortem certificate. PW10, the Doctor from Ashok Hospital, Berigal gave first aid treatment to the deceased. PW11, the Sub Inspector of Police received the complaint (Ex.PI) from PWI and registered FIR (Ex.P8). PW12, the Investigating Officer on receipt of information visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P9), conducted inquest on the body of the deceased and on examination of



witnesses and after collection of documents, filed the charge sheet before the trial Court. The trial Court on the evidence and materials, rendered judgment of conviction. The same is to be confirmed.

8.This Court considered the rival submissions and perused the materials available on record.

9.It is not in dispute that the appellant and the deceased are husband and wife and they got married 13 years before the occurrence and out of their wedlock, they have a male child. It is also not in dispute the appellant and the deceased were tenants under PW3. On the date of occurrence, i.e., 07.11.2012, at about 08.30 p.m., the deceased screaming ran out from the house and seeking help. PW3 saw the deceased with burn injuries and enquired him. The deceased informed that the appellant poured boiled oil on him. Immediately, PW3 made arrangements and sent the deceased along with Kaleemullah and Amzath to Ashok Hospital, Berigal, where PW10, the Doctor gave first aid and referred the deceased to the Government Hospital, Hosur, where the deceased took treatment as inpatient for 28 days. Thereafter, on 05.12.2012, the deceased passed away due to the burn injuries sustained by him. On the same day, PW1, the brother of the deceased lodged



the complaint against the appellant and a case in Crime No.369 of 2012 was registered. PW2, PW3, PW4 and PW5 confirmed when they visited the deceased in the hospital, the deceased informed them that it was the appellant who poured boiling oil on him.

10.It is seen that after the marriage, the relationship between the appellant and the deceased were not cordial and having strained relationship. In this case, the occurrence had taken place inside the house of the appellant and the deceased. No one other than them were present inside the house. With the burn injuries, the deceased came running out from the house which was witnessed by PW3. PW3 made arrangements, who sent the injured along with Kaleemullah and Amzath to Ashok Hospital, Berigal.

11.In this case, strangely, no Accident Register was collected and no Doctor, who gave treatment to the deceased for 28 days in Government Hospital, Hosur, was examined. Likewise, no corresponding medical records for 28 days treatment produced. Except the postmortem report (Ex.P10). viscera report (Ex.P5), no other document marked in this case. From the postmortem report (Ex.P10), it is confirmed that the death is due '*septicemia due to burn injuries*'. PW3 is the first person who saw the deceased



screaming and running out from the house with burn injuries. Though feeble attempt made to show it is an accident, no materials produced to that effect.

12.Further, in the Observation Mahazar (Ex.P2) nothing is recorded to show there was spillage of oil inside the house of the appellant. Admittedly, no statement from the deceased recorded though he took treatment for 28 days and was in a condition to speak with brother, relatives and friends. Whether the hospital authorities informed the Police and for what reason Police failed to take steps to record the statement of the deceased, are not known. Further, for what reason, the family members and friends of the deceased not objected the appellant visiting her husband is not known. Now, the appellant is the only person, who takes care of the minor son.

13.It could be seen that the death of the deceased is 28 days after the incident and further the reason for death is '*septicemia due to burn injuries*' which might be for various reasons including improper medical treatment and care. In this case, there is dearth of medical records of the deceased and for what reason, the Doctors who treated the deceased and the corresponding medical records not produced, are not known. In view of the same, this



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Court is inclined to modify the sentence of imprisonment passed against the appellant.

14. Accordingly, the conviction of the trial Court in S.C.No.82 of 2014, dated 04.01.2016 is altered from Section 304(ii) of IPC to Section 326 IPC and the sentence of imprisonment is also modified to the period of incarceration already undergone by the appellant.

15. With the above modification, this Criminal Revision case is partly allowed.

04.01.2023

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

1. The Additional Sessions Court,
Dharmapuri.

2. The Inspector of Police,
Marandadhalli Police Station,
Dharmapuri.



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3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR.J.,

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