

Vimaldoss Vs. State

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Court : Chennai

Decided On : Aug-29-2013

Judge : V.Dhanapalan

Appellant : Vimaldoss

Respondent : State

Advocate for Pet/Ap. : Mr. R. Sankarasubbu

Judgement :

In the High Court of Judicature at Madras Dated ::

29. .08..2013 Coram : The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice C.T. Selvam Criminal Appeal No:

341. of 2011 Vimaldoss 158, J.J.

Nagar Ennore Chennai 57. ... Appellant -vs- State represented by The Inspector of Police Ennore Police Station Thiruvallur District. ... Respondent Criminal Appeal under Section 391 of Cr.P.C. against the judgment and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No:

4. Ponneri, in S.C. No:

183. of 2009 dated 04.05.2011. For appellant :: M/s. R. Sankarasubbu For respondent :: Mr. V.M.R. Rajendran Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by C.T. Selvam, J.) The appellant is the sole accused who stood trial for offence under Section 302 I.P.C. in S.C. No:

183. of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No:

4. Ponneri.

2. The prosecution case is that the appellant was in the habit of getting drunk and picking up quarrels. Pursuant to one such quarrel in a drunken state, he doused her with kerosene and set her on fire on 04.03.2009 at about 8.00 p.m. Immediately after the occurrence, the deceased was taken to hospital by P.W.2, her mother. Upon receipt of intimation, on 05.03.2009, P.W.11 the Investigating Officer proceeded to Kilpauk Medical College hospital and recorded the statement of the deceased who was then at the burns ward of such hospital. On return to the police station at about 1.00 p.m., he registered a case in Crime No:

97. of 2009 for an offence under Section 307 I.P.C. On expiry of the deceased on 08.03.2009 at 10.00 a.m., the First Information Report was altered to one under Section 302 I.P.C.

3. In support of its case, the prosecution examined P.Ws. 1 to 11; marked exhibits P.1 to P.14 M.Os. 1 to 4.

4. On being questioned under Section 313 of Cr.P.C., the appellant denied guilt. On appreciation of the evidence before it, the trial Court convicted the appellant for offence under Section 302 I.P.C. and sentenced him to undergo life imprisonment and fine of Rs.3,000/- i/d 1 year R.I. This appeal arises against such finding.

5. We have heard Mr. R. Sankarasubbu learned counsel for the appellant, Mr.V.M.R. Rajendran, learned Additional Public Prosecutor for the State and

perused the records.

6. P.Ws. 1 to 6, the immediate relatives of the accused and his neighbours have turned hostile. Learned counsel for appellant submitted that evidence of P.W.8, the Sub Inspector of Police and P.W.11, the Investigating Officer were at variance. Both would inform that they had been to the hospital on receipt of information and recorded the statement of the deceased and both had forwarded the requisition for recording the statement of the deceased under Section 164 Cr.P.C. to the Judicial Magistrate. He contended that the intimation received from the hospital has been suppressed. Therefore, what has been placed before this Court as the First Information Report really is not so. Having produced before this Court a copy of the Accident Register issued by the hospital, which informs of the accused having suffered certain burn injuries, learned counsel would contend that the prosecution has suppressed the same and that the present was a case where the deceased had attempted self-immolation and the appellant had suffered injuries while trying to save her. Upon an application moved before this Court in Crl. M.P. No:

2. of 2013 and considering it appropriate, this Court has called for the original records from the Government Royapettah Hospital, Chennai. Pursuant to the production thereof, we have also examined the said medical records and marked the same as Ex.C.1. By an order passed by this Court on 31.07.2013, M.P. No:

2. of 2013 filed to take further evidence of Dr.Senthil and Dr. Mathivarathan, of Government Royapettah Hospital, Chennai, was allowed and Dr.Senthil had deposed before this Court on 02.08.2013. In his examination in chief, learned counsel for appellant has suggested that the burn injuries of the accused, as found in Ex.C.1, could have been occasioned in an attempt to save his wife. Such position was accepted by the witness. In cross examination, learned Additional Public Prosecutor suggested that the burn injuries suffered by the appellant could be self-inflicted. Such position also was accepted. This Court has questioned the Doctor as to whether it could be possible to inform the approximate time and the age of the burn wounds by examination. The Doctor had deposed that the same was possible and that such exercise had been done not in the instant case.

7. The next submission of the learned counsel for the appellant was that the present was a case where the injury suffered by the deceased were 35% burns as reflected in Ex.P.7, the Accident Register. The Post Mortem Report, Ex.P.3, reflects that the deceased had died of 'Septicemia'. Therefore, in case the appellant is held to be guilty, he would not attract punishment for offence of murder under Section 302 I.P.C. In support of his case, reliance was placed on decision in Maniben vs. State of Gujarat [1969] 2 S.C.C. 796..

8. We have heard learned Additional Public Prosecutor on the submissions of learned counsel for appellant. The Additional Public Prosecutor has submitted that the guilt of the accused stood sufficiently proved. A statement of the deceased had been recorded at hospital and the same has been registered as the First Information Report. Owing to the death of the deceased, the same is admissible under Section 32 of the Indian Evidence Act. Though even the same alone would be sufficient to convict the accused, the prosecution case found further support through the dying declaration recorded by P.W.9, the IX Metropolitan Magistrate, Saidapet, Chennai. The deceased had clearly stated before such Metropolitan Magistrate that she had been set on fire by the appellant. It was also pertinent to note that P.W.10, the Doctor, who admitted the deceased at hospital at about 9.40 p.m. on 04.03.2009 has deposed that she had been reportedly doused with kerosene and set on fire by a known person at 8.00 p.m. on such date. Such witness has informed that the deceased had been conscious at such time. Learned Additional Public Prosecutor would further submit that there was no doubt that the deceased had met her death owing to the gruesome act of the appellant. Hence, the conviction for offence under Section 302 I.P.C. and sentence of imprisonment for life imposed by the trial Court was a reasonable one. The same did not call for any interference by this Court.

9. We have considered the rival submissions.

10. Though P.Ws. 1 to 6 have turned hostile, we find no reason to doubt that it was the act of the appellant which has led to the death of the deceased. The act of the appellant in dousing the deceased, his wife, with kerosene and setting her on fire has been spoken to in Ex.P.4, the First Information Report, which now can be

read in evidence pursuant to Section 32 of the Indian Evidence Act. P.W.10, the Doctor, who admitted the deceased in hospital, has also informed such position. P.W.9, a Judicial Magistrate, has recorded the statement of the deceased under Section 164 Cr.P.C., following all requisite safeguards. He has found the deceased to be conscious and finding that the deceased had suffered burn injuries on her fingers and that she was unable to affix her thumb impression, her right toe impression has been taken in Ex.P.6. Therefore, the alternate version put forth by the defence that the deceased attempted self-immolation and the burn injuries suffered by the appellant was in an attempt to save her cannot be countenanced. The fact that the appellant had suffered burn injuries would only go to further prove his involvement in the offence. We find unacceptable the explanation of learned counsel for appellant on the delay in the appellant going to hospital. Though burn injuries were alleged to have been suffered on 04.03.2009, he has been admitted in hospital only on 06.08.2013. Learned counsel submits that having been beaten up by the neighbours and relatives, since they suspected him of the gruesome act, he had fallen on the beach and regained consciousness only after two days and then, had gone to the hospital. This version is highly untenable. Therefore, there is no reason to doubt the involvement of the appellant in the occurrence.

11. The judgment of the Apex Court in Rakesh and another vs. State of Haryana [2013 (2) S.C.C. (Cri.) 312]., shows that where dying declaration is corroborated by oral evidence, conviction would follow. In the instant case, we find that the dying declaration in Ex.P4 is corroborated by the evidence of P.W.10, the Doctor. As in the case cited so also in the instant case, the satisfaction of the Magistrate as to the deceased being conscious and in a fit state to make a declaration under Section 164 Cr.P.C. can be accepted and acted upon. Further, as earlier observed, the F.I.R. registered in the case could be read in evidence in keeping with Section 32 of the Indian Evidence Act.

12. It now lies upon us to decide whether the appellant could be convicted for an offence under Section 302 I.P.C. or would attract punishment only for the offence of culpable homicide not amounting to murder. In the instant case, the evidence of the Post Mortem Doctor P.W.7 is to the effect that a person having suffered 60% burn injuries could survive. In the instant case, the deceased had suffered 35%

burn injuries. It is seen that one of the reasons put forth for the death of the deceased in Ex.P.3, Post Mortem Certificate, is that she has suffered ".Septicemia".. The condition of ".Septicemia"., particularly in a case wherein the person who has suffered burn injuries of only 35%, could have been occasioned owing to laxity on the part of the medical personnel. Therefore, it would be appropriate not to convict the appellant for an offence under Section 302 I.P.C. However, we have absolutely no doubt that the intention of the appellant in dousing the deceased with kerosene and setting her on fire was to cause her death. However, in the instant case, there can be no doubt that the appellant has wrongfully conducted himself with the knowledge that his act was so imminently dangerous that it in all probability would cause death or such bodily injury as is likely to cause death. Even so, we cannot with conviction hold that it is his act that had led to death, the intervening factor being septicemia. Therefore, we would hold the appellant guilty of offence under Section 304 Part II I.P.C.

13. Accordingly, while upholding the conviction of guilt of the accused, we alter the section of offence into one under Section 304 Part II I.P.C. and convict him and sentence him to undergo 7 years rigorous imprisonment. The fine imposed by the Court below shall stand confirmed and shall be relatable to the offence with which the appellant / accused stand convicted. (V.D.P.J.

) (C.T.S.J.) 29..08..2013 Index:yes/no Internet:yes/no gp V. Dhanapalan, J.

and C.T. Selvam, J.

gp To 1. The Inspector of Police Ennore Police Station Thiruvallur District.

2. The Public Prosecutor High Court Chennai. Crl. Appeal No:

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