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Crl.A.No.87 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.87 of 2023

Thanga @ Thangaraj

... Appellant/Sole Accused

v.

The State Rep. by its,
Inspector of Police,
D1, Ramanthapuram Police Station,
Coimbatore,
Coimbatore District.
(Crime No.1522/2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant/sole accused and sentence in S.C.No.19 of 2021 dated 25.11.2022, on the file of the learned Sessions Judge, Mahila Court / Additional Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.C.D.Sugumar

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him, vide judgment dated 25.11.2022 in S.C.No.19 of 2021, on the file of the learned Sessions Judge, Mahila Court / Additional Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore.

2.(i) It is the case of the prosecution that the victim/deceased is the wife of the appellant; that there were frequent quarrels between the victim and the appellant, since the appellant had an illicit affair with PW12, the wife of the appellant's brother; that on the day of occurrence i.e., on 08.07.2020 at about 9.00 p.m., a wordy quarrel took place between the appellant and the deceased in the presence of PW8, the mother of the deceased; that the appellant had assaulted the deceased with a stick; that the deceased pushed the appellant and hence the appellant poured kerosene on the victim and set her ablaze; that the victim was taken to the hospital; and that thereafter, on the complaint [Ex.P1] given by the victim, an FIR [Ex.P16] was registered by PW20 and the investigation was conducted by PW21.



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(ii) The investigating officer [PW21] prepared the observation mahazar [Ex.P2] and the rough sketch [Ex.P17]; he arrested the appellant and recorded his confession, the admissible portion of which was marked as Ex.P18; and he seized a 5 Litre Plastic Can containing Kerosene [M.O.2] under seizure mahazar [Ex.P19].

(iii) On 10.07.2020, PW18 filed an alteration report, since the victim died on 10.07.2020. The investigating officer conducted the inquest and prepared the inquest report [Ex.P21] and sent the body for postmortem, which was done by PW19-Doctor, who had issued the postmortem certificate [Ex.P12] and gave the final opinion [Ex.P14]. After the examination of the Doctors, other witnesses and completion of investigation, PW21 filed the final report against the appellant for the offences under Sections 294(b), 324, 498(A) and 302 of the IPC before the learned Judicial Magistrate No.IV, Coimbatore.

(iv) In the meanwhile, the dying declaration of the deceased was recorded by PW16 on the information given by the doctor on 09.07.2020, which was marked as Ex.P9.



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(v) 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 Sessions i.e., learned Principal District Judge, Coimbatore, in S.C.No.19 of 2021. The case was made over to the learned Sessions Judge, Mahila Court / Additional Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore, for trial. The trial Court framed charges for the offences under Sections 498(A) and 302 of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 23 exhibits as Exs.P1 to Ex.P23 and marked 7 material objects as M.O.1 to M.O.7. 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 witness nor marked any document on his side.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offences under Section 304(II) of the IPC and



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sentenced him to undergo rigorous imprisonment for three years and to pay a fine

of Rs.5,000/-, in default to undergo simple imprisonment for three months, and found the appellant not guilty of the offence under Section 498 (A) of the IPC and acquitted him of the said charge. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.C.D.Sugumar, learned counsel appearing for the appellant, and Mr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.

4. The learned counsel for the appellant would submit that PW8, the mother of the victim and PW3, the son of the deceased, did not support the prosecution case and therefore, were treated hostile; that all the relatives viz., PW4, PW5 and PW11 turned hostile; that the prosecution had not established the motive; and that the trial Court erred in convicting the appellant on the basis of the dying declaration of the deceased and prayed for acquittal of the appellant.



5. The learned Government Advocate (Crl. Side) appearing for the respondent *per contra* submitted that the dying declaration of the victim inspires

confidence; that even in the absence of corroboration, the dying declaration was rightly believed by the trial Court to hold the appellant guilty of the offence under Section 304(II) of the IPC; and therefore, prayed for dismissal of the appeal.

6. Considered the rival submissions and perused all the relevant records.

7. As stated earlier, the prosecution had examined 21 witnesses. PW1 and PW2 are the neighbours of the victim, who first saw the victim after the occurrence; PW3, is the son of the deceased, who turned hostile; PW4 and PW5 are relatives of the deceased, who turned hostile; PW6 and PW7 are neighbours who were witnesses to the observation mahazar; PW8 is the mother of the victim, who was treated hostile by the prosecution; PW9 is the driver of the car, in which the deceased was taken to the hospital; PW10 is the brother-in-law of the deceased and is a hearsay witness; PW11 is the son-in-law of the accused and turned hostile; PW12 is the brother's wife of the appellant, who according to the



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prosecution had illicit intimacy with the appellant. However, she had not stated anything about the alleged illicit intimacy; PW13 is the doctor, in whose presence, the dying declaration was recorded by PW16, the Judicial Magistrate; PW14 is the



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Doctor, who treated PW8, who was also injured in the occurrence; PW15, is the Assistant Executive Engineer of the Tamil Nadu Electricity Board, who had deposed that there was no electricity supply to the house at the time of occurrence; PW16 is the Judicial Magistrate, who recorded the dying declaration; PW17 and PW18 are the Constables who assisted the investigation; PW19 is the doctor, who conducted the postmortem; PW20 is the Sub-Inspector, who registered the FIR; and PW21, is the investigating officer, who filed the final report.

8. From the above, it would be clear that the prosecution case rests on the evidence of PW1 and PW2, the neighbours who first saw the deceased after the occurrence, the evidence of PW8, the mother of the deceased and the evidence of PW3, the son of the deceased. The other witnesses are either hearsay witnesses or had turned hostile. PW9 is the driver of the vehicle, who took the deceased to the hospital. His evidence is of no avail to the prosecution as the deceased has not stated anything to PW9.

9. As stated earlier, PW1 and PW2 are the neighbours. PW2 is the wife of



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PW1. They both saw the deceased immediately after the occurrence and have

stated that PW8 was in an inebriated condition and was bedridden and the deceased was also in an inebriated condition. From their evidence it is seen that the deceased had not stated as to how the occurrence took place to either PW1 or PW2. In fact, PW1 would state that the appellant had made an attempt to extinguish the fire by wrapping the deceased with a bed sheet. The evidence of PW2 is also similar. PW3, the son of the deceased who turned hostile would state that his father has been falsely implicated and the case of the prosecution is false. PW4 and PW5, as stated earlier had turned hostile. The next evidence is that of PW8, the mother of the deceased. Though she would state in the chief examination that the appellant poured kerosene from a bottle on the deceased and thereafter set her ablaze, she did not support the prosecution case on other aspects and hence, treated hostile by the prosecution.

10. It is the victim's version as could be seen from the dying declaration that when there was a quarrel between her and the appellant, the victim poured kerosene on herself and thereafter, the appellant set her ablaze. This version is



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contrary to the prosecution case that the appellant poured kerosene from a 5 litre can on the victim and thereafter, set her ablaze. This version is also contrary to

the version of PW8 that the appellant poured kerosene on the victim from a bottle. The prosecution case is that a 5 litre can was seized which was allegedly used by the appellant for pouring kerosene. In the light of the evidence of PW1 and PW2 that PW8 was bedridden and in an inebriated condition and incapable of comprehending the events, this Court is of the view that even a part of the evidence of PW8, who was treated hostile by the prosecution, cannot be believed to hold that it was the appellant who poured kerosene on the victim and set her ablaze.

11. If the evidence of PW8 is rejected, the only available evidence is the dying declaration of the victim. As stated earlier, this dying declaration is contrary to the prosecution case. That apart, it is also seen that the Accident Register of the deceased has not been produced by the prosecution, which would have recorded the earliest version of the deceased. Further, the evidence of the neighbours PW1 and PW2, would show that both PW8 and the deceased were in



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an inebriated condition, at the time of occurrence. The evidence probabalise the defence case that the deceased committed suicide and the dying declaration is contrary to the other evidence on record.

12. In the light of the above facts and the other evidence on record, especially when all other witnesses including the son of the deceased, turned hostile, it would be highly unsafe to convict the appellant only on the sole basis of the dying declaration, which also suffers from infirmities, as stated earlier.

13. Therefore, in view of the above infirmities, this Court is of the view that it is highly unsafe to convict the appellant, on the basis of the above evidence and hence, the appellant is entitled to the benefit of doubt and deserves to be acquitted.

14. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of the charge. The conviction and sentence passed in S.C.No.19 of 2021, dated 25.11.2022 on the file of learned Sessions Judge, Mahila Court / Additional Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.



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Index : yes/no

02.01.2025

Speaking /Non-speaking order

Neutral citation : yes/no

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To

1. The Sessions Judge,
Mahila Court / Additional Special Court for
Exclusive Trial of cases under POCSO Act, Coimbatore

2. The Inspector of Police,
D1, Ramanthapuram Police Station,
Coimbatore,
Coimbatore District.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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