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Crl.A.No.598 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2024

PRONOUNCED ON : 22.01.2024
CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Vediyappan ... Appellant/Sole Accused
v.

State represented by
Inspector of Police
B-14 Police Station, Kuniamuthur,
Coimbatore.
(Crime No.312/2012) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.63 of 2013 dated 28.03.2019, on the file of the learned Additional District and Sessions Judge No.IV, Coimbatore and set aside the conviction and sentence imposed in judgment dated 28.03.2019 and acquit the appellant.

For Appellant : Mr.B.M.Subash
for Mr.B.Mohan
For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging



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the conviction and sentence imposed upon him vide judgment dated 28.03.2019 in S.C.No.63 of 2013 on the file of the learned Additional District and Sessions Judge No.IV, Coimbatore.

2(i) It is the case of the prosecution that the deceased and the appellant were in live-in-relationship for about four years prior to the date of occurrence; that the appellant was a married man with children; that the deceased was also earlier married to another person and had two children out of the said wedlock; after she divorced the said person, she was living with the appellant; that on 17.05.2012, the appellant came in an inebriated condition in the night hours and picked up a quarrel with the deceased; that on 18.05.2012 at about 9.00am, when the deceased asked the appellant money for household expenses, the appellant had shouted at the deceased stating that she was troubling him and that he would desert her and live with his wife and children; that thereafter, the appellant poured kerosene on the deceased and set fire by stating that he would cause the death; that after setting fire to the deceased, the appellant ran away from the house; and that the deceased sustained burn injuries and after discharge from the hospital on



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26.05.2012, she succumbed to the burn injuries on 02.06.2012.

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(ii) It is the further case of the prosecution that the deceased was taken to the Coimbatore Medical College Hospital in an ambulance; that on information given by the hospital authorities, PW13, the learned Judicial Magistrate No.V, Coimbatore, recorded the statement of the deceased [Ex.P18] at about 11.50am, in which the deceased had stated that the appellant had set fire to her and had ran away from the scene of occurrence and did not take any steps to save her; that her neighbours i.e., a fisherman and others doused the fire.

(iii) Thereafter, on information, PW12, the Sub Inspector of Police, is said to have recorded the complaint [Ex.P16] given by the deceased in which the left hand thumb impression of the deceased was affixed on 18.05.2012. PW12 thereafter registered the FIR [Ex.P17] at 6.00pm on the same day.

(iv) PW14, took up the investigation after registration of the complaint and recorded the statement of the deceased. He went to the scene of



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occurrence at about 8.00pm and prepared the Observation Mahazar [Ex.P1] and Rough Sketch [Ex.P19]. He seized a matchbox containing few wax match sticks [M.O.4], burnt match sticks [M.O.3] which smelt of kerosene and burnt Saree [M.O.1] and burnt Blouse [M.O.2], which smelt of kerosene, under the seizure mahazar [Ex.P2]. Thereafter, at about 11.00pm on 18.05.2012, he arrested the appellant and on his confession which was recorded in the presence of the VAO [PW3] and his Assistant one A.K.Hussain (not examined), he seized the kerosene can [M.O.5] containing 100ml kerosene, from a bush near the house of the appellant through seizure mahazar [Ex.P5].

(v) PW14 thereafter sent the seized articles under Form-91 to the learned Judicial Magistrate No.VII, Coimbatore. On 28.05.2012, he made a request to the learned Judicial Magistrate to send the seized articles, for examination by experts. On 07.06.2012, he examined the Doctor-PW6 and on 14.06.2012 he sent the seized articles which were received from the Court, to the Forensic Science Laboratory. Thereafter, he handed over the investigation to PW15.



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(vi) PW15 thereafter examined further witnesses and filed the final report against the appellant for the offence under Section 307 IPC on 14.08.2012. When the case was taken up for trial by the learned Chief Judicial Magistrate, the summons could not be served on the victim, who by then had expired. It is pertinent to mention here that when the final report was filed by PW15, he thought that the deceased was alive.

(vii) PW9 had submitted a Special Report [Ex.P11] on 08.10.2013 to the effect that the deceased died in her native place on 02.06.2012; and that the relatives of the deceased had not informed the police about the deceased's death.

(viii) PW15 thereafter sent a report to the Chief Judicial Magistrate and sought permission to conduct further investigation in the case. He thereafter went to the native place of the deceased on 28.11.2013 and on enquiry, it was found that the deceased died on 02.06.2012 at about 6.00am in the morning and that her body was cremated on the same day evening at



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about 5.00pm. Thereafter, in the presence of VAO-PW5 and his assistant, one Jagadeesan, he visited the place where the deceased was cremated and prepared the Observation Mahazar [Ex.P6] and Rough sketch [Ex.20].

(ix) PW15 seized the community certificate of the father of the deceased under the Seizure Mahazar [Ex.P7] and also the medical records [Ex.P22] of the deceased. Thereafter, on 03.12.2013, he examined PW6, the Doctor, once again and recorded her statement, and on 12.12.2013, PW14 filed a final report for the offence under Section 302 of the IPC against the appellant before the learned Judicial Magistrate No.VII, Coimbatore.

(x) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.63 of 2013 and was made over to the learned IV Additional District and Sessions Judge, Coimbatore, for trial. The trial Court framed charges u/s.302 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty.

(xi) To prove the case, the prosecution examined 15 witnesses as



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P.W.1 to P.W.15 and marked 25 exhibits as Exs.P1 to P25, and marked 5 Material Objects as M.O.1 to M.O.5. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused did not examine any witnesses, however, he marked Ex.D1 and Ex.D2 in defence.

(xii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the offences under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo a further period of six months of Rigorous imprisonment. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr. B.M.Subash, learned counsel appearing for the appellant/accused, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.



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4. (i) The learned counsel for the appellant submitted that the prosecution failed to establish that the deceased died due to the burn injuries suffered by her; that the Doctor who had first treated the deceased admitted that the deceased sustained only 25% burn injuries, however, though the prosecution had obtained a wound certificate [Ex.P9] making it appear that the deceased sustained 55% burn injuries, the prosecution has not examined the Doctor who had allegedly assessed the percentage of injuries as 55%.

(ii) The learned counsel further submitted that the death certificate of the deceased was not marked. However, the certificate issued by the VAO after referring to the proceedings of the Tahsildar, which is inadmissible, was marked at the fag end of the trial. PW15 had not collected the death certificate and filed it along with the final report. The learned counsel further submitted that the dying declarations said to have been recorded are not truthful and voluntary, and they suffer from inherent contradictions and therefore cannot be the basis for convicting the appellant, and prayed for



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acquittal of the appellant.

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5. The learned Additional Public Prosecutor submitted that the trial Court considered the evidence let in by the prosecution and found that the prosecution has proved its case beyond reasonable doubt; that there is no infirmity in the dying declarations; and that the judgment of conviction cannot be faulted and prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7. (i) PW1, is the neighbour/landlord of the victim and the appellant. He had stated that he went to the house of the deceased on hearing her cry for help, and the deceased informed him that the appellant had set fire by pouring the kerosene and that he sent the deceased in an ambulance with four persons.

(ii) PW2 is the son of PW1, who was examined to prove his



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signatures in the Seizure Mahazar [Ex.P2], however, since he did not support the prosecution case, he was treated as hostile.

(iii) PW3 is a neighbour of the deceased and the appellant, and he is a witness to the arrest of the appellant and seizure of kerosene can on the confession of the appellant/accused. PW4 is the brother of the deceased, who states that the deceased died due to burn injuries on 02.06.2012 and about his informing the police of the deceased's death

(iv) PW5 is the VAO, who had signed as a witness for the Observation Mahazar [Ex.P6] prepared by PW15 at the place where the deceased was cremated. PW6, is the doctor who first treated the deceased. The Hospital Intimation [Ex.P8] and the Wound Certificate [Ex.P9], were marked through her. PW6 had opined that the deceased would have died due to the burn injuries sustained by her.

(v) PW7 was working in a ration shop and deposed that M.O.5, Kerosene can contained kerosene. PW8 is a hearsay witness who learnt that



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the appellant had set fire and caused the death of the deceased.

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(vi) PW9 is the Head Constable, who signed the Special Report stating that the deceased died on 02.06.2012 and he came to know it, when he went to the village of the deceased to serve the summons on 07.10.2013.



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(vii) PW10 is the Assistant Director of the Forensic Science Laboratory, who had given a report [Ex.P13] stating that kerosene was found in the seized articles viz., match sticks, saree, blouse and the kerosene can.

(viii) PW11 is the Constable who had assisted the investigation officer. PW12 is the Special Sub Inspector, who recorded the statement of the deceased [Ex.P16] and registered the FIR [Ex.P17].

(ix) PW13, is the learned Magistrate, who recorded the dying declaration [Ex.P18] of the deceased. PW14 and PW15 as stated above are the investigation officers, who conducted the investigation, the details of which we have stated in the earlier part of the judgment.

8. As stated earlier, we find a strange aspect in this case, wherein initially a final report was filed on 14.08.2012 for the offence under Section 307 of IPC proceeding on the basis that the deceased was alive. It is the prosecution case that the deceased died on 02.06.2012. Thus, even before



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the filing of the final report, the deceased had died. PW15, who filed the final report had not taken care to verify whether the deceased was alive before filing of the final report.

9. Be that as it may, after PW9 had given a special report, PW15 had conducted further investigation, after seeking permission from the learned Chief Judicial Magistrate, Coimbatore. In order to ascertain whether the deceased died due to the burn injuries, he had examined PW6, the Doctor once again. Ex.P8, is the intimation sent by the hospital authorities to the police about the admission of the deceased in the hospital by the appellant. In the said intimation, the occurrence time is shown as 8.00am and it is stated that the deceased caught fire while cooking. In the intimation, the Accident Register reference number is shown as 402505. However, strangely, the copy of the Accident Register has not been marked by the prosecution. The wound certificate [Ex.P9] of the deceased is said to have been given on 07.06.2012. In the said Wound certificate, it is stated that the deceased had suffered 55% burn injuries.



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10. Firstly, it is not known as to why a wound certificate was obtained on 07.06.2012. Further the accident register was not marked. This suppression by the prosecution, throws doubt on the veracity of the statement made in Ex.P9-Wound Certificate that the deceased sustained 55% burn injuries. Above all, PW6 in her cross examination would state that when she first examined the deceased, she stated that the deceased sustained 25% to 30% burn injuries and that she later came to know from the Doctor who treated the deceased that the deceased sustained 55% burn injuries. However, in the Wound Certificate [Ex.P9] the name of the Doctor who treated the deceased is not found. Further, PW6 had not stated the name of the Doctor, who treated the deceased, based on whose finding PW6 had stated that the deceased sustained 55% burn injuries.

11. Unfortunately, the defence have also not elicited whether Ex.P9-Wound certificate was part of the original final report filed by PW15 under Section 307 of IPC. However, the evidence of PW6 coupled with the suppression of the Accident Register makes the prosecution version that the deceased sustained 55% burn injuries, highly doubtful. It appears that the



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prosecution had made an attempt to make it appear that the deceased sustained 55% burn injuries to prove its case that the deceased died due to the burn injuries.

12. That apart, we find that though PW4, the brother of the deceased had stated that he had informed about the death of the deceased to the police authorities, PW15 claims that he had not received any such information. After the investigation, PW15 who had filed the further final report for the offence under Section 302 of IPC had not chosen to produce the death certificate of the deceased. On the contrary, a certificate said to have been issued by the VAO [Ex.P25] which refers to some proceedings of the Tahsildar, was marked at the fag end of the trial viz., on 07.03.2018, when PW15 was recalled for further examination. The prosecution had also not cared to produce the proceedings of the Tahsildar which is referred by the VAO. The above infirmities in the prosecution case leads to an inference that the prosecution had failed to establish the exact date of the death of the deceased and that the deceased died due to burn injuries, beyond reasonable doubt. Further, we are of the view that the fact of death of the deceased has not been proved by any acceptable documentary evidence except for the oral



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evidence of PW4.

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13. Even assuming that the deceased had died due to the burn injuries, we find that in the earliest document, it is stated that the deceased sustained burn injuries while she was cooking. The prosecution had also suppressed the fact that the appellant/accused sustained injuries, which is established through Ex.D1-the outpatient slip issued by the Coimbatore Medical College Hospital and signed by PW6. The said document suggests that the appellant/accused had sustained blisters in the left forearm, extending up to the hand and in the abdomen. The prosecution had attempted to suppress this fact. PW1, who stated that the deceased informed him that the appellant/accused had set fire by pouring kerosene, would admit in his cross examination that he came to know that the appellant set fire when he overheard the conversation of persons who were at the scene of the occurrence. Therefore, his version that the deceased informed him cannot be accepted or believed. Further, he would add that the appellant did not accompany the deceased to the hospital and that four others accompanied the deceased. This version is also contrary to the



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earliest entries made in the hospital records.

14. The conduct of PW4, the brother of the deceased, who stated that the deceased died due to the burn injuries, is also worth mentioning. Though he had stated that he informed the police about the death of the deceased, PW15, the investigation officer confirms that he did not receive any such information. If the deceased had really died due to the burn injuries, PW4's natural conduct would be to inform the police, and there was no necessity to cremate the body on the same day.

15. In this background, we may now analyse the two statements, which have been marked as dying declarations. Ex.P18 is said to have been given to PW13, the learned Magistrate, which reads as follows:-

“நோயாளி மயில் க/பெ வேடியப்பன் தரும் வாக்குமூலம் என் கணவர் அதிகமாக குடிப்பார். இன்று காலை 8 மணிக்கு என் வீட்டில் வைத்து என் கணவர் சும்மாதான் மண்ணெண்ணையை ஊற்றுகிறார் என்று நினைத்தேன். ஊற்றிவிட்டு என் கணவரே பற்ற வைத்தார். அவர் என்னை காப்பாற்ற ஒன்றும் செய்யவில்லை. நானே வெளியில் ஓடி வந்து விட்டேன். பிறகு பக்கத்தில் இருந்த மீன்காரர் மற்றும் பலர் தீயை அனைத்தனர்.”



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16. In the above statement, it is seen that the deceased stated that the appellant had not taken any steps to save her and that one fisherman and the others saved her. The said fisherman has not been examined by the prosecution. The said statement was recorded at 11.50am, wherein the time of occurrence is shown as 8.00am. Ex.D1, the outpatient slip given to the appellant confirms that the appellant sustained blisters. No explanation has been offered by the prosecution as to how the appellant sustained such injuries. There was no necessity at this stage to specifically state that the appellant did not attempt to save her, when the medical evidence is to the contrary. Thus, the dying declaration does not appear to be truthful. The fact that the appellant admitted the deceased in the hospital and the fact that he sustained burn injuries probabalises the defence case that the burn injuries suffered by the deceased were due to an accident and the appellant attempted to save her.

17. The second statement said to have been recorded from the deceased is Ex.P16, by PW12, the Sub Inspector of Police. In Ex.P16, we find that there is a correction made in regard to the time of occurrence, and it



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is shown as 9.00am and more details are found about how the alleged occurrence took place. In this, the deceased would add that the appellant took her in an ambulance and brought her to the hospital, and there is no reference to who assisted her in dousing the fire. Though intimation was given as per Ex.P8 at 9.00am, to the police authorities, and PW12 had stated that he recorded the statement of the deceased at 12.00pm, it is not known

as to why the FIR was registered at 6.00pm on 18.05.2012. PW12 has not offered any explanation as to why there was a huge delay in registering the FIR after recording the statement of the deceased at 12.00pm. However, in the cross examination he would state that the FIR was registered at 1.00pm, which is contrary to the record. Therefore, the above facts make the statement Ex.P16 highly doubtful.

18. Considering the above aspects in this case, we are of the view that when the learned Judicial Magistrate recorded the dying declaration at about 11.50am, there was a possibility of tutoring, and the deceased had made certain statements with regard to the appellant not helping the deceased in



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dousing the fire, which are contrary to the available evidence on record and that confirms that the said dying declaration is also not truthful.

19. Taking into account the above fact that the dying declarations are not truthful and voluntary and the fact that the prosecution had also not established through conclusive evidence the cause of death of the deceased and the exact date of death, we are of the view that the appellant cannot be convicted on the basis of such evidence. Therefore, the conviction and sentence imposed on the appellant are liable to be set aside.

20. Accordingly, the Criminal Appeal is allowed, and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in S.C. No.63 of 2013 dated 28.03.2019, on the file of the learned Additional District and Sessions Judge No.IV, Coimbatore, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
22.01.2024



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Index : yes/no

Neutral citation : yes/no
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Additional District and Sessions Judge No.IV,
Coimbatore.

2. The Inspector of Police,
B-14 Police Station, Kuniyamuthur,
Coimbatore.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
Crl.A.No.598 of 2019

22.01.2024



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