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Crl.A.No.221 of 2019

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                      |            |
|----------------------|------------|
| <b>Reserved on</b>   | 25.09.2024 |
| <b>Pronounced on</b> | 20.12.2024 |

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**  
AND  
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.221 of 2019

Ashen Babu

... Appellant/Accused

Vs.

State represented by  
Inspector of Police,  
B7 Kaveripattinam Police Station,  
Krishnagiri District.

... Respondent/Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment delivered by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in SC.No.244 of 2016 dated 05.04.2019.

For Appellant : Mr.Kabilan  
for Mr.P.Ezhil Nilavan

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

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## **J U D G M E N T**

**C.KUMARAPPAN, J.**

The sole accused is the appellant herein. The Criminal Appeal has been filed against the order of conviction passed in SC.No.244 of 2016 vide order dated 05.04.2019, by and in which the accused was convicted under Section 302 IPC, and was sentenced to undergo life imprisonment.

2. The brief prosecution's case is that, the accused and the deceased were in a live-in relationship. The deceased had a son by name Arun, through her husband, namely Mr.Johny. On 19.03.2016, when the accused went to the deceased's house at about 7.00 in the evening, a squabble started between them, during the course of which, the accused took kerosene and poured on deceased and set her on fire. Owing to such act, the deceased suffered burn injuries and subsequently, died in the hospital on 20.03.2016 at 12:40 hours [PM].

3. On receiving information from the hospital, Mr.Ravi [PW13], Sub Inspector of Police reached the hospital on 20.03.2016 at about 3.00.am and recorded the statement of the deceased Sathya, under Ex.P10-complaint and



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registered Ex.P11-FIR at about 5:30.AM on the same day. Immediately after the registration of the FIR, the same was forwarded to the jurisdictional Magistrate, and the Investigating Officer Mr.Ravichandran [PW16].

4. On receipt of a copy of the FIR, the Investigating Officer [PW16] went to the scene of occurrence at about 6:05.AM on 20.03.2016 and prepared the observation mahazar [Ex.P6] and rough sketch [Ex.P12], in the presence of Mr.Sathishkumar [PW6] and PW6's assistant. In their presence, he had also seized the stove, woolen blanket and other materials found in the scene of occurrence, which were marked as M.Os.1 to 9. He then had also recorded the statement of Arun [PW1], Thilaga [PW2], Srinivasan [PW8], Karthikeyan [PW9] and other witnesses and thereafter, went to Dharmapuri hospital, where the deceased was admitted for treatment, and recorded her statement. Through the investigation, he came to know that there was an illegal relationship between the deceased and the accused and that the deceased's son born through her husband was the eyewitness to the occurrence. After he ascertained the involvement of the accused, he arrested him at about 15:00 hours, and recorded his confession statement and also made arrangements to remand the accused.



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5. In spite of treatment, on 23.03.2016 the victim died. After coming to know about the death of the victim, the Investigating Officer made arrangements for inquest and had also altered the FIR to one under Section 302 IPC. He also made arrangements to record the statement under Section 164 Cr.P.C of PW1 and other witnesses, which have been marked as Exs.P18 to P20. He has also recorded the statement of the Doctor [PW3], who first admitted the deceased at the hospital and the other Doctor [PW4], who conducted the postmortem. According to the postmortem Doctor [PW4], the deceased died due to the burn injuries. Thus, after completing the investigation, he laid the final report under Section 302 IPC.

6. At trial, the prosecution had examined 17 witnesses as PW1 to PW17 and marked 27 documents as Exs.P1 to P27, and 10 Material Objects as M.O.1 to M.O.10.

7. The Trial Court, after having considered the oral and documentary evidence, had arrived at a conclusion that the prosecution has proved the charge beyond reasonable doubts and thereby, convicted him for the offence under Section 302 IPC and sentenced him to undergo life imprisonment.



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Assailing the said order, the appellant has preferred the instant Criminal Appeal.

8. The learned counsel for the appellant would vehemently contend that, though this case rests upon both ocular evidence and dying declaration, they are surrounded by reasonable doubts, touching upon the core issue. It is his further submission that, though PW1 projects himself as an eyewitness to the occurrence, there are wild contradictions. Further, the learned counsel would invite the attention of this Court about the statement of PW1 recorded under Section 164 Cr.P.C [Ex.P18], wherein, he narrated a different story as if the accused locked the door, which is contrary to his cross examination, where he had mentioned that the deceased did not bolt the door, and that 20 persons had reached the scene, immediately after the occurrence. He would also submit that there are no independent witnesses. It is the further submission of the learned counsel for the appellant that PW1, who was projected as the eyewitness, was aged about 17 years at the relevant point of time, and his silence while recording the AR, is in support of the defence. According to him, Ex.P1-complaint is an after thought. It is the further submission of the learned counsel for the appellant that even according to



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Ex.P26-the alleged dying declaration, the accused was implicated only to the extent of pouring kerosene and not for lighting fire. As such, according to the counsel, all these instances would unequivocally demonstrate the falsity over the prosecution's case, whereas, the Trial Court, without going into these aspects, has arrived at a wrong conclusion and hence, prayed to interfere with the order of the Trial Court.

9. Per contra, the learned Additional Public Prosecutor would vehemently contend that the evidence of PW1 is wholly reliable, and that his mere silence at the time of admitting the deceased should not be taken against the prosecution, as he was under the control of the accused. Therefore, the mere silence of PW1, would in no way affect his credibility. He would further submit that admittedly Doctor Thamaraiselvi [PW3] has stated that the theory of explosion of the stove was recorded only based upon the instruction given by the accused, as such the same need not be given undue advantage. It is the further contention of the learned Additional Public Prosecutor that, the delay in registering the FIR, will in no way affect the prosecution's case. He would further submit that the evidence of the learned Judicial Magistrate and the dying declaration would overwhelmingly prove



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the prosecution's case, which is corroborated by other witnesses. As such, it is his submission that the prosecution has proved the charge beyond reasonable doubts and therefore, contended that there are no grounds to interfere with the order of the Trial Court.

10. We have given our anxious consideration to the submissions made by either side.

11. From the submissions made by either side, it is seen that the entire case rests upon two fold of evidences. One is, the ocular evidence through PW1, and the other is, the alleged dying declaration of the deceased. While looking into the evidence of the postmortem Doctor [PW4], the death of the deceased had occurred only due to the burn injuries, as evidenced under Ex.P5 certificate. This leads us to find out as to who had caused the burn injuries.

12. In this regard, the learned counsel for the appellant drew the attention of this Court to Ex.P2-AR copy, recorded by PW3-Doctor Thamaraiselvi. According to her statement, AR copy was recorded at the



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instance of the accused and she had recorded that the deceased had sustained burn injuries, due to the explosion of the stove. As rightly contended by the learned Additional Public Prosecutor, such a statement made by the accused should not be given undue preference, but at the same time, we intend to look at the circumstances under which such statement was made by the accused.

13. According to PW1, qua son of the deceased, he and the accused took the deceased to the hospital for treatment. At the time of the occurrence, PW1 was aged about 17 years and we may safely conclude that he would definitely be a wordly wise. Assuming that the accused had given a false reason before the Doctor, nothing prevented him [PW1] to object the accused statement.

14. At this juncture, we must also keep in mind that PW1, being a minor, who had a great interest in his mother's life, could have maintained silence, for the safety of his mother. But, once the deceased reached the hospital and after their relatives had arrived there, nothing prevented him from informing them about the manner of occurrence. But, in the case in



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hand, while looking at the previous statement of PW1, which was recorded under Ex.P18 on 12.04.2016 under Section 164 Cr.PC, he mentioned that he had informed about the occurrence only on 20.03.2016. For ready reference, this Court deems it appropriate to extract the statement given before the learned Judicial Magistrate under Section 164 Cr.P.C.

“20ம் தேதி மதியானம் காவோபட்டணம் போலீஸ் ஸ்டேசனிலிருந்து இன்ஸ்பெக்டர் போன் செஞ்சி வீடை பார்க்கும்னு சொன்னாங்க நான் வீட்டை காண்பிச்சேன். அப்போ நான் இன்ஸ்பெக்டர்கிட்டே ஸ்டவ் வெடிக்கல சார், அவரு தான் கொளுத்துனாருனு சொன்னேன்.”

15. Through the above statement, what emerges is, until 20.03.2016 evening the investigation was not proceeded on the footing that the deceased was murdered by the accused. But, if we look at Ex.P10, which is a complaint recorded by the Sub Inspector of Police [PW13], it is his statement that he recorded the statement of the deceased on 20.03.2016 at about 3.00.AM. According to the above Complaint, it was the case of a murder. But according to PW1, until 20<sup>th</sup> evening, he did not inform to the police as to the involvement of the accused.

16. Here, even the recording of Ex.P10-complaint on 20.03.2016, at 3:00.AM is shrouded with a serious doubt, as PW3-Doctor, who recorded AR copy had stated that, when the deceased was admitted at the hospital, the



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deceased was not in a position to answer her query and hence, she was constrained to record the statement of the accused. For ready reference, the evidence of the Doctor [PW3], who gave Ex.P2-AR copy reads as hereunder:-

“தீ காயத்தின் வலியினால் நான் கேட்ட கேள்விக்கு அவரால் பதில் சொல்ல இயலவில்லை.”

In her Cross examination, she has admitted as follows:-

“காயம் பட்ட சத்யா எப்படி காயம் பட்டது என்று சொல்லவில்லை. உடன் வந்தவர் தான் விவரங்கள் சொன்னார்.”

17. As such, from the Doctor's [PW3] evidence, it is apparent that the deceased was not in a position to even answer the small questions of the Doctor. However, the complaint [Ex.P10], contains the entire prosecution's story with minute details. For ready reference, the statement alleged to have been made by the deceased in the complaint [Ex.P10], is extracted below:-

“நேற்று 19.03.2016ஆம் தேதி இரவு சுமார் 7 மணி அளவில் நானும் என் மகன் அருணும் வீட்டில் இருந்த போது அசனப்பாபு வீட்டிற்கு வந்தார் வந்தவுடன் நான் வீட்டிற்கு வாடகை பணம் இதுவரை கொடுக்கவில்லை. நீ வீட்டிற்கு வந்து இரண்டு நாள் ஆகிவிட்டது. மூத்த பொண்டாட்டிகிட்டயே இருக்கிற வீட்டிற்கு வந்தால் பணம் வாடகை பணம் கேட்பேன் என்று சொல்லி வரல என்று சொல்லி பாபுவிடம் கேட்டேன் அதற்கு அசேனப்பாபு பணம் கொடுக்க முடியாது என்று சொல்லிவிட்டார் இருவருக்கும்



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வாய் தகராறு ஏற்பட்டது என மகன் தகராறு செய்யாதீர்கள் என்று சொல்லிவிட்டு வீட்டிற்கு வெளியே போய் உட்கார்ந்து கொண்டான். என்னை திட்டிக் கொண்டே அசேனப்பாபு இருந்தார். திடீரென்று சுமார் 9 மணிக்கு இனிமேல் நீ உயிருடன் இருக்க கூடாது என்று பக்கத்தில் இருந்த ஸ்டவ்வில் இருந்த மண்ணெண்ணையை மக்கில் என் முகம் மற்றும் உடம்பு மீது ஊற்றினான் பின்பு தீ பெட்டி எடுத்து பொறுத்தி இனிமேல் நீ உயிருடன் இருக்க கூடாது என்று சொல்லி என்மேல் தீ உறைத்து பொறுத்தி வைத்தான். தீ உடனே என் உடம்பு முழுவதும் பற்றிக்கொண்டது அதனால் வலி தாங்காமல் நான் அய்யோ அய்யோ சத்தம் போட்டேன். என மகன் வெளியில் இருந்தவன் என சத்தத்தை கேட்டு வீட்டிற்குள் வந்தான் அப்போது அசேனப்பாபு பக்கத்தில் இருந்த கம்பளி மற்றும் போர்வை எடுத்து என்மேல் இருந்த நெருப்பை அணைத்தான்.”

The above narration causes serious doubt over Ex.P10-complaint in the back drop of Doctor's (PW3) evidence. Further, the unnatural conduct of PW1 in not informing the manner of occurrence even to the police in the hospital at 9.00.AM, further enforces the doubt.

18. In such a view of the matter, the alleged recording of the complaint is highly doubtful and this could be further fortified from the belated transmission of the FIR [Ex.P11] to the jurisdictional Magistrate on 20.03.2016 at about 7.45 pm, which is almost after 24 hours of the incident. Therefore, we are of the firm view that PW1 is not a wholly reliable witness.

19. Furthermore, while looking at the other evidences, all of them are hearsay in nature. According to Srinivasan [PW8], who is the relative to the



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deceased, he was informed by PW1 that the deceased had committed suicide.

His evidence, in this regard, is as follows:-

“கடந்த 19.03.2016ம் தேதி இரவு 9 மணியிலிருந்து 9.30 மணிக்குள் என் மாமியாருக்கு போன் வந்தது. சத்யா மண்ணெண்ணை ஊற்றி கொளுத்திக்கொண்டார். எனவே அவரை ஆஸ்பத்திரிக்கு கூட்டிக்கொண்டு போகின்றோம் என்று போன் வந்தது.”

During cross examination, he would admit in the following manner:-

“சம்பவம் பற்றி அருண் சொன்னதை வைத்து சொல்கிறேன்.”

20. The statement of PW8 is contrary to the prosecution's case. As rightly contended by the learned counsel for the appellant, though there were about 20 people in the scene of occurrence, none was examined before the Court, to corroborate PW1's evidence. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in **Sampat Babso Kale v. State of Maharashtra**, reported in (2019) 4 SCC 739 and would contend that the non examination of auto driver, or the persons who had arranged for an ambulance to admit the victim, is fatal to the prosecution's case. The relevant paragraph is paragraph 19 and the same reads as under:-

“19. Another factor which needs to be taken into consideration is that none of the witnesses from the neighbourhood have been examined. Even as per the prosecution case it was the neighbours



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*who first raised an alarm. There is no explanation why none of them have been examined. It is also the prosecution case that the accused husband along with another neighbour went to the hospital to arrange for an ambulance. This person has not been examined. The non-examination of these important witnesses leads to non-corroboration of the dying declaration. The best witnesses would have been the neighbours who reached the spot immediately after the occurrence. They would have been the best persons to state as to whether the victim told them anything about the occurrence or not.”*

21. The learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court in ***Kamla v. State of Punjab***, reported in ***AIR 1993 SC 374***, wherein the Hon'ble Supreme Court held that when the dying declarations are inconsistent, it is highly dangerous to take out one statement from it, to pass the conviction against the accused. He also relied upon the three Bench judgment of the Hon'ble Supreme Court in ***Jayamma & Another vs. State of Karnataka***, reported in ***(2021) 6 SCC 213***, wherein the Apex Court has elaborately discussed various aspects, and had arrived at a conclusion that the silence of the son, who was accompanying the deceased, along with the accused, from informing the ghastly incident, could be a reasonable doubt, as it was difficult and impossible for the



accused to win over the witnesses, within a short span of time. The finding reads as follows:-

*“22.7. The Seventh reason to dissuade us from harping upon Ext. P-5 is the conduct of the parties i.e. a natural recourse expected to happen. Had it been a case of homicidal death, and the victim's son (PW 2) and her daughter-in-law (PW 5) had witnessed the occurrence, then in all probabilities, they would have, while making arrangement to take the injured to hospital, definitely attempted to lodge a complaint to the police. Contrarily, the evidence of the doctor and the police officer suggest that while the son, daughter-in-law and neighbour of the deceased were present in the hospital, none approached the police to report such a ghastly crime. It is difficult to accept that the son and daughter-in-law of the deceased were won over by the accused persons within hours of the occurrence. This unusual conduct and behaviour lends support to the parallel version that the victim might have committed suicide.”*

22. As already stated, the evidence of PW1 is not wholly reliable, and there were no independent witnesses. When the complaint [Ex.P10] itself is doubtful, the recording of the statement under Section 161 Cr.P.C, which is projected as a dying declaration, also cannot be relied upon, since the deceased was not medically fit to speak at the relevant point of time. Furthermore, even the dying declaration [Ex.P26] given before the learned



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Judicial Magistrate [PW17] does not implicate the accused. The evidence of the learned Judicial Magistrate [PW17] in this regard, reads thus:-

“எனது இரண்டாவது கணவர் பாபுவும் அவரது தம்பியும் எனக்கு 7 பவுன் நகையும் பணம் ரூபாய் 90,000 தரவேண்டும் என்று கேட்டதற்கு கதவை தப்பால் போட்டு என்னை இருவரும் மிரட்டி என்மேல் மண்ணெண்ணை ஊற்றினார்கள். அவ்வுளவு தான்.”

23. On a wholesome reading of the above statement, two aspects emerge. One is, the involvement of the brother of the accused Babu, and the demand of dowry as a reason for pouring kerosene on her. This aspect has not been spoken to by PW1, who according to the prosecution, was with the deceased and the accused, at the relevant point of time. Further, the involvement of another person was also not spoken by the other witnesses or mentioned in Ex.P10-complaint. Even assuming that we rely upon the dying declaration [Ex.P26], as rightly contended by the learned counsel for the appellant, there is no implication of the accused. Besides, the dying declaration was recorded at about 1.25.am, just prior to recording the complaint-Ex.P10, which runs contrary to the dying declaration [Ex.P26]. As such, it is evident that there are no statements to implicate the accused in the alleged murder. As such, in the light of the above detailed discussion, we are of the firm view that the prosecution has miserably failed to prove the



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charge, beyond reasonable doubt either through the ocular evidence or through the dying declaration.

24. Before we close the curtain, we would like to recapitulate our findings in arriving at the above conclusion:-

1. PW1's evidence is neither wholly reliable nor wholly unreliable.
2. No corroboration for PW1 evidence.
3. PW1's silence until evening of 20.03.2016 in informing the involvement of the accused, would cause reasonable doubt in the prosecution's case.
4. In the place of PW3-Doctor's evidence, the statement recorded by the police under Ex.P10 appears to be a doubtful circumstances.
5. There are no similarity between the dying declaration [Ex.P26] and the complaint [Ex.P10] do not corroborate, in spite of fact that the dying declaration [Ex.P26] was recorded about 1 ½ hours prior to the complaint [Ex.P10].
6. There was a huge delay of 24 hours in transmitting the FIR.
7. The case of pouring kerosene mentioned in the complaint [Ex.P10], was not at all projected by either PW1 or in the complaint [Ex.P10].
8. Even assuming that we consider there was a dying declaration in Ex.P26, it does not implicate the accused to the final act of setting fire.



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25. Thus, we are of the firm view that there are numerous reasonable doubts in the prosecution's case, which touches upon the core issue of the matter. As such, we hold that the prosecution has miserably failed to prove the charge against the accused, beyond reasonable doubts, which entails him for acquittal.

26. In the result, this Criminal Appeal stands allowed. The conviction and sentence passed in S.C.No.244 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri dated 05.04.2019 is set aside. As a concomitant, the appellant is acquitted from all the charges and the fine amount paid by him, shall be directed to be refunded. The bail bond, if any, executed by the accused shall stand cancelled.

[M.S.R., J.] [C.K., J.]  
20.12.2024

Index: Yes

Speaking order

Neutral Citation: Yes

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**M.S.RAMESH, J.**  
**and**  
**C.KUMARAPPAN, J.**

*kmi*

To

1. The Sessions Court,  
Fast Track Mahila Court,  
Krishnagiri.
2. The Inspector of Police,  
B7 Kaveripattinam Police Station,  
Krishnagiri District.
3. The Public Prosecutor,  
High Court,  
Chennai-104.

Pre-delivery judgment made in  
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20.12.2024