

Murthy Vs. State, Rep. by Inspector of Police

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Court : Chennai

Decided On : Mar-27-2003

Reported in : II(2003)DMC675

Judge : M. Karpagavinayagam and ;A.K. Rajan, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 374(2)

Appeal No. : Crl. A. No. 151 of 2000

Appellant : Murthy

Respondent : State, Rep. by Inspector of Police

Advocate for Def. : E. Raja, Addl. P.P.

Advocate for Pet/Ap. : S.E. Victor, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. For having caused the death of his wife by pouring kerosene and setting fire to her, Murthy, the appellant/accused was convicted for the offence under Section 302 I.P.C. and sentenced to undergo life imprisonment. Hence, this appeal.

2. The facts, in brief, leading to conviction, are as follows:-

(a) The deceased Mariammal got married to the accused four years back. Out of their wedlock, two children were born. Prior to the occurrence, one female child died. They lived together in the residence, which is situated near the house of P.W.1 Sarasu, the mother of the deceased. The accused developed illicit intimacy with one Fathima. The accused eloped with the said Fathima and married her as second wife.

(b) One month later, the accused and the said Fathima came back to their village. The accused insisted the deceased that she must allow Fathima to stay along with her. However, the deceased refused for the same. Due to this, there were frequent quarrels between them.

(c) On the date of occurrence, i.e. on 4-2-1999 at about 2 p.m., there was a wordy quarrel on this reason between the accused and the deceased inside their house. The deceased Mariammal ultimately threatened the accused that if he insists further, she would complain to Police. Getting infuriated, the accused took the kerosene bottle and poured kerosene on the body of the deceased and set fire to her.

(d) The deceased came running out of the house in flames. P.W.1 Sarasu, the mother of the deceased, P.W.2 Kaliamurthy, the father of the deceased, P.W.5 Preeta, the wife of P.W.3 Shankar, the brother of the deceased, were standing outside. On noticing the deceased coming out of the house, engulfed in flames, they doused the fire. Thereafter, the deceased, with burn injuries, was taken to the Government Hospital, Cuddalore accompanied by P.W.1 Sarasu and P.W.2 Kaliamurthy, the parents of the deceased and one Padma, who is the maternal aunt of the accused.

(e) At about 2.10 p.m. on 4-2-1999, P.W.8 Doctor attached to Cuddalore Government Hospital admitted the deceased and gave treatment. Ex.P-9 is the accident register. P.W.3 Shankar and P.W.4 Thirugnanam, the brothers of the deceased, on coming to know of the incident, came to the hospital. The deceased told them as to what had happened.

(f) In the meantime, P.W.8 Doctor sent intimation to the Police as well as to the Judicial Magistrate, regarding the admission of the deceased with burn injuries. P.W.13 Sub-Inspector of Police went to the Government Hospital at 5 p.m. and recorded Ex.P-14 statement from the deceased.

(g) The case was registered for the offence under Section 307 I.P.C. Ex.P-15 is the F.I.R.

(h) At about 6.40 p.m., P.W.7 Judicial Magistrate came to the hospital and in the presence of P.W.12 Dr.Kalaichelvi, he recorded the dying declaration of the deceased. Ex.P-7 is the dying declaration. P.W.12 Dr. Kalaichelvi certified that the deceased was conscious and was in a fit state of mind while recording the dying declaration.

(i) On receipt of message, P.W.14 Inspector of Police went to the hospital and recorded the statement of the deceased under Section 161 Cr.P.C., which has been marked as Ex.P-16. On 5-2-1999 at about 7.30 a.m., P.W.14 went to the spot and prepared observation mahazar and rough sketch and recovered M.O.1 burnt saree from the scene of occurrence. At about 11.30 a.m., he arrested the accused near Thaikal (Cuddalore O.T.) and in pursuance of his confession, he recovered M.O.2 white bottle and M.O.3 match box.

(j) Despite the best treatment given to the deceased, she died on 1-4-1999. P.W.10 Doctor sent Ex.P-11 death intimation. On knowing that the deceased died, P.W.4, the brother of the deceased, went to the Police Station and gave Ex.P-1 statement. Therefore, the case was altered from Section 307 I.P.C. to Section 302 I.P.C.

(k) P.W.14 Inspector of Police came to the hospital and conducted inquest. Ex.P-18 is the inquest report. Then, the dead body was sent for post-mortem. P.W.11 Doctor conducted post-mortem and issued Ex.P-13 post-mortem certificate. She opined that the deceased would appear to have died of 60% of burns with septicemic shock.

(l) In the meantime, P.W.14 Inspector of Police arranged to send the material objects for chemical examination. After completion of investigation, he filed the charge sheet against the accused for the offence under Section 302 I.P.C.

(m) During the course of trial, on the side of prosecution, P.Ws.1 to 14 were examined, Exs.P-1 to P-18 were filed and M.Os.1 to 5 were marked.

(n) Ex.C-1 is the Court document, which is the case sheet of the deceased Mariammal maintained in the Government Hospital, Cuddalore.

(o) When the accused was questioned under Section 313 Cr.P.C., he denied having committed the offence. He stated that he was not in the village on the date of occurrence and when he went to the hospital to see the deceased, the deceased cautioned him to go away as there was a plan to foist a false case against him, but he did not go out of the hospital and on the same day, he was arrested by the Police in the hospital itself, from where he was taken to the Police Station. As such, the accused pleaded innocence.

(p) On an appraisal of the evidence available on record, the trial Court found the accused guilty under Section 302 I.P.C. and convicted him thereunder.

3. Mr. S.E. Victor, learned counsel appearing for the appellant/accused, while assailing the judgment impugned, would contend that there are materials to show that the deceased attempted to commit suicide by pouring kerosene over her body and set fire to herself and during that time, the accused tried to save her and due to that, he also sustained injuries. Ex.P-9 accident register, the first document, which was issued by P.W.8 Doctor who admitted the deceased at the hospital at about 2.10 p.m., would make it clear that the deceased herself told the Doctor that she poured kerosene over herself. As such, no reliance can be placed on the subsequent documents, namely the dying declaration given to the Police as well as to the Judicial Magistrate. Therefore, the accused is entitled to be acquitted.

4. We have heard learned Additional Public Prosecutor on the above aspects.

5. We have carefully considered the contentions urged by the counsel on either side and gone through the records.

6. According to the prosecution, the deceased who loved the accused, ultimately succeeded in marrying him four years back. Two children were born to them. Recently, the accused loved another girl, by name Fathima and eloped with her and he married her as the second wife and lived with her for some time in some other Village. Few days prior to the date of occurrence, the accused came back with her and asked the deceased to adjust herself by allowing Fathima to stay along with her in the same house. This was objected to by the deceased. There was a wordy quarrel. On the date of occurrence at about 2 p.m., the accused came and again insisted her to agree for Fathima to come and stay with her in the same house. The deceased threatened him that if she is compelled, she would give a complaint to the Police. Then, the accused took a kerosene bottle and poured the same on her and set fire to her by throwing a lighted match stick. Engulfed in flames, the deceased came out. This was witnessed by P.W.1, the mother of the deceased and P.W.5 Preeta, the wife of P.W.3 Shankar. These witnesses, along with the neighbours, extinguished the fire. The victim was taken to Cuddalore Government Hospital immediately. She was accompanied by her parents as well as by one Padma, who is the maternal aunt of the accused. After admission in the hospital, the intimation was sent to the Police as well as to the Judicial Magistrate, since her condition was very serious. Accordingly, P.W.13 Sub-Inspector of Police came to the hospital at 5 p.m. and recorded her statement Ex.P-14. Thereafter, at 6.45 p.m., P.W.7 Judicial Magistrate came and recorded her dying declaration, which is Ex.P-7. Originally, the case was registered for the offence under Section 307 I.P.C. P.W.14 Inspector of Police, on receipt of message, went to the hospital and recorded the statement under Section 161 Cr.P.C. from the deceased at about 7.15 p.m. The deceased died only on 1-4-1999. Therefore, Section 161 Cr.P.C. statement given by the deceased on 4-2-1999 at about 7.15 p.m. to P.W.14 Inspector of Police was marked as Ex.P-16 as dying declaration.

7. A perusal of Ex.P-14 statement recorded by P.W.13 Sub-Inspector of Police, Ex.P-17 Express Report by P.W.14 Inspector of Police and Ex.P-18 inquest report prepared by P.W.14 Inspector of Police, would make it obvious that there was a wordy quarrel between the deceased and accused over the second marriage and ultimately, the accused poured kerosene over the body of the deceased and set

fire to her.

8. It is strenuously contended that the earliest statement given by the deceased to P.W.8 Doctor, namely Ex.P-9 accident register, would show that kerosene was poured over the body of the deceased by the deceased herself, which has been clearly spoken to by P.W.8 Doctor herself and as such, no reliance can be placed on the subsequent dying declaration.

9. The abovesaid contention, in our view, is not tenable, inasmuch as the said aspect has been explained by the deceased herself in Ex.P-16 statement given by her to P.W.14 Inspector of Police on the same day. According to the statement of the deceased in Ex.P-16, she was constrained to give statement to P.W.8 Doctor that she herself poured kerosene and set fire only at the instance of the maternal aunt of the accused, namely Padma who accompanied the deceased to the hospital. It has also been mentioned in the said statement that at that time, P.Ws.1 and 2 had gone outside the hospital to purchase clothes. Therefore, the explanation given by the deceased in Ex.P-16 for making such a statement to P.W.8 at about 2.10 p.m., is quite acceptable and as such, the contention of the learned counsel appearing for the appellant that the other documents cannot be relied upon, deserves no acceptance.

10. Apart from this, P.Ws.3 and 4, who are the brothers of the deceased, would speak to the fact that on receiving the message that the deceased sustained burn injuries and was taken to the hospital, they went to the hospital and saw the deceased, and at that point of time, the deceased told them that the accused was responsible for having caused burn injuries on her body.

11. Apart from the above materials, yet another important aspect of the evidence is available in this case. According to P.W.5 Preeta, the wife of P.W.3, there was quarrel between the accused and the deceased inside the house and within a few minutes, the deceased came out of the house with burning flames and at that time, they found the accused running away from the scene. According to P.W.14 Inspector of Police, the accused was arrested on 5-2-1999 at about 11.30 a.m. and on his confession, white bottle which contained kerosene as well as the match sticks were recovered. Since he was found with some injuries, he was sent to the

hospital.

12. P.W.9 Doctor issued Ex.P-10 accident register. On a perusal of the evidence of P.W.9 and Ex.P-10, it is clear that the accused himself told the Doctor that he sustained injuries when he tried to save the deceased. Even though the accused stated in Section 313 Cr.P.C. questioning that he was not available at the scene of occurrence on the relevant date and only on coming to know that she sustained burn injuries and was admitted in the hospital, he went and saw her, there is no cross-examination to the evidence of P.W.9, the Doctor who stated that the accused sustained injuries on the relevant date in the house of the deceased as per his statement.

13. Thus, it has been clearly established through the evidence of P.W.1 to P.W.5 and the dying declaration of the deceased that during the relevant time, the accused was with the deceased in the house and there was a wordy quarrel between them. When once this is established, it is for the accused to prove as to how the deceased sustained injuries. Though a suggestion has been put to the witnesses that the deceased attempted to commit suicide by pouring kerosene, the same has not been established by the accused by adducing acceptable evidence. Furthermore, as per the statement of accused under Section 313 Cr.P.C. questioning, the accused was not there at the place of occurrence at the relevant time and he had been to some other village. It is a settled law that when a plea of alibi is raised, it is for the accused to prove the same, but this has not been done in this case.

14. Under those circumstances, we do not find any merit in any one of the contentions urged by learned counsel for the appellant. Therefore, the appeal is liable to be dismissed as devoid of merits. Accordingly, the appeal is dismissed, confirming the conviction and sentence imposed on the appellant/accused by the trial Court.

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