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Court : Chennai

Decided On : Jan-12-2017

Judge : S. Nagamuthu &Amp; N. Authinathan

Appeal No. : Criminal Appeal No. 624 of 2016

Appellant : Kannan

Respondent : State by The Inspector of Police, Vazhapady Police Station, Salem District

Judgement :

(Prayer:Criminal Appeal filed under Section 374 Cr.P.C., against the judgment passed by the Sessions Judge, Mahila Court, Salem, Salem District dated 07.06.2016 in S.C.No.270 of 2012.)

S. Nagamuthu. J.

1. The appellant is the sole accused in S.C.No.270/2012 on the file of the learned Sessions Judge, Mahila Court, Salem. He stood charged for offence under Section 302 I.P.C., (2 counts). By judgment dated 07.06.2016, the trial Court convicted and sentenced the accused/appellant to undergo imprisonment for life for each count and to pay a fine of Rs.10,000/- for each count (no default sentence was imposed). Challenging the said conviction and sentence, the appellant is before

this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

There are two deceased in this case. Deceased Mrs.Gayathri is hereinafter referred to as D.1 . P.W.1 is the husband of D.1. The marriage between them was celebrated 7 years before her death. Out of the said wedlock, a male and a female children were born. In due course, the accused, who is the resident of same area had developed illicit intimacy with D.1. The female child Ms.Dharaneeswari (hereinafter referred to as D.2) was claimed by the accused to have born to him. This resulted in frequent quarrel between D.1, P.W.1 and the accused. As a matter of fact, D.1 had made a complaint against the accused and the accused in turn, made a complaint against D.1 and P.W.1. D.1 was living separately along with D.2. D.1 had given 10 soverigns of gold jewels to the accused. She started demanding the same. The accused declined to return the same. This again resulted in ill feeling between D.1 and the accused.

3. It is alleged that on 06.11.2011, at 9.00 pm, the accused who was in a drunken state, came to the house of D.1; developed quarrel; manhandled D.1; poured kerosene on D.1 as well as D.2 and set fire. He himself informed P.W.1 over phone that he had set fire to D.1 and D.2. He himself informed 108 Ambulance also. P.W.1 immediately rushed to the place of occurrence. By that time, 108 Ambulance had also come. Both D.1 and D.2 were taken to the Salem Government Hospital.

4. On receiving intimation from the hospital, the Inspector of Police (P.w.16) had gone to the hospital. By that time, D.2 succumbed to the injuries in the hospital. The Inspector of Police, therefore, recorded the statement of D.1. On returning to the Vazhapadi Police Station, on 07.11.2011 at 9.00 am, he registered a case in Crime No.1247/2011 for offences under Sections 307 and 302 I.P.C. Ex.P.32 is the complaint and Ex.P.22 is the F.I.R.

5. P.W.16 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch at the place of occurrence. He arranged for a Photographer to take photograph at the place of occurrence. He

also recovered material objects from the place of occurrence, under a mahazar, in the presence of the same witnesses. On the same day, between 11.45 am and 3.45 pm, in the hospital, he conducted inquest on the body of D.2 and forwarded the same for post mortem.

6. P.W.9 Dr.Panneerselvam conducted autopsy on the body of D.2 on 07.11.2011 at 3.05 pm. He found the following injuries:-

Dermo Epidermal burns over face, around the neck, front and back of chest and abdomen, both upper limb including the hands, front and back of right thigh, front of left thigh, front of Lt leg, front of right foot, remaining areas intact. Burnt areas shows hyperemia with areas of inflammation, surgical cut down wound over medial aspect of left ankle with two sutures.

Ex.P.18 is the post mortem certificate of D.2. He gave opinion that the death of D.2 was due to extensive burn injuries.

7. On the same day (07.11.2011), at 5.30 pm, near Vazhapadi Polur Branch road, P.W.16 arrested the accused. The accused had come to Deepam Hospital for taking treatment for the injuries on his hands. On returning to the Police Station, P.W.16 examined the accused. The accused gave a voluntary confession. He recovered the clothes worn by the accused at the time of occurrence. Then he forwarded him to Court for judicial remand.

8. When D.1 was undergoing treatment in the Government Hospital, Salem, P.W.10 - the then Judicial Magistrate, went to the hospital and recorded the dying declaration of D.1 on 07.11.2011 at 7.50 am. At that time, the deceased was in a fit state of mind to make a statement. The Doctor on duty also certified that she was in a fit state of mind to make dying declaration. Ex.P.21 is the dying declaration made by D.1. In the said dying declaration, D.1 has stated that it was this accused who poured kerosene and set fire on her as well as on D.2.

9. On 10.11.2011, at 7.15 am, D.1 succumbed to the injuries in the hospital. On receiving intimation, P.W.16 altered the case into one under Section 302 I.P.C., (2 counts) and submitted an alteration report, on the same day, to Court. On

10.11.2011, between 10.30 am and 12.30 pm, he conducted inquest on the body of D.1 and forwarded the same for post mortem.

10. P.W.7 Dr.Angaiyarkanni conducted autopsy on the body of D.1 on 10.11.2011 at 1.10 pm. She found the following injuries:-

Dermo Epidermal burns with reddish tone of inflammation with yellowish foul smelling discharge noted over face, front side and back of the neck, chest and abdomen, both upper limbs including palms both lower limbs excluding soles, external genitalia, both gluteal region, scalp hair, anillary hair and pubic hair signed

Ex.P.11 is the post mortem certificate of D.1. She gave opinion that D.1 had died due to the extensive burn injuries. On completing investigation, P.W.16 laid charge sheet against the accused.

11. Based on the above materials, the trial Court framed a charge under Section 302 I.P.C., (2 counts) against the accused. He denied the same as false. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 32 exhibits were marked besides 13 material objects were marked.

12. Out of the said witnesses, P.W.1 is the husband of D.1. He has spoken about the illicit relationship between the accused and D.1. He has further stated that on the day of occurrence also, in the house, D.1 and D.2 alone were there. He has then stated that the accused called him over his mobile phone and informed him that he had set fire on D.1 and D.2. Then, he rushed to the place of occurrence. At that time, 108 Ambulance had also come. Then he took both D.1 and D.2 to the Government Hospital, Salem and admitted them.

13. P.W.2 is the mother of D.1. She has also spoken about the phone call from the accused to P.W.1 that he had poured kerosene and set fire on D.1 and D.2. She has also spoken about the illicit relationship between the accused and D.1. P.W.3 is the mother-in-law of D.1. She has also stated the same facts. P.W.4, the brother of the deceased has also spoken about the relationship between D.1 and the accused and he has spoken about the earlier complaints made between the

accused, D.1 and P.W.1. He has also spoken about the motive.

14. P.W.5, the then Village Administrative Officer has spoken about the preparation of observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence. He has also spoken about the arrest of the accused and the confession made and the consequential recoveries of the clothes from the accused. P.W.6 has stated that he treated D.1 and D.2 at Government hospital at Salem. According to her, when D.1 was brought to her for treatment, she was conscious. But she was not in a position to speak. She had sustained 90% of burn injuries. She has further stated that D.2 was also conscious and she had also sustained 90% of burn injuries. P.W.7 has spoken about the post mortem conducted on D.1 and the final opinion regarding the cause of her death. P.W.8, the then Head Constable has stated that he received intimation from the hospital about the admission of D.1 and D.2. When he went to the hospital, at 6.30 am, on 07.11.2011, D.2 had already passed away. Therefore, he recorded the statement of D.1. On returning to the Police Station, he handed over the same to the Inspector of Police for registration of the case. The said statement of D.1 is Ex.P.32.

15. P.W.9 Dr.Panneerselvam, has spoken about the post mortem conducted on D.1 and his final opinion regarding her cause of death. P.W.10, the then Judicial Magistrate has spoken about the dying declaration of D.1 recorded by him. P.W.11, the then Head Constable has stated that he handed over the F.I.R., to the learned Judicial Magistrate at 6.15 pm on 07.11.2011. P.W.12, yet another Constable has stated that he handed over the dead body of D.2 to Doctor for post mortem, as directed by the Investigating Officer. P.W.13 has spoken about the fact that he handed over the dead body of D.1 to Doctor for conducting post mortem as directed by the Investigating Officer. P.W.14 has stated that as directed by P.W.16, he took the accused to the Government Hospital, Salem for treatment and after treatment, he took him to the Court of the learned Judicial Magistrate for remand. P.W.15 Dr.Thenmozhi has stated that she gave opinion that D.1 was conscious and in a fit state of mind for making dying declaration. P.W.16 has spoken about the registration of the case, investigation done and the final report filed.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not choose to examine any witness. However, a memo of the Sub Inspector of Police, Vazhapady Police Station for medical examination of the accused was marked as Ex.D.1 on the side of the accused. His defence was a total denial.

17. Having considered all the above materials, the trial Court convicted the appellant for offence under Section 302 I.P.C., (2 counts) and sentenced him to undergo imprisonment for life for each count. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

18. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

19. This is a case based on circumstantial evidence. The foremost circumstance is the relationship between the accused and D.1. This has been spoken to by P.Ws.1 to 4. There was a complaint made by D.1 against the accused. But, again, a complaint was made by the accused against D.1 and her husband (P.W.1). It is also in evidence that D.1 had given 10 soverigns of gold jewels to the accused and the accused refused to return the same. This is stated to be the motive for the occurrence. In our considered view, the prosecution has succeeded in establishing the ill feeling, from out of the evidences of P.Ws.1 to 4.

20. Now, turning to the actual occurrence, there is no denial of the fact that D.1 and D.2 alone were in the house. It is the case of the prosecution that the accused came there in a drunken state and at that time, D.1 wanted him to return the jewels to her. This resulted in a quarrel between them. It was in that quarrel, the accused poured kerosene on D.1 and D.2 and set fire. In the very same occurrence, he also sustained injuries on both his hands. The occurrence was not witnessed by anyone. The entire occurrence was spoken by D.1 in her dying declaration made to P.W.10. In the said dying declaration, she has stated that it was this accused who poured kerosene on her and D.2 and set fire.

21. P.W.15 Dr.Thenmozhi who attended D.1 at the Government Hospital, Salem, has certified that D.1 was in a fit state of mind to make dying declaration. P.W.10, the then learned Judicial Magistrate, satisfied his judicial conscience and thereafter only he recorded the dying declaration from D.1. In that dying declaration, the deceased had categorically stated that it was this accused who poured kerosene on her and D.2 and set fire. We find no reason to reject the said dying declaration.

22. But, the learned counsel for the appellant would submit that the said dying declaration cannot be true as D.1 has not stated anything about the extensive burn injuries sustained by the accused. It is true that D.1 had not stated anything about the burn injuries caused to the accused. It is the positive case of the prosecution that the accused had also sustained injuries on both of his hands, in the very same occurrence and he was taken to the hospital for treatment and then only he was remanded to judicial custody. It is not the case of the accused that he tried to extinguish the fire on D.1 and D.2 and in that process, he sustained burn injuries. Therefore, it is inferable that while setting fire on D.1 and D.2, a small quantity of kerosene would have fallen on his hands also and while setting fire on D.1 and D.2 he also sustained burn injuries on both his hands. Though, there is no direct evidence to prove this fact, it is only inferable. Thus, the presence of the accused at the place of occurrence cannot be disputed. The injuries found on the accused themselves would speak to the fact that he was present at the time of occurrence.

23. The learned counsel for the appellant would submit that D.1, after having known that D.2 was no, more with a view to escape from the clutches of law, has made such a false statement against the accused to the Police as well as to the learned Judicial Magistrate. This argument does not persuade us at all. We find no force at all even to remotely infer that D.1 would have made such a false statement against the accused. Not only in the judicial dying declaration but also in the statement made to P.W.8, the then Special Sub Inspector of Police (vide Ex.P.32), D.1 had repeatedly stated the same thing which is yet another dying declaration made by the deceased.

24. Above all, immediately after the occurrence, it is stated that the accused informed P.W.1 over phone that he had poured kerosene and set fire to D.1 and D.2. This statement is an extra judicial confession which is relevant under Section 24 of the Indian Evidence Act. Though, the accused denied that he made any such statement to P.W.1, P.W.1 had rushed to the place of occurrence only on such information. It is not as though the said information made by the accused is the sole evidence available for the prosecution to convict the accused. It is only a piece of evidence which is available for the prosecution. This confession would naturally corroborate the dying declaration made by D.1 on two occasions.

25. Then, the conduct of the accused also assumes importance in this case. Though, he sustained injuries in the very same occurrence, he absconded from the place of occurrence. He did not even go for treatment immediately. He came to Deepam hospital belatedly and only at that time, he was taken to the Court for judicial remand. This conduct also incriminates the accused.

26. From these circumstances, in our considered view, the prosecution has clinchingly proved that it was this accused who poured kerosene and set fire on D.1 and D.2 which resulted in their death.

27. Having come to the said conclusion, now we have to examine the question as to, What was the offence that was committed by the accused by the said act ? . It is in evidence that when the accused came to the house of D.1, D.1 wanted him to return her jewels. This resulted in a quarrel. D.1 had stated that even the accused manhandled her. It was in that quarrel, the accused had taken the kerosene can lying there and poured the same on D.1 and D.2 and set fire on both of them. It was not a premeditated occurrence. As a man having living-in-relationship with D.1, the accused had gone there. It is in evidence that on the day of occurrence, P.W.1 had gone to the house of D.1 and brought back all the utensils, so as to force D.1 to return to her matrimonial house. But, D.1 remained there separately along with D.2. P.W.1 has also admitted that after D.1 and D.2 started living separately in the house where the occurrence was taken place. The accused continued to visit D.1. This would only go to show that on the day of occurrence also, the accused had gone there only in a routine course, as a person having illicit

relationship with D.1. But for the demand made by D.1 for return of jewels, the quarrel would not have ensued. In that quarrel, there was a scuffle between D.1 and D.2. It is inferable that there would have been exchange of abusive words. It is further inferable that having lost his control over his mental faculty, the accused had taken the kerosene can lying there and poured kerosene on D.1 and D.2 and set fire on them. In that process, he also sustained injuries. Thus, in our considered view, though the act of the accused would fall with the third limb of Section 300 I.P.C., so far as both the deceased are concerned, his act would squarely fall with the first exception to Section 300 I.P.C. Therefore, he is liable to be punished for offence under Section 304(i) I.P.C., for each count.

28. Now, turning to the quantum of sentence, at the time of occurrence, the appellant/accused is an young man aged 29 years. The occurrence was not a premeditated one. It is not reported that he had bad antecedents. After the occurrence also, he has repeated any such crime. There are lot of chances for reformation. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- would meet the ends of justice.

29. In the result, this appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC (2 counts) is set aside and instead, he is convicted for offence under Section 304(i) IPC (2 counts) and sentenced to undergo rigorous imprisonment for ten years for each count and to pay a fine of Rs.10,000/- for each count, in default to undergo rigorous imprisonment for four weeks. The above sentences shall run concurrently. It is directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C. It is further directed that the said total fine amount of Rs.20,000/- (Rupees twenty thousand only) on realisation shall be paid to P.W.1 as compensation by the trial Court.

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