(2010) 07 MAD CK 0317

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) No. 149 of 2009

Varatharaj @ N. Perumal	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision: July 8, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 302, 307, 330, 380
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(5)

Hon'ble Judges: M. Duraiswamy, J; M. Chockalingam, J

Bench: Division Bench

Advocate: R. Mariappan, for the Appellant; M. Daniel Manoharan, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to the judgment of the Additional Sessions Division, Fast Track Court No. I, Tuticorin, dated 07.05.2009, made in S.C. No. 103/2008, whereby the appellant/sole accused stood charged under Sections 380 and 302 IPC, tried and found guilty thereunder and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs. 500/-, in default to undergo three months rigorous imprisonment for the first offence and life imprisonment and to pay a fine of Rs. 1,000/-, in default to undergo rigorous imprisonment for six months in respect of the latter offence.

2. The short facts necessary for the disposal of the appeal can be stated as follows:

(a) P.W.1 Yessiah and P.W.2 Suganthi are the parents and P.W.3 Chellathurai is the brother of the deceased Maria. Deceased Maria was living along with her parents. She developed illicit intimacy with the appellant/accused Varatharajan. Three days

prior to the occurrence, i.e. on 31.01.2008, the accused took the deceased from her house promising to marry her and kept in his mother''s sister''s house (P.W.8) at Athimarappatti for few days.

(b) On 03.02.2008 on the morning hours, the accused demanded the deceased to give her jewels for the purpose of sale as he needed money but, the deceased refused to give the same. While the matter stood thus, at about 5.00 p.m. on the same day, the accused went inside the house and took the jewels of the deceased which were kept in a small cloth bag. At that time, the deceased Maria prevented the accused from taking the jewels and immediately the accused poured kerosene on the deceased and set her ablaze. Thereafter, the accused took the jewels and ran away. With burn injuries and crying, the deceased came out of the house. P.W.4 and P.W.7 saw the accused coming out of the house and also sawa girl coming with burning fire on her body behind him. Immediately, P.Ws.4 and 7 put-off the fire by pouring water and when enquired the deceased informed them that the accused Varatharajan poured kerosene and set her ablaze.

(c) P.W.10, Ambulance Driver, on receipt of a phone call, took her to the Government Hospital, where P.W.22, the doctor on duty, examined her at 6.20 p.m. on 03.02.2008 and found burn injuries all over her body. He also found her conscious and sent her to Special Ward for Burn Injury cases and gave Ex.P-17 intimation to the police. Ex.P-16 is the copy of the Accident Register pertaining to the deceased given by P.W.22d. On the same day, at about 6.35 p.m., P.W.15, the doctor attached to Government Hospital, Tuticorin, examined the deceased who was admitted in the hospital with 100% burn injuries and gave Ex.P-8 Intimation to the Judicial Magistrate for recording the dying declaration of the deceased. On receipt of Ex.P-8, P.W.14, the Judicial Magistrate No. II, Tuticorin, proceeded to the Hospital at about 7.30 p.m. on 03.02.2008 and recorded the dying declaration of the deceased Maria, which is marked as Ex.P-9.

(d) P.W.16, the Head Constable attached to the Outpost Police Station, Government Medical College Hospital, Tuticorin, gave intimation to the Sub-Inspector of Police attached to the respondent police about Ex.P-17 and on the arrival of the Sub-Inspector, he handed over Ex.P-17 to him. P.W.20, the Sub-Inspector of Police attached to the respondent police station, on receipt of Ex.P-17 from P.W.16, proceeded to the Hospital where he recorded the statement of the victim at 10.00 p.m. on 03.02.2008 and obtained her thumb impression on it and the same was attested by P.W.3, the brother of the deceased, which is marked as Ex.P-1 and on the strength of Ex.P-1, a case was registered by P.W.20 at 11.30 p.m. in respondent Police Station Crime No. 29/2008 under Sections 330, 307 and Sections 3(2) of SC & ST (PA) Act, 1989. Ex.P-13 is the First Information Report and the same was sent to the Court through P.W.18, the Constable, and copies were sent to higher police officers.

(e) On receipt of a copy of Ex.P-13 FIR at about 00.15 a.m. on 04.02.2008, P.W.24, the Deputy Superintendent of Police, took up the investigation, proceeded to the Hospital, examined the victim Maria and recorded her statement u/s 161 Code of Criminal Procedure On enquiry, P.W.24 came to know that the victim belonged to Christian Pallar Community and therefore found that the provisions of SC & ST Act are not applicable to the case and therefore he altered the provisions of law and Ex.P-23, the altered FIR, to the Court and handed over the investigation to the Inspector of Police, Muthaiyapuram Police Station. Ex.P-24 is the statement recorded by P.W.24 from the victim.

(f) P.W.23, the Inspector of Police, at about 2.30 a.m. on 04.02.2008, took up the further investigation from P.W.24 and at about 3.00 a.m., he proceeded to the place of occurrence, made an observation in the presence of P.W.11 and P.W.21 and prepared Ex.P-18, the observation mahazar and also drew Ex.P-19, the rough sketch. P.W.23 recovered M.O.5 - Plastic Can, M.O.6 series - saree pieces and M.O.7 - Match box, under Ex.P-20 Mahazar attested by the same witnesses. At about 6.00 a.m. on 04.02.2008, on coming to know that the victim died in the hospital at 3.10 p.m. on 04.02.2008, through EX.P-10 intimation given by P.W.15, the Doctor, P.W.23 altered the provisions of law under Sections 380 and 302 IPC and sent Ex.P-21, the altered F.I.R., to the Court. Thereafter, he proceeded to the Government Hospital and conducted inquest on the body of the deceased, which was kept in the mortuary, between 7.00 a.m. and 10.00 a.m. in the presence of panchayatdars and witnesses and prepared Ex.P-22, the inquest report. He examined PWs.1 and 3 and recorded their statements. Thereafter, he sent the body for postmortem through P.W.19 Constable with Ex.P-6 requisition.

(g) P.W.13, the Doctor attached to Tuticorin Government Hospital, conducted autopsy on the body of the deceased at 01.10 p.m. on 04.02.2008. On completion of postmortem, P.W.13 issued Ex.P-7, the postmortem certificate, opining that the deceased would have died due to complications of antemortem burns.

(h) Pending investigation, P.W.23, the Inspector of Police, came to know that the accused surrendered before the Judicial Magistrate No. II, Tuticorin, on 11.02.2008 and he filed an application seeking police custody of the accused and accordingly he took custody of the accused and when enquired, the accused voluntarily came forward to give a confessional statement and P.W.23 recorded the same in the presence witnesses and pursuant to the admissible of the confessional statement, which is marked as Ex.P-4, the accused took and produced M.O.1 - a gold ring, M.O.2 - a pair of ear studs, M.O.3 - a gold chain and M.O.4 - cloth bag and the same were recovered by P.W.23 under Ex.P-5 mahazar attested by P.W.12 and another. P.W.23 completed the investigation and filed the final report against the accused under Sections 380 and 302 IPC.

3. After committal proceedings, the case was taken on file by the Sessions Court in S.C. No. 103/2008 and necessary charges were framed. To prove the charge against

the accused, the prosecution examined 24 witnesses as P.Ws.1 to 24 and marked 24 documents as Exs.P-1 to P-24 and produced M.Os.1 to 7. On completion of the evidence on the side of the prosecution, when the accused was questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances found in the evidence of prosecution witnesses, he denied all of them as false. On the side of defence, neither oral evidence nor documentary evidence was let it. The trial court, after hearing the parties, took the view that the prosecution has proved the charges against accused beyond reasonable doubt, found him guilty on both the charges, convicted him thereunder and awarded imprisonments as referred to above and hence this appeal at the instance of the appellant.

4. Advancing his arguments on behalf of the appellant/accused, the learned Counsel raised the following contentions in assailing the judgment of the trial court.

(a) In the instant case Ex.P-1 Report has not come into existence at the time as put-forth by the prosecution but, it is a document which has come into existence in order to suit the prosecution case. A perusal of Ex.P-1 would clearly indicate that P.W.3, the brother of the deceased, was actually present at the time when Ex.P-1 Statement was recorded by P.W.20, the Sub-Inspector of Police, from the deceased and according to P.W.20, the Statement was actually recorded at 10.100 p.m. at the Government Hospital from the deceased and P.W.2, the mother of the deceased, has categorically stated that P.W.3 was not in station on the day of occurrence and he came back only at 2.00 a.m. on the next day and this would clearly indicate that Ex.P-1 Statement could not have come into existence as projected by the prosecution. Learned Counsel further added, the FIR has reached Judicial Magistrate only at 4.30 a.m. when the Magistrate''s residence was situated within a short distance from the police station and if to be so, it strengthens the doubt that Ex.P-1 could not have come into existence as put-forth by the prosecution.

(b) Insofar as P.Ws.4 and 7 are concerned, they are shown as witnesses as if immediately after the occurrence the deceased came out of the house shouting that it was the accused who poured kerosene and set her ablaze. The evidence of these two witnesses should have been rejected by the trial court for the simple reason that names of P.Ws.4 and 7 do not find a place in Ex.P-1 Statement. Had it been true that P.Ws.4 and 7 were actually available and to whom the deceased has spoken about the occurrence, she would have definitely mentioned their names in Ex.P-1 Statement but, not stated so and thus these P.Ws.4 and 7 were the witnesses introduced for the purpose of prosecution case.

(c) Insofar as Ex.P-9, the Dying Declaration, is concerned, it in no way inspires the confidence of the Court. According to P.W.2, the mother of the deceased, the deceased was already married but, when the deceased gave Dying Declaration she has categorically spoken to the Judicial Magistrate that she was not married and this would clearly indicative of the fact that she has come with a falsehood. Further, according to P.Ws.1 and 2, the parents of the deceased, the deceased was taken by

the accused on 31.01.2008 itself but according to the statement given by the deceased in the dying declaration she was taken only on the very day and not earlier. Added further the counsel, the prosecution came up with a story that the jewels were kept in a small bag and when the accused wanted to take it the deceased refused and enraged over the same the accused poured kerosene and set her ablaze. On the contrary, the deceased has given the statement to the effect that the accused demanded her to give the jewels and she really handed over the same to him and in such circumstances there is no reason for the appellant to set her ablaze.

(d) Added further the learned Counsel, the deceased was 23 years old with nourished body and if really such an occurrence in which the accused poured kerosene and set her ablaze had taken place, the deceased would have immediately resisted the same and tried to quench the fire and in that process burn injuries would have caused on the hands. But, on the contrary, P.W.22, the Doctor who examined her at the earliest point of time as well as P.W.13, the postmortem doctor, have spoken to the effect that burn injuries were not found in the hands of the deceased and this would go to show that such an incident, as spoken to by the deceased, would not have happened at all and hence this would clearly indicative that it was a self-immolation on the part of the deceased and, therefore, the case of the prosecution that the accused poured kerosene and set the deceased ablaze is nothing but a falsehood and a story put-forth by the prosecution and thus the doubts created were thoroughly reasonable and hence the appellant/accused is entitled for an order of acquittal at the hands of this Court.

5. The Court heard the learned Additional Public Prosecutor on all the submissions made by the counsel for the appellant and paid its anxious consideration to the submissions made on either side and perused the materials on record.

6. It is not in controversy that pursuant to an incident that has taken place at about 5.00 p.m. on 03.02.2008, Maria, the deceased, was immediately taken to the Government Hospital at Tuticorin, where he was initially treated by P.W.22, the doctor, and Ex.P-16 is the Accident Register Copy given by him and pursuant to the statement of the deceased, which is marked as Ex.P-1, originally a case was registered u/s 307 IPC and other provisions and pursuant to the death of the victim, the provisions of law was altered to under Sections 380 and 302 IPC and thereafter, pending investigation, after the inquest was made, the dead body was subjected to postmortem by P.W.13, the postmortem doctor, who, in Ex.P-6, the postmortem certificate, has opined that the deceased died due to complications of ante-mortem burns. The fact that Maria died out of burn injuries was never disputed by the appellant/accused. On the contrary, it was contended before the trial and equally before this Court that it was self-immolation by the deceased herself and not the act of the appellant/accused. Hence the only question arises for consideration is that whether it was an act of self-immolation or the act of the appellant accused.

7. On a scrutiny of all the materials placed before the trial Court by the Court now, the Court is of the considered opinion that the prosecution has brought home the guilt of the accused beyond all reasonable doubts. In the instant case, the occurrence has taken place at 5.00 p.m. on 03.02.2008 and P.Ws.4 and 7 have witnessed the accused coming out from the house and also saw the deceased coming with burning fire on her body behind him and thereafter the victim was taken to the hospital by P.W.10, the Ambulance Driver. Learned Counsel for the appellant brought to the notice of the Court that the names of P.Ws.4 and 7 did not find a place either in Ex.P-1 Statement or in Ex.P-9, the Dying Declaration, and hence those witnesses could not have been in the place of occurrence and therefore the deceased could not have informed them about the occurrence immediately. Even assuming that P.Ws.4 and 7 were actually not available at the place of occurrence before whom she made utterances, from the evidence of P.W.10, it is seen that she was taken to the hospital and admitted there at 6.20 p.m. P.W.22, the Doctor, has examined her at the earliest point of time and Ex.P-16 is the Accident Register Copy, which is the earliest document found available in the case records. From a perusal of the same, it would be quite clear that it was stated by the deceased that kerosene was poured and she was set ablaze by a known person and thus it is indicative of the fact that it was an act committed by a third person and not by the lady concerned.

8. The next document available is the Dying Declaration, recorded by P.W.14, the Judicial Magistrate No. II, Tuticorin, which is marked as Ex.P-9. At the time of giving testimony before the trial court, P.W.14 has deposed that on her arrival to the hospital the victim was identified to her and after getting due certification from the doctor concerned that the victim was conscious enough to give statement and after finding that the mental condition of the victim was fit enough to give declaration, she recorded the dying declaration of the victim. A perusal of Ex.P-9 would clearly indicate that at the time of occurrence she was staying with the accused and the accused was with her and he demanded the jewels and she gave the same and thereafter the accused attempted to put cloth on her mouth and when she demanded the accused to return the jewels he started to press her neck and in that process he got wild and poured kerosene and set her ablaze. The above facts that the poured kerosene and set her ablaze found in the Dying Declaration are concerned, it is pertinent to point out that she was in a fit state of mind and the Court is unable to see any reason or circumstance brought forth by the appellant/accused why she must come forward to implicate him. Added further, she has been in intimacy with the accused for a period of one year prior to the occurrence.

9. Now, learned Counsel for the appellant brought to the notice of the Court certain discrepancies found that the deceased was actually married according to the evidence of P.W.2 but, she gave statement to the Judicial Magistrate in the dying declaration that she was not married and apart from that while she has stated that

she came to the place of occurrence on the day of occurrence alone, according to P.Ws.1 and 2 she left the house few days earlier. This discrepancies, in the considered opinion of the Court, cannot, in any way, take away the truth of the dying declaration. In a given case like this, where the prosecution rests its case on dying declaration, the Court must look into the substance of the declaration given by the deceased. The relevant factors which remain to be proved by the prosecution is that availability of the deceased and the appellant and further it was he who poured kerosene and set her ablaze at the time of occurrence and at the place of occurrence. All these relevant factors are actually found contained in the Dying Declaration and the dying declaration contains the required substance to find the appellant/accused guilty.

10. The other contention put-forth by the learned Counsel for the appellant that the deceased herself handed over the jewels and therefore there was no question of stealing or theft would arise cannot be accepted at all. The circumstances clearly indicate that the deceased was alone and actually there was a demand for the jewels and the deceased also gave the same to him but, when the accused attempted to close her mouth with a cloth, the deceased demanded the accused return the jewels and at that time after setting her ablaze the took away the jewels and therefore the provision for theft is clearly applicable.

11. The next contention put-forth by the counsel for the appellant that P.W.3 could not have been present at the time when Ex.P-1 Statement was recorded by P.W.20, the Sub-Inspector of Police, from the deceased cannot by itself a reason to reject the prosecution case. The deceased was taken to the hospital at about 6.20 p.m. and there she was initially treated by P.W.22, the Doctor and thereafter P.W.15, another doctor, also examined her and gave a requisition to the Judicial Magistrate to record her dying declaration as she was admitted with 100% burn injuries and in turn P.W.14, the Judicial Magistrate, recorded the dying declaration from 7.30 p.m. to 8.15 p.m. and thereafter based on Ex.P-1 Statement recorded from the deceased, a case has been registered. Now, it is pertinent to point out that the dying declaration recorded by the Judicial Magistrate was in the earlier point of time to the registration of the case in question. So long as the dying declaration which is pointing to the guilt of the accused is available and it is also acceptable and convincing, the Court need not look into for other evidence.

12. Under such circumstances, it leaves no doubt, much less reasonable doubt, in the mind of the Court to record a finding that it was the appellant/accused who actually stolen the jewels and set the deceased ablaze by putting fire on her. The trial judge was perfectly right in recording a finding that it was the appellant/accused who poured kerosene and set the deceased ablaze by putting fire and caused her death and hence the judgment of the trial court does not suffer either factually or legally and all the contentions raised by the learned Counsel for the appellant do not merit acceptance and they are liable to be rejected and

accordingly rejected. There is no merit in the appeal and the same is liable to be dismissed.

13. In the result, the appeal fails and the same is dismissed and the judgment of the trial court is confirmed.