
(2003) 02 MAD CK 0139
In the Madras High Court
Case No : Criminal Appeal No. 981 of 1999

Paulraj

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Citation : (2003) 02 MAD CK 0139

Hon'ble Judges : M. Karpagavinayagam, J;A.K. Rajan, J

Bench : Division Bench

Advocate : S. Shanmugavelayutham, for the Appellant; E. Raja, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Paulraj, the appellant herein for having committed the murder of his wife by pouring kerosene and setting fire to her was convicted for the offence u/s 302 I.P.C. Challenging the same, this appeal has been filed.

2. The facts leading to the conviction are as follows:

"(a) The accused Paulraj is the husband of the deceased Baby. About two years prior to the date of occurrence, their marriage took place. At the time of marriage, P.W.1-Ponnusamy, father of the victim gave jewels and cash as sridhana, even then the accused used to pester the deceased to get some more money from her father for the purchase of a tempo van. Accordingly the deceased used to visited her parents house often and made demand of the sum. P.W.1 expressed his inability to pay the money demanded by the accused. Whenever the deceased came to the house of P.W.1 and reminded him of her husband's demand, P.W.1 invariably pleaded his inability. Due to this, the deceased was tortured at the hands of the accused now and then.

(b) On the fateful day of occurrence, i.e., on 17.08.1993 at about 1.00 P.M., the accused was taking lunch inside the house and the deceased was serving the

food to him. At that time, there was a quarrel ensued between them over the demand of Rs.10,000/-. While engaging in the wordy quarrel, the accused suddenly took the Kerosene lamp M.O.1 and poured kerosene on the body of the victim and set her ablaze by throwing a lighted match stick. When the victim tried to escape from the house, the accused bolted the door from inside the house and prevented the deceased from escaping. However, the deceased managed to open the door forcibly and came out running. When the neighbours on seeing her in flames tried to put out the fire with water. Then the neighbours as well as the accused took the victim, who was suffering from severe burn injuries, to the private hospital at Alagambarai on 17.08.1993 at 2.00 P.M.

(c) P.W.5 Dr. Rex Paulraj, admitted the deceased and gave first aid treatment. Though he gave first aid treatment under the prescription Ex.P.3, he thought it fit to send her to a private hospital having proper equipments. Therefore, he referred the deceased along with Ex.P.4 letter to P.W.7 Doctor at Colachel. Accordingly, the victim was taken to Colachel private hospital. P.W.7 Dr. Kannan admitted the deceased on 17.08.1993 at 12.00 mid-night and gave treatment to her as inpatient. Ex.P.7 is the inpatient chart.

(d) In the meantime, on coming to know of the situation P.W.3-Sornam, the elder sister of the victim, came to the hospital. P.W.1-Ponnusamy, father of the deceased, also came and saw the deceased. The deceased told them that her husband set fire to her body by pouring kerosene for not paying Rs.10,000/- demanded by him.

(e) On 25.08.1993 at about 8.00 A.M. P.W.1-Ponnusamy, went to the Eraniel Police Station and gave a complaint to P.W.9-Sub Inspector of Police. P.W.9 after receiving the complaint registered the case in Crime No.362 of 1993 under Sections 498(A), and 307 IPC. The First Information Report is Ex.P.11.

(f) The Circle Inspector of Police-P.W.10 on receipt of the message, took up the investigation on 26.08.1993. He went to P.W.7's hospital and examined P.W.1, P.W.3 and P.W.4. Thereafter, he went to the scene of occurrence and prepared observation mahazar Ex.P.5 and rough sketch Ex.P.14. He recovered M.O.1 kerosene lamp and M.O.2 match box with sticks under Ex.P.6 mahazar in the presence of P.Ws.1, 3 and 4. Thereafter, he sent the requisition Ex.P.15 to P.W.2--Judicial Magistrate, Eraniel, for recording the dying declaration.

(g) On 26.08.1993 at about 10.00 A.M. P.W.2-Judicial Magistrate, Eraniel went to the hospital and recorded the dying declaration between 10.30 A.M. and 11.15 A.M. in the presence of P.W.7 Dr. Kannan. The dying declaration is Ex.P.2. P.W.7 attested the same and opined that the patient was conscious and she was in a fit state of mind to give a statement.

(h) On 28.08.1993 at about 3.00 P.M. the victim died. Therefore P.W.7 sent the death intimation Ex.P.12 to the Inspector of Police P.W.10 through passport Ex.P.13.

(i) On receipt of the death intimation, P.W.10 Inspector of Police altered the case for the offence under Sec. 304(B) IPC., and sent the express report Ex.P.16 to the Revenue Divisional Officer, Padmanabhapuram and the Judicial Magistrate, Eraniel.

(j) On 29.08.1993, P.W.11-Revenue Divisional Officer came to the hospital and conducted inquest over the body of the deceased. P.W.1 thereupon sent the body of the deceased for postmortem.

(k) On 29.08.1998 at about 4.25 p.m., P.W.8 Doctor attached to the Government Hospital, Colachel conducted postmortem and issued the postmortem certificate Ex.P.9 and gave final opinion Ex.P.10. The doctor opined that the deceased would appear to have died of shock due to massive deep burns.

(l) Further investigation was conducted by P.W.13-Deputy Superintendent of Police, who examined the witnesses and sent the material objects for chemical examination through Court.

(m) On 1.9.1993, P.W.10 arrested the accused. Thereafter, P.W.12-Deputy Superintendent of Police took up further investigation and ultimately, he filed the charge sheet against the accused for the offence u/s 302 I.P.C.

(n) During the Course of trial, the prosecution examined P.Ws.1 to 13; filed Exs.P.1 to P.18 and marked M.Os.1 to 6.

(o) When the accused was questioned u/s 313 Cr.P.C., he denied his complicity in the offence. He stated that the deceased had illicit intimacy with one Thangaraj and when the same was questioned, there was a quarrel between the accused and the deceased; after the quarrel, he came to the lorry shed and at that time, one Subramani, his uncle's son came and informed him that the deceased herself had set fire to her body in a bid to commit suicide; on receipt of the said information, he came to the scene of occurrence and took the victim to the hospital and as such, he had not committed the offence alleged. On the side of the defence, D.Ws.1 and 2 were examined.

(p) On considering the materials available on record, the trial Court concluded that the prosecution has established its case beyond reasonable doubt and convicted the accused for the offence u/s 302 I.P.C. Hence, this appeal."

3. Mr. S.Shanmugavelayutham, learned counsel appearing for the appellant would take us through the evidence and contend that the evidence available on record would not indicate that there is a direct evidence to prove the offence as against the accused and the oral evidence spoken to by P.Ws.1, 3 and 4 cannot be accepted, in view of the fact that the same is not in consonance with the dying declaration given by the deceased to P.W.2-Judicial Magistrate. Furthermore, P.Ws.1, 3 and 4 having known about the involvement of the accused in the incident four days earlier, had kept quiet and P.W.1 gave a complaint to P.W.9 Sub Inspector of Police only on 25.08.1993 and no proper explanation was given on the side of the prosecution for the delay in lodging the

complaint and as such, the case of the prosecution with reference to the involvement of the accused in the incident, which is belatedly given is false and as such, the accused is liable to be acquitted.

4. In reply to the above submissions, the learned Additional Public Prosecutor would contend that the evidence of P.Ws.1, 3 and 4 and the dying declaration Ex.P.2 recorded by the Judicial Magistrate-P.W.2, would clearly indicate that it is the accused, who poured the kerosene over the body of the deceased and set fire to her body and as such the conviction imposed upon the appellant is perfectly legal.

5. We have carefully considered the rival contentions and gone through the records.

6. As correctly pointed out by the learned counsel for the appellant that there is no direct evidence. The evidence projected by the prosecution witnesses to establish its case has been adduced through P.Ws.1, 3 and 4 and the evidence of P.W.2-Judicial Magistrate, who recorded the dying declaration and P.W.7-Doctor, who attested the dying declaration.

7. The main ground of attack made by the learned counsel for the appellant is that the dying declaration recorded by P.W.2 on 26.08.1993, cannot be relied upon, in view of the fact that the occurrence had taken place on 17.08.1993 itself. Similarly, the evidence relating to the oral dying declaration given to P.Ws.1, 3 and 4 also cannot be given due importance for the reason that the explanation for having not made the complaint to the police immediately after getting information is not acceptable.

8. It is strenuously argued by the learned counsel for the appellant that P.W.1 would specifically state in Ex.P.1 that he came to know about the involvement of the accused only on 25.08.1993 through Sornam-P.W.3 and immediately, he rushed to the Police station and gave a complaint. But, this statement is quite contradictory to his deposition given in the Court, in which he has stated that he got the information four days back. Though this argument at the first blush looks attractive, a thorough scrutiny of the records would clearly show that this submission cannot be accepted for rejecting the case of the prosecution.

9. It is true that P.W.1 in Ex.P.1 stated that he came to know about the involvement of the accused only on 25.08.1993. But, the evidence of P.Ws.1, 2 and 4, reading as a whole, would reveal that they came to know about the incident four days earlier. According to them, the deceased herself had stated to them at the hospital that the accused only poured kerosene and set her body ablaze. Under those circumstances, the statement in Ex.P.1 made by P.W.1 that he came to know about the involvement of the accused only on 25.08.1993 cannot be accepted to be true.

10. It has to be noticed that the witnesses were informed about the incident by the deceased on the first day itself at the hospital. P.Ws.1 and 3 would

specifically admit that they came to know about the incident already, but did not choose to give complaint to the Police, for the reason that her health condition appeared to be not so serious and she would get cured in course of time and after discharge from the hospital, they could see that the matter is settled through compromise. This explanation, in our view, cannot be said to be unreasonable.

11. Furthermore, as admitted by the prosecution, the accused only took the victim to P.W.5 Doctor, who gave first aid treatment and on his reference letter Ex.P.4, the deceased was brought by her husband/accused to another private hospital at Colachel. A reading of Ex.P.4 also would show that the accused was well known to P.W.5 Doctor. Under those circumstances, the witnesses having seen the attitude of the accused, who took steps to admit the deceased in the hospital for giving proper treatment, thought it fit not to give any complaint against the accused as he was helping the deceased for her treatment given in the hospital. The evidence of P.Ws.1 and 3 would further show that they decided to give a complaint only on 25.08.1993, since the health condition of the deceased became very critical. Accordingly, Ex.P.1 was given to P.W.9-- Sub-Inspector of Police.

12. On receipt of message from P.W.9-Sub Inspector of Police, P.W.10-Inspector of Police, immediately arranged for recording of dying declaration by P.W.2-Judicial Magistrate. Accordingly, he sent the requisition Ex.P.15 to P.W.2-Judicial Magistrate.

13. On receipt of requisition, P.W.2-Judicial Magistrate rushed to the hospital and recorded the dying declaration in the presence of P.W.7-Dr. Kannan, and the same has been attested by P.W.7, who certified that the deceased was conscious to speak. A reading of Ex.P.2 and the evidence of P.W.7-Doctor and P.W.2-Judicial Magistrate would clearly show that the deceased was in a conscious state and she was in a fit condition to give a statement.

14. The dying declaration covering about three pages would contain the minute details. According to the dying declaration, the accused was taking food and at that time an altercation ensued between the deceased and the accused and when the accused abused her, the deceased also retaliated and at that time, the accused took out a bottle lamp and poured kerosene and throw the lighted match stick on her. Apart from that, the accused also tried to prevent her from escaping from the house by locking the doors inside. However, the deceased applying her full strength opened the door by unlocking the same and came out running towards the neighbouring house.

15. P.W.10, the Inspector of Police went to the spot and prepared the observation magazar and drew rough sketch and recovered bottle chimney lamp as well as match box containing match sticks at the scene.

16. A peculiar feature in this case is that the accused was with the deceased from 17.08.1993 onwards in the hospital and subsequently, he was not found.

The complaint was lodged on 25.08.1993 and at that time, the accused was not available, but he was arrested on 1.9.1993 by P.W.10-Inspector of Police.

17. The accused while giving the statement u/s 313 Cr.P.C., has stated that he only took the deceased to hospital, but subsequently, he surrendered before the police. If the accused had not committed any offence, there is no necessity for him to surrender before the police. Furthermore, when the accused had taken the deceased to the hospital with burn injuries, it is for the accused to explain as to how the deceased sustained those injuries. In the absence of any explanation from the accused, the dying declaration Ex.P.2 given by the deceased can be held to be true and voluntary, especially when the deceased herself had stated in the dying declaration that the accused only took the deceased to the hospital. When the accused helped the deceased in taking the deceased to the hospital, as admitted by the deceased, there is no necessity to implicate the accused falsely by stating that the accused only set fire to her.

18. Under those circumstances, placing reliance upon the dying declaration Ex.P.2, which has been properly recorded by P.W.2-Judicial Magistrate in the presence of P.W.7-Doctor, we have no other option except to hold that the prosecution has established its case against the accused beyond all reasonable doubts. There is no merit in this appeal and consequently, the conviction and sentence imposed on the accused by the trial Court stand confirmed and the appeal is dismissed.