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Crl.A.No.522 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.522 of 2019

Kumar

...Appellant/Sole Accused

VS.

State rep. by
The Inspector of Police,
Pollachi Taluk Police Station,
Coimbatore District.
Crime No.8 of 2016

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., 1973, to call for the records relating to the Judgment dated 12.07.2019 made in S.C.No.124 of 2016 on the file of the 1st Additional District and Sessions Court, Coimbatore and set aside the same by allowing this criminal appeal.

For Appellant : Mr.S.Mohamed Ansari
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



Crl.A.No.522 of 2019

JUDGMENT

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

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This Criminal Appeal has been filed by the appellant/sole accused challenging the conviction and sentence imposed upon him vide judgment dated 12.07.2019 in S.C.No.124 of 2016 on the file of the learned 1st Additional District and Sessions Judge, Coimbatore.

2 (i). It is the case of the prosecution that the deceased was the wife of the appellant; that the appellant was in the habit of spending money on gambling and drinking; that there were disputes between the husband and wife; that the son of the appellant had gone to Sabarimala Temple on 11.01.2016; that on 11.01.2016 at 10:30 p.m., the appellant after eating non vegetarian food brought an egg biryani parcel for the deceased; that the deceased shouted at the appellant as to why he had non vegetarian food, when their son had gone to the temple; that the appellant enraged by the behaviour of the deceased poured kerosene from the kerosene lamp, which was used as there was no power supply and set fire to the deceased; and that the deceased succumbed to the injuries, the next day on 12.01.2016.



(ii). It is further the case of the prosecution that the deceased was taken to Coimbatore Medical College Hospital [for the sake of convenience hereinafter referred to as C.M.C. Hospital] at Coimbatore; that a statement of the deceased was recorded by the Sub Inspector of Police, one Thangavelu, and the right toe impression was affixed; and that he registered the First Information Report in Crime No.8 of 216, for the offence under Section 307 of the IPC. The said Thangavelu was not examined, as he had passed away by then.

(iii). P.W.10, Inspector of Police, took up the investigation and went to the scene of the occurrence. He prepared the Rough Sketch [Ex.P.12] and the Observation Mahazar [Ex.P2] in the presence of witnesses. At about 10:30 a.m., he seized two bottles that smelt of kerosene and seized the burnt articles, including the burnt dress materials of the deceased. Thereafter, he went to the C.M.C. Hospital at Coimbatore and recorded the statement of the deceased and her mother, P.W.1. On 14.01.2016, he arrested the accused at 5.30 a.m. On the confession given by the deceased, he seized blood-stained clothes, which he concealed in a scooter that was



Crl.A.No.522 of 2019

parked in a scooter stand. On 03.02.2016, he received intimation that the deceased had succumbed to burn injuries and altered the offence to Section 302 of the IPC. On 04.02.2016, he conducted an inquest in the presence of Panchayatdars and prepared an Inquest report, Ex.P.13. He altered the offences and prepared an alteration report, Ex.P14 and handed over the investigation to P.W.11. P.W.11, the Inspector of Police, Pollachi Police Station, examined other witnesses and the post-mortem doctor and filed the Final Report on 27.05.2016, before the learned Judicial Magistrate – II, Pollachi, for the offence under Section 302 of the IPC.

(iv) 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.124 of 2016 and was made over to the learned I Additional District and Sessions Judge, Coimbatore District, 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'.



(v) To prove the case, the prosecution examined 11 witnesses as P.W.1 to P.W.11, marked 14 exhibits as Exs.P1 to P14, and marked material objects as M.O.1 to M.O.9. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witnesses, nor marked any documents.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, held the appellant guilty of the offence under Section 302 of the IPC, and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- and, in default to undergo three months of simple imprisonment. Hence, the appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard Mr.S.Mohamed Ansari, learned counsel appearing for the appellant, and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.



4. Mr.S.Mohamed Ansari, the learned counsel for the appellant submitted that the Dying Declaration is said to have been given to P.W.1, the complaint given by the deceased and the Dying Declaration given to the learned Judicial Magistrate No.I, Pollachi, are contrary to each other, which makes the Dying Declarations totally unreliable; that the prosecution has suppressed the Accident Register and also the fact that the deceased was first taken to Pollachi Hospital and thereafter, to the C.M.C, Hospital at Coimbatore; that since the earliest version has been suppressed, the prosecution case is doubtful; and that in any case, P.W.1 herself admitted that the deceased had a tendency to commit suicide and had attempted to commit suicide earlier.

5. Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, *per contra*, submitted that the Dying Declarations are cogent and convincing, and the prosecution has established that the deceased was done to death by setting fire, and submitted that the appeal has to be dismissed.



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6. We have carefully considered the rival submissions and perused all the relevant materials available on record.

7. P.W.1 is the mother of the deceased, to whom the deceased is said to have made a Dying Declaration. P.W.2 and P.W.3 are neighbours who corroborated the evidence of P.W.1. P.W.4 is another neighbour, who is a witness to the Seizure Mahazar, Ex.P3, for the seizure of the quarter bottles, which smelt of kerosene, M.O.1 and M.O.2, and other burnt articles, M.O.3 to M.O.7. P.W.5 is a witness to the confession of the accused. P.W.6 is the corpse constable. P.W.7 is the post-mortem Doctor. P.W.8 is the learned Judicial Magistrate, who recorded the Dying Declaration, Ex.P.10, from the deceased. P.W.9 is the Doctor, who certified that the deceased was in a fit condition to give Dying Declarations. P.W.10 and P.W.11 are the Investigating Officers.

8. It is P.W.1's version that when she went to the house of the deceased on 11.06.2016, at 10:30 p.m., the neighbours of the deceased



informed her that the appellant had set fire to the deceased. She had also stated that when the appellant and the deceased were in her house on 11.01.2016, the appellant informed the deceased that he was going to Pollachi and that he would have dinner outside and then go to their house [the house of the appellant and the deceased], which was nearby; and that he had asked the deceased to have dinner at P.W.1's house and thereafter, go to their house.

9. The above evidence would suggest that the appellant and the deceased were on cordial terms. Further, P.W.1 did not say anything about disputes between the appellant and the deceased in the chief-examination. In the cross-examination, she stated that there were minor disputes and that sometimes the deceased would come to her house, after such quarrels. She would further add that she and the family of the accused/appellant were on cordial terms. As regards her version that the neighbours informed her that the appellant set fire to the deceased, this is not corroborated. Both P.W.2 and P.W.3, deposed that the deceased told P.W.1 about what had happened, and both of them had no personal knowledge as to what



Crl.A.No.522 of 2019

happened. It is not clear who told P.W.1 that the deceased was set on fire by the appellant. However, P.W.1 would state that when she asked the deceased, the deceased told her that there was a quarrel between her and the appellant since he had non-vegetarian food, and that the appellant therefore poured kerosene, set her on fire, and ran away.

10. The evidence of P.W.2 would suggest that the appellant was very much available in the house. Therefore, the version that the appellant ran away is falsified. P.W.1 would admit that the deceased was first taken to Pollachi Government Hospital, and the Doctor who treated the deceased recorded the statement of the deceased. Subsequently, the deceased was taken to C.M.C Hospital at Coimbatore for further treatment. Strangely, the prosecution has suppressed the fact that the deceased was first taken to Pollachi Hospital. The Accident Register maintained at Pollachi Hospital or at C.M.C. Hospital, Coimbatore, was not marked by the prosecution. The earliest version recorded in the Accident Register, therefore, has been suppressed by the prosecution. This would have a bearing on appreciating the Dying Declarations and the other evidence on record.



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11. In Ex.P1/complaint, the deceased stated that there was a quarrel between her and the appellant since she shouted at the appellant for eating non-vegetarian food, and thereafter, the appellant set fire to her. This statement was recorded at 7:00 a.m. on 12.01.2016, according to the prosecution. In Ex.P10 series, it is seen that the Doctor had made a request to the learned Magistrate to take the Dying Declaration at 1:27 a.m. on 12.01.2016. In the said requisition, it is stated that the deceased had suffered 60% burns. It is not known as to why the intimation was sent by the Doctor directly. The prosecution has also suppressed the intimation sent by the Hospital to the Police about the occurrence. Be that as it may. In the Dying Declaration given to the learned Judicial Magistrate at 6:20 a.m., the deceased stated that the cause for the quarrel was that she refused to go to the appellant's native place along with him. There is no reference to any dispute with regard to eating non-vegetarian food. She also added in the said Dying Declaration that the appellant used to fight with her after consuming alcohol. There is no mention of this aspect in any of the other Dying Declarations. That apart, P.W.1 has not stated that the appellant ever quarrelled in an inebriated condition. Further, as stated earlier, P.W.2 and



Crl.A.No.522 of 2019

P.W.3, the neighbours admitted that they had no personal knowledge of what happened. Therefore, P.W.1's version that she came to know that the appellant had set fire to her daughter from the neighbours is not reliable. The Dying Declarations said to have been given by the deceased to P.W.1 also is doubtful.

12. In light of the above evidence, the admission made by P.W.1 in the cross-examination that the deceased had a tendency to commit suicide, and she had once consumed cow dung powder and attempted to commit suicide assumes significance. She had once threatened the villagers that she would commit suicide when they questioned her brother regarding an issue. Above all, the most important aspect elicited in the cross-examination of P.W.1 is that she conceded that it is true that she came to know from the neighbours that the deceased committed suicide. The relevant portion in the cross-examination of P.W.1 reads as follows:-

"என் மகள் சின்ன சின்ன பிரச்சனைக்கு உணர்ச்சி
வசப்பட்டு, கோப்பட்டு தற்கொலைக்கு முயற்சித்து வந்தவர்
என்றாலும் அது போல் தான் சம்பவத்தன்று என் மகள்



Crl.A.No.522 of 2019

WEB COPY

அவராகவே மண்ணெண்ணெய்யை அவர் உடம்பில்
ஊற்றிக்கொண்டு, தீ வைத்துக்கொண்டு தற்கொலைக்கு
முயற்சித்தார் என்றாலும் அவ்வாறுதான் நானும்
கேள்விபட்டேன்.

Though the above admissions were made in the cross-examination two years after the occurrence, nothing was elicited in the re-examination by the prosecution, suggesting that she was won over by the appellant. That apart, even in the earlier cross-examination, P.W.1 admitted that the deceased was in the habit of threatening people with suicide and, in fact, attempted suicide more than once.

13. Therefore, we are of the view that considering the above evidence of P.W.1; the contradictions in the Dying Declarations given by the deceased; the fact that the Accident Register at Pollachi Government Hospital and at C.M.C Hospital, Coimbatore, have been suppressed by the prosecution; and that the FIR was registered belatedly at 7:30 a.m., on the next day (i.e) 12.01.2016, it would be highly unsafe to convict the appellant.



Crl.A.No.522 of 2019

Hence, the Judgement of the Trial Court is liable to be set aside and set aside.

14. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charge u/s.302 of the Indian Penal Code. The conviction and sentence passed in S.C.No.124/2016 on the file of the learned I Additional District and Sessions Judge, Coimbatore, *vide* Judgment dated 12.07.2019 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.)
17.04.2024

Speaking / Non-Speaking Order
Neutral Citation : Yes / No
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Crl.A.No.522 of 2019

Copy to:-

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Superintendent of Prison,
Central Prison Trichy.
- 3.The Inspector of Police,
Pollachi Taluk Police Station,
Coimbatore District.
- 4.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.522 of 2019

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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