

K.Nagu Vs. State Represented by

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SooperKanoon Citation : sooperkanoon.com/964345

Court : Chennai

Decided On : Jan-09-2013

Judge : M.Jaichandren

Appellant : K.Nagu

Respondent : State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN and THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal (MD).No.315 of 2011 K.Nagu .. Appellant vs. State represented by The Inspector of Police, Kaneekarai Police Station, Ramanathapuram .. Respondent Cr.No.458/2008 Criminal appeal is filed under Section 374 of Criminal Procedure Code to call for records in S.C.No.101/2009 on the file of Principal District and Sessions Court, Ramanathapuram, dated 20.01.2010 and set aside the same. !For appellant ... Mr.V.Kathirvelu Senior Counsel for Mr.S.M.S.Johnny Basha ^For respondent ... Mr.C.Ramesh Additional Public Prosecutor :JUDGMENT (Judgment of the Court was delivered by S.NAGAMUTHU, J) The appellant is the sole accused in S.C.No.101 of 2009 on the file of the learned Principal District and Sessions Judge, Ramanathapuram. He stood charged for the offence under Section 302 IPC. The trial Court by judgment, dated 20.01.2010, convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for a period of 6 months.

Challenging the same, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one MuthuRakku. The accused is her husband. They had a son, who is PW1 in this case. PW2 is her mother. Both the appellant as well as the deceased were coolies. In course of time, the accused had developed suspicion over the fidelity of the deceased. There were frequent quarrels on account of the same. The appellant alleged that the accused was having free sex with others. On the intervening night of 23.06.2008 and 24.06.2008, PW1, the deceased and the accused were at home. At about 11.00 p.m. there arose a quarrel between the accused and the deceased, since the accused questioned the fidelity of the deceased, out of suspicion. In culmination of the said quarrel, it is alleged that the accused poured kerosene and set fire to her. She sustained 100% burn injuries on her body. PW3, who is a neighbour, on hearing the cry, rushed to the house of the deceased. She found the deceased with injuries, but the accused was not found.

3. Thereafter, PW3 carried her to the Hospital. PW7, was an Assistant Surgeon at the Government Hospital, Ramanathapuram. He examined the deceased on 24.06.2008 at about 12.40 a.m. He found extensive burn injuries of 100% all over her body. But, the deceased was conscious and she told PW7 that on 23.06.2008, at about 11.00 p.m., while she was in the house, the accused poured kerosene on her and set fire. PW7 entered the same in the Accident Register (Ex.P4).

4. On receiving information from the hospital, PW10, the then Judicial Magistrate not I, Ramanathapuram proceeded to the hospital on 24.06.2008 at 01.30 a.m. He recorded a dying declaration from the deceased. At that time, the deceased was fully conscious. DW1, Doctor Gnanakumar, who was then attending on the deceased, gave opinion that the deceased was fully conscious and fit enough to make a dying declaration. Based on the said opinion and on his own assessment, PW10 was satisfied about the mental fitness of the deceased and then he recorded the dying declaration. Ex.P6 is the dying declaration. In the said dying declaration, the deceased had told that on suspecting her fidelity, the accused questioned the deceased and in the said quarrel he poured kerosene and set fire to her.

5. On receipt of the message from the Government Hospital, Ramanathapuram, PW11, the then Sub Inspector of Police, proceeded to the hospital on 24.06.1008 at 04.30 a.m. At that time, the deceased was fully conscious. The deceased gave a detailed statement orally to him. He reduced the same into writing (Ex.P8). On returning to the police station, on the basis of the Ex.P8, PW11 registered a case in Cr.No.458 of 2008 for the offence under Section 307 IPC. Ex.P9, is the First Information Report. Then, he forwarded the First Information Report and Ex.P1 to the jurisdictional Magistrate. Then he handed over the case diary to PW12 for investigation.

6. Taking up the case for investigation, PW12, proceeded to the place of occurrence at 07.00 a.m. on 24.06.2008 and prepared Ex.P2, Observation Mahazar in the presence of PW6 and another witness. He also prepared a Rough Sketch under Ex.P10. Then, he recovered the Material Objects (Mos.1 to

10) under Ex.P3 Mahazar, in the presence of the same witnesses. Then, he examined many witnesses. He arrested the accused on the same day at 11.00 a.m. in the presence of PW6 and another witness. Then, he sent the accused for remand through Court and also handed over the Material Objects.

7. PW13, took up the case for further investigation from PW12 on 28.06.2008. On receiving the message that the deceased died on 28.06.2008, he altered the case into one under Section 302 IPC and submitted a report under Ex.P11. Then, he conducted inquest on the body of the deceased between 08.00 am and 10.00 am and prepared Ex.P12 Mahazar. Then he forwarded the body for postmortem. PW8, M.Sheik Dhavudeen, an Assistant Surgeon attached to the Government Hospital at Ramanathapuram conducted Autopsy on the body of the deceased at 12 Noon on 28.06.2008. Ex.P5 is the postmortem certificate. He opined that the deceased died of 100% burns with septicemia. PW14, collected the medical records, examined the doctor and few more witnesses. Finally, he laid final report against the accused.

8. Based on the above materials, the Trial Court framed charges under Section 302 IPC. The accused pleaded innocence. Therefore, he was put on trial. In order to prove the charges, on the side of the prosecution, 14 witnesses were examined

and 12 documents were exhibited besides 10 Material Objects.

9. Out of the said witnesses, Pws1, 2, 4 and 5 have turned hostile and they have stated nothing incriminating against the accused. Thus, the evidences of Pws1, 2, 4 and 5 are not useful for the prosecution in any manner. PW3 is the witness, who had taken the deceased to the hospital. PW7, doctor Mohideen Pitchai, has stated above the statement made by the deceased to him. PW10 has spoken to about the dying declaration. PW11 has stated above the statement made to him by the deceased. The others are official witnesses.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side he examined DW1, doctor Gnanakumar, but no document was marked on his side.

11. Having considered the above, the trial Court found him guilty for the offence under Section 302 IPC and accordingly punished him. That is how the appellant is before this Court.

12. In this appeal, it is contended by the learned Senior Counsel appearing for the appellant that these multiple dying declarations, one given to PW7, the other given to PW10 and the last one given to PW11, are not trustworthy and thus, the conviction and sentence imposed by the trial Court is not sustainable in law.

13. The learned Senior Counsel, would nextly contend that the learned Magistrate had not assessed the mental fitness of the deceased as required in law. The learned Senior Counsel would submit even assuming that it was this accused, who set fire to the accused, the act of the accused would fall under exception 1 to Section 300 IPC and the offence would fall under Section 304 (i) IPC. In any event, according to the learned Senior Counsel, the conviction requires interference at that hands of this Court.

14. The learned Additional Public Prosecutor, would vehemently oppose this criminal appeal. According to him, there is no contradiction between these three dying declarations given at different stages. Consistency between these three dying declarations would go to guarantee the truthfulness of the statements of the

deceased made in the dying declarations. There is no delay in recording the dying declarations. He would further submit that the conduct of the accused also matters. He would further submit that the offence committed by the appellant would squarely fall under Section 302 IPC.

15. We have considered the above submissions. Let us consider the evidence of PW1. Though PW1 has turned hostile, there are certain facts spoken to by him, which have not been controverted by the defence. In chief examination, he has stated that at the time of occurrence, the deceased, the accused, and PW1 alone were there. As a matter of fact, according to him, the accused came to his house at 6 p.m. and enquired about the deceased. PW1 told him that the deceased had gone for work and she would return soon. The deceased returned to the house at 10.00 p.m. At that time, PW1 and the accused were sleeping. This part of the evidence spoken to PW1 has not been controverted by the defence. This would go to establish that at the time of occurrence, only three persons were at home viz., PW1, the accused and the deceased.

16. PW3, who is a neighbour, has stated that on hearing the cry, she rushed towards the house of the deceased. At that time, she found the deceased with full of burn injuries all over the body. But, the accused was not available at home at that time. This has not been disputed by the defence during cross examination of PW3. Thus, the absence of the accused immediately after the occurrence is a fact which is adverse to the accused. In this background, now let us look into the dying declarations.

17. At the earliest, particularly, at 12.40 a.m. on 24.06.2008, when the deceased was rushed to the hospital, she told PW7 that it was this accused who poured kerosene and set fire to her. This statement of the deceased relating to the cause of death certainly falls under the ambit of Section 32 of the Indian Evidence Act, as a dying declaration. A careful perusal of the cross examination of PW7 would go to show this dying declaration has not all been disputed by the defence. Thereafter, at 01.30 a.m. PW10, the Judicial Magistrate not I, Ramanathapuram, recorded dying declaration of the deceased. Dr.Gnanakumar, DW1 opined that she was in a fit state of mind to make dying declaration. PW10 on his own assessment and on

the opinion of Dr.Gnanakumar, was satisfied that the deceased was in a fit state of mind to make a dying declaration. Thereafter, the dying declaration was recorded. It is not even the case of the defence, that the said dying declaration was out of any tutoring. Looking into the cross examination of PW10, we find that nothing has been elicited to disbelieve the said dying declaration.

18. Thereafter, PW11 recorded the complaint at 5.00 a.m on 24.06.2008 from the deceased (Vide Ex.,P8). Ex.P8 is also a dying declaration falling within the ambit of Section 32 of the Indian Evidence Act. In the said dying declaration, apart from saying that it was the accused, who poured kerosene and set fire to her, she has further stated that the deceased run away from the house. This part of the dying declaration, is corroborated by the evidence of PW3, who has stated that the accused was not in the house at the time when she rushed. Thus, we find no reason to reject these three dying declarations. From these three dying declarations, the prosecution has clearly established that it was this accused who poured kerosene and set fire to her. The said act of the accused, in our considered opinion, falls within the third limb of Section 300 IPC.

19. The learned Senior Counsel would contend that the act of the accused would fall within the ambit of exception 1 to Section 300 IPC. In order to substantiate the same, he would take us through Ex.P7 and Ex.P8. In Ex.P7, the deceased has stated that the accused used to question the fidelity of the deceased as and when she used to return late in the night to the house. It has been further stated in the dying declaration that on the date of occurrence out of suspicion over the fidelity, the accused scolded her for which she also responded. It was only in the said quarrel, according to the dying declaration, the accused set fire to her. In Ex.P8 also she has elaborately stated about the quarrel between them. At this stage we may look into the evidence of PW1. He has stated that when the accused came to the house at 6 p.m. he enquired as to where the deceased was, PW1 told him that the deceased had gone for work. Thereafter, PW1 and the accused were sleeping. It was at 10.00 p.m. the deceased came. From this evidence and from the dying declarations, it is clear that at the time of occurrence there was a quarrel between the accused and the deceased. In the said quarrel only the accused poured kerosene and set fire. In our considered opinion, the act of the accused was due to

the provocation caused by the deceased by her words. As we are able to see in the dying declaration, the said provocation was in our considered opinion, sudden and also grave. Thus, the act of the accused would fall within the exception 1 to Section 300 IPC and the appellant is therefore liable to be punished under Section 304 (i) IPC.

20. With regard to the quantum of punishment, the learned Senior counsel would submit that there are lot of mitigating circumstances. The first one is that the appellant has got two children aged 13 and 11 years to be taken care of only by the accused. The appellant is a coolie by profession and he has to eke out his livelihood to maintain the children also. The learned Senior Counsel would further submit that there is also no ill-feeling between the accused and his mother-in-law, who has been jointly taking care of the children.

21. Having regard to the above circumstances, the age of the accused, his past conduct and all other attending circumstances, we are of the view that imposing a punishment of rigorous imprisonment for a period of 7 years and to pay a fine of Rs.1,000/- will be fair, just and reasonable.

22. In the result, the appeal is partly allowed . The conviction and sentence imposed on the appellant in S.C.No.101 of 2009 by the learned Principal District and Sessions Judge, Ramanathapuram is set aside, instead the appellant is convicted for the offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two weeks. The period of sentence already undergone by the appellant shall be given set off. jikr To The Principal District and Sessions Judge, Ramanathapuram. The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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