

(2016) 03 MAD CK 0167
In the Madras High Court
Case No : Criminal Appeal No. 547 of 2012

Kuppusamy

APPELLANT

Vs

State rep. by The Inspector of Police

RESPONDENT

Date of Decision : 24-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 MLJCriminal 418

Hon'ble Judges : Mr. M. Jaichandren and Mr. S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : Mr. V. Paarthiban, Advocate, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The appellant is the sole accused in S.C.No.253 of 2007 on the file of the learned Sessions Judge, Mahalir Neethimandram, Cehnnai. He stood charged for offence under Section 302 I.P.C. By judgment dated 08.03.2012, the trial Court convicted him and sentenced him to under go imprisonment for life and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for three months for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The appellant/accused is the father of the deceased Miss Varalakshmi. The accused and the deceased were residing in Kanu Nagar, Chennai - 600078. She was hardly 16 years old. The accused was then working as a watchman in a private concern. The deceased was studying tenth standard in the municipal high school at Nesapakkam.

2.2 One Mr. Murugan was residing in the same locality with his family members including his son by name Jagadesh. Mr. Jagadesh had fallen in love with the

deceased. Mr. Jagadesh was already married and he was separated from his wife. When this illicit intimacy between Mr. Jagadesh and the deceased came to light, the accused on several occasions, warned her to snap her connection with Mr. Jagadesh. But the deceased did not stop.

2.3. On 28.01.2007, therefore the accused sent her out of his house. On 28.01.2007, the deceased went to the house of her relative by name Mohan and stayed there as she was sent out. On 30.01.2007, the accused had gone to the house of Mr. Mohan and brought the deceased back.

2.4. While she was being brought to his house, at about 09.45 a.m., near Matha Amrithamayie School, the accused poured kerosene on her and set fire. The accused had already stealthily kept kerosene in a bush. The deceased died on the spot. The occurrence was witnessed by P.Ws.1 and 2.

2.5. P.Ws.1 thereafter went to M.G.R Nagar Police Station and made a complaint at 11.30 a.m. on 30.01.2007. P.W.10 the Inspector of Police on receipt of the said complaint under Ex.P1, registered a case in Crime No.195 of 2007 under Section 302 I.P.C. Ex.P7 is the F.I.R. He forwarded Exs.P1 and P7 to Court, which were received by the learned Judicial Magistrate at 04.30 p.m. on 30.01.2007.

2.6. Taking the case for investigation, P.W.10 went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. He arranged for a photographer to take photographs. He recovered the burnt clothings of the deceased (M.Os.1 and 2) from the place of occurrence. Then he conducted inquest on the body of the deceased between 01.40 p.m. to 2.15 p.m. and forwarded the body for postmortem. P.W.8 Dr. R. Baskar conducted autopsy on the body of the deceased on 31.01.2007 at 11.45 a.m. and he found the following injuries:

"Extensive mixed burn involving scalp, face, front and back of neck, front and back of each upper limb, front and back of entire chest, front of abdomen and most parts of back of abdomen, front and back of upper three fourth of left leg and front and back of upper two third of right leg. Singeing of hairs and decolouring of skin over the burnt areas and evidence of vital reactions made out. On dissection of neck, hyoid bone and thoracic cage intact. On dissection of head, scalp appear normal. Cranial vault intact, brain grossly appear normal. Heart normal in size, chambers contained fluid blood. Lungs congested, larynx and trachea contained food particles. Stomach contained 250 grams of well discernible food materials. Mucosa normal, liver, spleen and kidneys congested. Intestine distended with gas, bladder empty, uterus normal in size. Endometrium grossly appear normal. Endometrium cavity empty. Pelvis and spinal column intact.

Ex.P6 is the postmortem certificate. He gave the opinion that the deceased died due to the burn injuries.

2.7. During the course of investigation, on the same day at 05.30 p.m. P.W.10

arrested the accused in the presence of one Mr. Arputham and Mr. Mohan. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden a shirt. In pursuance of the said statement, he took P.W.10 and the witnesses to the said place and produced a bottle, a full hand shirt and a lungi. P.W.10 recovered the same under a mahazar in the presence of the same witnesses. He forwarded the accused to Court and also handed over the material objects to the Court. On his request, the material objects were sent for chemical examination. The report revealed that in the bottle recovered from the accused, there were traces of kerosene. On completing the investigation, P.W.10 laid the charge sheet against the accused.

2.8. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined, 15 documents and 5 material objects were marked.

2.9. Out of the said witnesses, P.Ws.1 and 2 are the eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 has spoken about the fact that she saw the deceased between 09.30 a.m and 10.00 a.m. She has further stated that at that time, the deceased was pleading that she would not commit anything wrong and she pleaded to relieve her. But the accused took her by force. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of the material objects from the place of occurrence. P.W.5 has turned hostile and has not supported the case of the prosecution in any manner. P.W.6 is the police photographer who has spoken about the photographs taken by him at the place of occurrence. P.W.7 the forensic expert who has spoken about the scientific examination conducted by him on M.O.1 and he has stated that the bottle recovered from the accused contained traces of kerosene. P.W.8 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.9 the head constable took the dead body of the deceased for postmortem. P.W.10 has spoken about the registration of the case, investigation done by him and the final report filed by him.

2.10. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document. His defence was total denial. Having considered all the above, the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

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

4. In this case, there are two eyewitnesses to the occurrence. These two witnesses have stated that on 30.01.2007 at 09.30 a.m. when they were passing

through Matha Amrithamayie School, they found the accused holding the deceased in his hand and taking her towards the school. At that time, the deceased was pleading that she would not commit anything wrong and pleaded to him to spare her. But the accused took her to the bank of the river. They have further stated that suddenly, the accused took out a plastic bottle containing kerosene from the bush, which he had already kept there, poured on her and within a fraction of a second, set her on fire. P.Ws.1 and 2 rushed towards the place and tried to extinguish the fire, but the deceased died due to burn injuries. P.W.1 has spoken about the complaint given to the police. Though these two witnesses have been cross examined at length to doubt their very presence, we do not find any material to disbelieve them. These two witnesses are independent witnesses and they do not have any axe to grind against the accused. There is no delay in filing the F.I.R. and in forwarding the F.I.R to the Court also. P.Ws.1 and 2 have vividly spoken about the occurrence. Their evidence inspires the confidence of this Court. From these two evidences, the prosecution, in our considered view, has clearly established that it was this accused who set fire to the deceased. The motive for the occurrence was that the deceased had illicit relationship with Mr. Jagadesan. The very fact that kerosene was kept stealthily in the bush already and the accused had taken the deceased to the said place, suddenly poured kerosene and set fire would clearly go to prove his intention that his intention was only to do away with the deceased as she was having illicit relationship with Mr. Jagadesh. This act of the accused would clearly fall within the first limb of Section 300 I.P.C and therefore he is liable to be punished under Section 302 I.P.C. The act of the accused would not fall under any of the exceptions to Section 300 I.P.C. Therefore, he is liable to be punished under Section 302 I.P.C.

5. Now, turning to the quantum of punishment, the trial Court has imposed only lesser punishment, which is fair and just. Therefore, the quantum of punishment also does not require any interference at the hands of this Court. At any rate, we do not find any merit at all in this appeal.

6. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the accused by the learned Sessions Judge, Mahalir Neethimandram, Chennai in S.C.No.253 of 2007 dated 08.03.2012, is hereby confirmed.