Meena Vs State by The Inspector of Police

Court: MADRAS HIGH COURT

Date of Decision: June 1, 2017

Acts Referred: Code of Criminal Procedure, 1973, Section 164 - Recording of confessions and statements
Indian Penal Code, 1860, Section 306, Section 309 - Abetmen

Hon'ble Judges: P.Velmurugan

Bench: SINGLE BENCH

Advocate: P.Velmurugan

Judgement

1. This criminal appeal has been filed by the appellant/accused against the judgment of conviction passed by the learned Mahila Sessions Judge,

Chennai in S.C.No.36 of 2013 dated 21.07.2014, in which, the Mahila Judge had convicted the appellant for the commission of offence under

Section 306 of I.P.C. and sentenced her to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo 6

months simple imprisonment.

2. The case of the prosecution is that one Vivek, who is the maternal grandson of the accused fallen in love with 15 years old girl by name Jessima,

who is the deceased and daughter of the complainant and on 25.05.2012 at about 10.00 p.m., when Jessima was walking in the Muthiah Thotta

street, the accused with an intention to insult her, scolded her with filthy language and induced her to commit suicide and since the minor girl

Jessima was not able to bear the words uttered by the accused, poured kerosene, which was kept in her house on her and set fire as self

immolation, as a result of which, she sustained burnt injuries and immediately, she was admitted in the Government Hospital, Royapettah, where,

she died on 26.05.2012 at about 10.15 a.m. Therefore, a case was registered against the accused for the offence under Section 306 of I.P.C. by

the respondent police in crime No.1039 of 2012.

3. After completion of investigation, the Inspector of Police, D3 Ice House Police Station, Chennai laid a charge sheet against the appellant before

the learned XIII Metropolitan Magistrate, Egmore, where the case was taken on file in P.R.C.No.330 of 2012 and the case was committed to the

Court of Sessions and the same was made over to the learned Mahila Sessions Judge, Chennai, where the case was taken on file in S.C.No.36 of

2013 and as prima facie case was found against the accused, she was charged for the commission of offence under Section 306 of I.P.C.

4. In order to prove the case of prosecution, on the side of prosecution, as many as 10 witnesses, P.W.1 to 10 were examined and Exs.P1 to 8

were marked. P.W.1 is the mother of the deceased and she has spoken about the complaint statement made before the Assistant Sub Inspector of

Police. P.W.2 is the uncle of the deceased, who had admitted the deceased in the Government Hospital, Royapettah and spoken about the cause

of the injuries sustained by the deceased. P.W.3 is the second husband of the complainant and P.W.4 is the mother of the complainant as well as

the maternal grandmother of the deceased, who has spoken about the cause of injury sustained by the deceased. P.W.7 is the doctor, who gave

treatment to the deceased and spoken about the A.R.Copy entry made in the G.H. Register and spoken about the condition of the deceased at

that time, when she was admitted in the hospital. P.W.8 is the doctor, who has done postmortem and has spoken about the cause of the death.

P.W.9 is the Special Sub Inspector of D3 Ice House Police Station and spoken about the registration of first information report and P.W.10 is the

Inspector of Police, who investigated the matter and laid the charge sheet against the accused.

5. After examining the above said witnesses, the incriminating evidence as against the accused were put to her, for which, the accused denied the

same as false and in order to disprove the case of prosecution, on the side of the accused, though D.W.1 was examined as defence witness, no

document was marked.

6. The trial Court, after completion of trial, on the basis of oral and documentary evidence produced by the prosecution, found the accused guilty

for the offence under Section 306 of I.P.C. and sentenced her as stated above. Aggrieved by the said judgment of conviction passed against the

accused, the present appeal has been filed.

7. The learned counsel for the appellant would submit that the prosecution has not proved the case beyond reasonable doubt. There is no eye

witness to prove that the accused scolded the deceased and due to that, she poured kerosene and set her on fire. The evidence of P.W.9 has

created doubt and there is a contradiction regarding the condition of the deceased when he obtained the complaint from P.W.1, the mother of the

deceased. P.Ws.1,2, and 4 are the interested witnesses and they made false allegation against the accused. The prosecution had laid charge sheet

against the accused without any proper investigation. The prosecution could not substantiate the charge. The trial Court failed to consider the

materials produced before it and wrongly convicted the accused. The judgment of conviction passed by the trial Court is without any substance.

The conviction and sentence passed by the learned trial Judge is purely on a sympathy on the deceased and not on merits and therefore, the

conviction and sentence passed by the trial Court is liable to be set aside. For supporting his contention, he has placed reliance of the following

decisions:

1.2016(1) MLJ (Criminal) 459 - Govindan V. State by Inspector of Police, Attayampatty, Salem.

2.2016(1) MLJ (criminal) 657 - B.Raja V. State by Inspector of Police, E3, Teynampet Police Station, Chennai.

3.2002 Cri.L.J. 2796 - Sanju @ Sanjay Singh Sengar

4.2007(10 SCC 797 - Kishori Lal V. State of M.P.

8. The learned Additional Public Prosecutor appearing for the State would submit that P.Ws.1 and 2 had clearly spoken about the involvement of

the accused. P.W.7, doctor, who had made A.R. Copy entry clearly stated that at the time, when the deceased was admitted in the hospital, she

was able to speak. The deceased has spoken to her uncle P.W.2 about the occurrence and thereafter, her mother and therefore, evidence of

P.Ws.1,2 and 7 have clearly proved the involvement of the accused in the commission of offence. The trial Court has correctly come to the

conclusion that the accused has committed the offence and found her guilty and hence, the conviction and sentence passed by the trial Court does

not warrant any interference and the appeal is devoid of merits and the same is liable to be dismissed.

9. Since the first appellate Court is a fact finding Court, this Court has to come to an independent conclusion as to whether the accused has

committed and the prosecution has proved the charge as framed against the appellant/accused beyond reasonable doubt?

10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the

materials available on records as well as the judgment passed by the Court below.

11. The brief facts of the case is that on 25.05.2012 at about 10.00 p.m., when the deceased Jessima was walking in the Muthiah Thotta street,

the accused with an intention to insult her, scolded her with filthy language regarding her love with his maternal grandson and induced her to commit

suicide and accordingly, the deceased poured kerosene on her and set fire as self immolation, as a result of which, she died and a case was

registered against the accused for the offence under Section 306 of I.P.C. by the respondent police in crime No.1039 of 2012.

12. In order to find out the correctness of the judgment of the trial Court, it is relevant to refer the evidence of prosecution, which would run thus:

P.W.1, Regina Mary, who is the mother of the deceased has deposed in her evidence that on 25.05.2012 at about 9.00 p.m., she

sent the deceased to buy milk and gone to the function of her relative. P.W.2, Prabhu, who is the uncle of the deceased, while

chatting with his friends, hearing the news that one lady set fire on her and when he attempted to set off the fire, the lady called him as

uncle and thereafter, he came to know that the lady is his sister''s daughter and he took her to the hospital in an auto and in the

hospital, when he asked her as to why she acted like this, she replied that when he returned back from the shop, the accused scolded

her in filthy language. Thereafter, he called P.W.1 over phone and intimated the matter and asked her to come to government

hospital, Royapettah. Immediately, P.W.1 came to the hospital and asked the deceased as to why she acted like this, she replied that

when the deceased along with her friends was talking with one Vivek, who is the maternal grandson of the deceased, she scolded her

in filthy language before some persons and since she was not able to bear with the same, she set fire on self immolation. P.Ws.3 and

4 have corroborated the evidence of P.Ws.1 and 2. P.W.6 witnessed that she had put his signature in the mahazer. P.W.7 doctor,

who made entry in accident register maintained in the hospital has deposed that when he examined Jesima at the time of admission in

the hospital, she has stated that on 25.05.2012 at about 10.30 p.m., she pored kerosene on her and set fire on self immolation. He

has further stated that she was conscious and was in semi sedation and was able to speak and she sustained 91% burnt injuries.

P.W.8 doctor conducted postmortem and gave opinion that the deceased would appear to have died of shock due to extensive

burns. P.W.9, Sub Inspector of Police received the intimation and gone to government hospital and since the deceased was not able

to speak, he recorded the statement given by her mother P.W.1 and registered the case in crime No.1039 of 2012 for the offence

under Section 309 of I.P.C. and P.W.10, Inspector of Police conducted further investigation and laid the charge sheet against the

accused.

13. A perusal of the judgment of the trial court and other records would show that there is no direct evidence to speak about the occurrence to

prove that the accused scolded the deceased before some other person and as a result of which, she poured kerosene and set fire on self

immolation. The evidence of P.Ws.1 to 4 are only hearsay evidence. There is no eye witness to prove the case of prosecution. Even though it is

alleged that the deceased fallen in love with the maternal grandson of the accused, no witnesses has been examined by the prosecution to prove the

same.

14. The case of the prosecution is that on 25.05.2012 at about9.00 p.m., when the deceased returned back from the shop, the accused scolded

her in filthy language in the presence of some persons. However, no occurrence witness has been examined from the village to prove the above

fact. Therefore, the prosecution has not established the case with acceptable evidence that the accused scolded the deceased in filthy language and

induced her to set fire on self immolation.

15. Perusal of the evidence of P.W.2 would show that when he heard the news that one lady set fire on self immolation and when he tried to set off

the fire, the deceased called him as uncle and thereafter only, he came to know that the deceased was his sister"s daughter. Likewise, after sending

the deceased to buy milk in the shop, P.W.1 gone to a function and after the occurrence only, she was intimated by his brother/P.W.2 about the

occurrence and thereafter only, she gone to the hospital.

16. Even though, P.W.7 enquired the deceased at the time of admitting in the hospital, she has stated that she poured kerosene and set fire on self

immolation during that time she was in conscious and semi sedation, he has not recorded as to the reason for why she poured kerosene on her and

set fire. Subsequently, P.W.8, the doctor who conducted postmortem has given opinion that the deceased sustained 91% burnt injuries. However,

the prosecution has not taken any steps to record the dying declaration of the deceased before her death. Furthermore, the prosecution has not

seized any suicidal note or there is no any extra judicial confession.

17. Perusal of the evidence of P.W.9 would show that when he gone to the hospital, the deceased was not able to speak and hence, he recorded

the statement of P.W.1, whereas, during the cross examination, P.W.1 has deposed that when she saw her daughter in the Hospital, she was in a

position to speak well. Police came to the hospital at 10.30 a.m. Her daughter gave complaint statement before the police. She also heard the

statement given by her daughter before the police which create doubts. P.W.1 is the mother, P.W.2 is the uncle, P.W.3 is the second husband of

P.W.1 and P.W.4 is the maternal grandmother of the deceased and they are all interested witness. Though the evidence of a related witness cannot

be discarded solely on this score. It will not adversely affect prosecution version, if statement of related witnesses are trustworthy. But, in this case,

P.W.1 has stated that her daughter, the deceased, while she was admitted in the hospital told her that infront of others the accused had insulted by

uttering untold filthy language and induced to commit suicide. But except P.W.5, none of the person has been examined before the Court to

establish that accused scolded the deceased with untold words. The only person P.W.5 was examined before the Court for that purpose also has

not supported the case of the prosecution. Further, it is not clear that there was a dispute between the accused family and the deceased family due

to the love affairs between the deceased and the maternal grandson of the accused.

18. Therefore, in the absence of any eye witnesses or dying declaration or suicidal note or statement of the witnesses under Section 164 of

Cr.P.C., or extra judicial confession and since there is no evidence as to the love between the deceased and Vivek and there is no evidence to

prove that the accused scolded the deceased in the presence of some persons and no one person in the village, except the family members of the

complainant has spoken about occurrence and accused is reason for self immolation of the deceased. That too only hearsay evidence. It is clear

that the prosecution has not proved its case beyond reasonable doubt. Further more, the evidence of P.W.9 itself create suspicion as to whether

the deceased was conscious and able to speak or not at the time of recording the statement from P.W.1. But, there is no doctor certificate

annexed with the complaint statement, Ex.P1 in this regard.

19. Thus, the prosecution evidence does not go to establish the charges framed against the accused. What remains is suspicion and surmises.

Suspicion and surmises, however, strong may not take the place of legal proof. No legal and acceptable evidence is available to record a

conviction against the accused. Prosecution has thoroughly failed to prove the charge framed against the accused.

20. .For all the above reasons, this Court is of the view that the trial Court has not considered all the aspects in a proper manner and convicted the

accused for the offence under Section 306 of I.P.C. Therefore, the judgment and conviction passed by the trial Court is liable to be set aside and

the benefit of doubt should be given to the accused.

21. Accordingly, this criminal appeal is allowed and judgment and conviction dated 21.07.2014 passed in S.C.No.36 of 2013 by the learned

Mahila Sessions Judge, Chennai is set aside and the accused is acquitted from the charge of offence under Section 306 of I.P.C.