
(2009) 03 MAD CK 0032
In the Madras High Court
Case No : Criminal Appeal No. 955 of 2007

Shahul Hameed

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 307

Citation : (2009) 03 MAD CK 0032

Hon'ble Judges : T. Sudanthiram, J;C. Nagappan, J

Bench : Division Bench

Advocate : A. Sirajudeen, for Siraj and Siraj, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C. Nagappan, J.—The appellant-Shahul Hameed is the sole accused in Sessions Case No. 258 of 2007 on the file of Additional District

and Sessions Judge, Fast Track Court-V, Chennai and he has preferred this appeal challenging the conviction and sentence imposed on him for the

offence u/s 302 IPC. For the sake of convenience, in this Judgment, the appellant will be referred to as accused.

2. Charge u/s 302 IPC was framed against the accused on the allegation that during the occurrence, he poured kerosene on Selvameri and set fire,

resulting in her death. The learned Additional Sessions Judge found the accused guilty of the offence u/s 302 IPC and convicted and sentenced him

to undergo life imprisonment and also to pay a fine of Rs. 1000/-, in default, to undergo Rigorous Imprisonment for six months.

3. To prove the charge, the prosecution examined P.Ws.1 to 14 and marked Exs.P1 to P13 and M.Os.1 to 9.

4. The case of the prosecution, as could be discerned from oral and documentary evidence, can be briefly summarised as follows.

The accused-Shahul Hameed was living with Selvameri in one of the portions of the house owned by P.W.1-Chandrasekaran. P.W.2-Gajendran

was living in the neighbouring portion of the same house. On 7.8.2006, in the night, Selvameri asked the accused to bring biryani and the accused

demanding money and Selvameri replied that she had no money and the accused went out and brought biryani and brandy at about 10.30 pm and

compelled Selvameri to drink the same and Selvameri refused to consume it on the ground that she was unwell and the accused poured kerosene

from the stove on Selvameri and set fire on her by lighting a matchstick and snatched away the cellphone from her and left the house. Selvameri

came out of the house by crying aloud and fell down on the verandah with burns and on hearing the noise, P.Ws.1 and 2 came there and Selvameri

told them that the accused poured kerosene and set fire on her. P.W.1-Chandrasekaran poured water on her and P.W.2-Gajendran brought the

Auto and both of them took Selvameri to Kilpauk Medical College Hospital.

P.W. 10-Dr. D. Jason Philip examined Selvameri at 00.30 am on 8.8.2006 at K.M.C. Hospital and Selvameri told him that she was set on fire by

her husband at about 11.45 pm on 7.8.2006. P.W.10-Dr.D.Jason Philip found 20% burns on her body and admitted her as in-patient in burns

ward in the hospital. Ex.P6 is the Accident Register issued by him. P.W.11-Dr. V. Jeyaraman examined Selvameri at 2 am on 8.8.2006 and found

33% burn injuries on her body and he treated her.

P.W.13-Sub Inspector Pattabiraman, on 8.8.2006, received intimation from K.M.C. Hospital and went and saw Selvameri as in-patient in the

hospital and he recorded Ex.P1-statement given by her in the presence of P.W.3-Shanthi, her elder sister and obtained left toe impression in it and

returned to H-6, R.K. Nagar Police Station and registered a case in Crime No. 621 of 2006 u/s 307 IPC and prepared Ex.P10-First Information

Report and sent the same to the Inspector.

P.W.14-Inspector Karunakaran took up the investigation and went to K.M.C. Hospital at 9.45 am and found her conscious and he recorded the

statement of Selvameri. He went to the occurrence place at 10 am and prepared Ex.P2-Observation Mahazar in the presence of P.W.4-Kumar

and another and he prepared Ex.P11-Rough Sketch. He seized M.Os.1 to 6 from the occurrence place in the presence of P.W.4-Kumar and

another under Ex.P3-mahazar and obtained the signature of the witnesses in it. He gave requisition to record the dying declaration of Selvameri.

P.W.7-Judicial Magistrate Mr.Arunachalam went to K.M.C.Hospital and saw Selvameri in the burns ward and found her conscious and in a fit

state of mind. P.W.11-Dr.Jeyaraman certified that Selvameri was conscious, well oriented and in a fit state of mind to give statement. P.W.7-

Judicial Magistrate Mr. Arunachalam, in the presence of P.W.11-Dr.Jeyaraman, recorded her Ex.P4-statement at 11.30 am and P.W.11-

Dr.Jeyaraman also certified that Selvameri was fully conscious, well oriented and in a fit state of mind to give statement throughout the recording of

her statement and issued Ex.P8-Certificate. P.W.7-Judicial Magistrate Mr. Arunachalam certified that burn injuries were present in the hands and

fingers of Selvameri and hence the left toe impression was obtained in the presence of P.W.11-Dr.Jeyaraman.

P.W.14-Inspector Karunakaran examined P.W.1-Chandrasekar, P.W.2-Gajendran, P.W.3-Shanthi and some more witnesses and recorded their

statements and he arrested the accused at 1.00 pm on 8.8.2006 near the IOC Bus stop, Tondiarpet and recorded the confession statement given

by the accused in the presence of P.W.8-Chitrarasu and Durairaj and he subjected the accused to judicial remand on the same day. He also

examined P.W.8-Chitrarasu, Durairaj and some more witnesses and recorded their statements. He received information that Selvameri died at

5.25 pm on 14.8.2006 and altered the case into one u/s 302 IPC and prepared Ex.P12-Express Report and despatched the same to the Court

and he went to K.M.C. Hospital on 15.8.2006 and conducted inquest on the body of Selvameri between 8 am and 10.30 am in the presence of

panchayatars and prepared Ex.P13-Inquest Report. He sent the body of deceased Selvameri for post-mortem through P.W.5-Head Constable

Vaseekaran.

P.W.12-Dr.Udayasankar conducted post-mortem on the body of Selvameri at 2.40 pm on 15.8.2006 and found the following.

Appearances found at the post-mortem:

Moderately nourished, symmetrical 31 years old female body lies on back.

External Injuries: Deep infected wounds seen over the abdomen, both thighs, upto the knee in front, right palm, left arm front and back from elbow

to the palm. Right and left pectoral region, left side of the neck and left shoulder. 33% burns - Septicaemia.

Heart: Normal, Lungs: Bluish, Hyoid Bone: Intact. Larynx and Trachea: Normal, Stomach: 100 ml of coffee coloured fluid present. Liver, Spleen,

Kidneys: Normal C/s congested. Bladder: 100 ml turbid urine present. Uterus: Empty, Pelvis, Skull, Brain: Normal.

He gave opinion that the deceased would appear to have died of complications of burns. (33% BURNS SEPTICAEMIA) and issued Ex.P9-

Post-mortem Certificate.

P.W.14-Inspector Karunakaran examined P.W.12-Dr.Udayasankar and further examined P.W.1-Chandrasekaran, P.W.2-Gajendran and some

more witnesses and recorded their statements. He also examined P.W.9-Dr.Anjelin Selvaraj on 14.8.2006 and recorded her statement and he

completed the investigation and filed final report against the accused.

5. The accused was questioned u/s 313 Cr.P.C and he denied complicity and he examined himself as D.W.1 and his first wife Mumtaj as D.W.2

on his side.

6. The learned Additional Sessions Judge held that the charge u/s 302 IPC against the accused has been proved and convicted and sentenced him

as stated above. Challenging the same, the accused has preferred this appeal.

7. Mr. Sirajudeen, learned Counsel for the appellant, submits that the prosecution has not proved the guilt of the accused beyond reasonable doubt

and in any event there is no intention of causing death of Selvameri and while deprived of self-control by sudden provocation, he has acted and

Exception (1) to Section 300 IPC is applicable and further there was sudden quarrel at the time of occurrence between the husband and wife and

without premeditation, the accused has acted and Exception (4) to Section 300 IPC also is to be applied and moreover, as per the medical

evidence, the deceased died of complications of burns due to Septicaemia and the act of the accused would only be culpable homicide not

amounting to murder and in this regard he relies on the decision of the Bombay High Court in Sadashiv Dhondiram Pandit v.. The State of

Maharashtra 2000 CRI. L.J. 4880.

8. Per contra, Mr. V.R. Balasubramaniam, learned Additional Public Prosecutor, submits that Selvameri has stated to the neighbours, her sister, the doctor, who admitted her in the hospital, the Sub-Inspector of Police, who examined her, and also the learned Judicial Magistrate who enquired her, that the accused burnt her by pouring kerosene during the occurrence and there are three written dying declarations and other oral dying declarations implicating the accused. The learned Additional Public Prosecutor further submits that there was no provocation made by the deceased at the time of occurrence and it is only the accused who compelled the deceased to consume liquor and hence, Exception (1) to Section 300 IPC may not be applicable and there was no sudden quarrel during the occurrence and hence, the accused took undue advantage by setting her on fire by pouring kerosene and hence, Exception (4) is also not applicable and though the deceased developed Septicaemia, it could not affect the conclusion that the burn injuries are the direct cause of her death and he relies on the recent decision of the Apex Court in Antram Vs. State of Maharashtra, .

9. In the light of the rival submissions, we examined the material records carefully. The prosecution case rests on circumstantial evidence based on a number of dying declarations given by Selvameri about the occurrence. Accused Shahul Hameed is the second husband of Selvameri and admittedly, they were living together in a portion of the house owned by P.W.1 Chandrasekar and P.W.2 Gajendran is the neighbour. According to P.Ws.1 and 2, on 7.8.2006, at about 11.00 p.m., they heard the loud screaming voice of Selvameri and on rushing to her house, they found Selvameri with burn injuries lying on the veranda and they asked her as to what happened and Selvameri told them that her husband, the accused, poured kerosene and set fire on her. P.W.2 Gajendran brought the auto and P.Ws.1 and 2 took injured Selvameri to Government Kilpauk Medical College, Hospital. P.W.10 Dr. Jason Philip examined Selvameri at 00.30 hrs on 8.8.2006 in K.M.C. Hospital, and she has testified that Selvameri told her that her husband poured kerosene and set fire on her at 11.45 p.m. in her house. The Doctor found 20% burn injuries on Selvameri and admitted her as in-patient in Burns ward and Ex.P6 is the Accident Register copy. Thereafter, P.W.11 Dr. Jeyaraman treated her at

2.00 a.m. on 8.8.2006 in the burns ward. According to P.W.11 Jayaraman, Selvameri told him that the person residing with her poured kerosene

and set fire on her in the house at about 11.00 p.m. on 7.8.2006 and he found 33% burn injuries on the body of Selvameri. On receiving the

intimation about admission, P.W.13 Sub Inspector Pattabiraman went to K.M.C. Hospital and found Selvameri in conscious condition and

recorded Ex.P1 Complaint given by her in the presence of P.W.3 Shanthi and obtained the left toe impression of Selvameri in the complaint and

obtained the signature of P.W.3 Shanthi as attesting witness in it. P.W.14 Inspector Karunakaran took up investigation and gave requisition to the

learned Judicial Magistrate to record the dying declaration of Selvameri. P.W.7 Judicial Magistrate Arunachalam has stated that he went to

K.M.C. Hospital and found Selvameri conscious and in a fit state of mind and P.W.11 Dr. Jayaraman certified her fitness and he recorded Ex.P4

Statement given by Selvameri and on account of the presence of burn injuries in the hands and fingers, he obtained left toe impression of Selvameri

in it and P.W.11 Dr. Jayaraman also gave Ex.P8 Certificate in the proceedings that the patient was fully conscious, well oriented and in a fit state

of mind to give statement throughout the recording of the statement.

10. Selvameri in the written dying declarations in Exs.P1, P4 and P6 had clearly stated that during the occurrence, accused Shahul Hameed

compelled her to drink brandy and when she refused, he poured kerosene and set fire on her and she sustained burn injuries. There is no

discrepancy in the above dying declarations and they are consistent and there is absolutely no reason to discard the same. Besides the oral dying

declarations spoken to by the witnesses also deserve acceptance. Hence, it is clear that it is the accused who poured kerosene on Selvameri and

set fire on her during the occurrence resulting in the burn injuries.

11. It has to be seen as to whether Exceptions 1 and 4 to Section 300 IPC are applicable to the facts of the present case as contended by the

learned Counsel for the appellant. During the occurrence, the accused compelled Selvameri to drink brandy and she refused to consume the same

on the ground that she was unwell and on refusal, the accused poured kerosene and set fire on her. There was no provocation made by Selvameri

and the contention of the learned Counsel that the accused was provoked has no

basis. Hence, Exception (1) to Section 300 IPC is not attracted.

12. The other contention is that there was sudden quarrel during the occurrence and the accused without any premeditation had acted. Even

though there seems to be a wordy quarrel between the husband and wife at the time of occurrence, there was no fight between them and in any

event it cannot be said that the accused had not taken any undue advantage since pouring kerosene and setting fire on the body is a cruel act.

Therefore, exception (4) to Section 300 IPC is not applicable.

13. Selvameri was treated as in-patient in the burns ward for 7 days and died on 14.8.2006. P.W.12 Post-mortem Doctor Udayasanker testified

that the death has occurred due to Septicaemia on account of burn injuries. Ex.P9 is the Post-mortem Certificate issued by him stating that the

deceased would appear to have died of complications of burns (33% Burns Septicaemia). From the medical evidence it is clear that the deceased

developed Septicaemia on account of burn injuries. That would not, in any event, affect the conclusion that the burn injuries are the direct cause of

her death since Septicaemia is the direct result of injuries.

14. In the decision of the Bombay High Court (stated supra), relied on by the learned Counsel for the appellant, the victim succumbed to her burns

one month after the occurrence and the Division Bench held that the act of the accused would fall under Clause thirdly of Section 299 IPC and he

was found guilty for the offence u/s 304 part (ii) IPC and sentence of seven years Rigorous Imprisonment was imposed. The Division Bench has

observed in the said decision that the accused committed an act with the knowledge, (in terms of Clause thirdly of Section 299 IPC), that her

death could be possible. In our view, merely because the act falls under Clause thirdly of Section 299 IPC, it cannot be said that culpable homicide

would not amount to murder.

Section 300 IPC reads as follows:

Section 300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with

the intention of causing death, or

2ndly. -

3rdly. -

4thly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

15. Their Lordships of the Supreme Court in the recent decision in *Antram v. State of Maharashtra*, referred to above, laid down that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper medical care, the death might have been prevented. For better appreciation, the relevant portions of the judgment are extracted below-

12. In *State of Haryana Vs. Pala and Others*, it was noted as follows:

In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration.

13. In *Sudershan Kumar Vs. State of Delhi*, it was noted as follows:

The fact that the deceased lingered for about 12 days would not show that the death was not the direct result of the act of the accused in throwing acid on her. So also the fact that the deceased developed symptoms of malaena and respiratory failure and they also contributed to her death could not in any way affect the conclusion that the injuries caused by the acid burns were the direct cause of her death.

14. As noted above, it was emphasized by learned Counsel for the appellant that with proper medical care the deceased could have survived and therefore Section 302 IPC has no application. The plea clearly overlooks Exception 2 to Section 299 IPC, which reads as follows:

Exception 2. - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

15. When the background facts are examined on the touchstone of the principles of law highlighted, the inevitable result is that the appeal is without merit, deserves dismissal, which we direct.

16. In the present case, as already seen, the death of Selvameri is due to burn injuries suffered and the accused had caused the burn injuries.

Hence, the act of the accused would amount to murder.

17. There are no merits in the appeal and the same is dismissed.