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Crl.A.No.281 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.09.2024
Pronounced on	20.12.2024

CORAM :

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

Crl.A.No.281 of 2019

Mohammed Syed

... Appellant/Accused

Vs.

State of Tamil Nadu represented by
The Inspector of Police,
Pernambut Police Station,
Pernambut, Vellore District.
(Crime No.141/2018)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of conviction passed by the learned Additional District and Sessions Judge, Fast Track Court, Vellore made in SC.No.45 of 2019 by a judgment dated 29.04.2019 and acquit the appellant.

For Appellant : Mr.M.R.Thangavel

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The appellant is the sole accused. The instant Criminal Appeal is filed against the order of conviction passed in SC.No.45 of 2019 vide order dated 29.04.2019, by and in which the accused was convicted under Section 302 IPC, and was sentenced to undergo life imprisonment.

2. According to the prosecution's case, the accused Mohammed Syed had two wives, the deceased Sultana was his 2nd wife. On 29.03.2018, the accused instigated the deceased to pour kerosene on herself, as he suspected her fidelity, and set her on fire. The complaint was registered on the basis of the information received from the hospital by PW14-Manikandan, Sub Inspector of Police. According to his evidence, on receipt of the information on 29.03.2018, he went to the hospital and got the statement of the deceased, while she was under treatment for burn injuries.

3. The Sub Inspector of police [PW14-Manikandan], though received statement of the deceased on 29.03.2018 itself, had registered the FIR on



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31.03.2018 at about 8:00 AM, after the death of the victim and forwarded the same to the concerned jurisdictional Magistrate, as well as to the Investigating Officer-PW15 [Mr.Appasamy], the Inspector of Police. The Investigating Officer, on receipt of a copy of FIR, went to the scene of occurrence and prepared an observation mahazar [Ex.P13], and rough sketch [Ex.P14], in the presence of Mr.Abdul Bahseeth [PW7] and Mr.Ansar Basha. He also recovered the kerosene can and match box from the scene of occurrence and recorded the statement of PW4-Kadumbee, PW5-Kadharbee and other witnesses. He thereafter prepared the alteration report, altering the charge to Section 174 Cr.PC r/w 306 of IPC. In the meanwhile, he arrested the accused on 31.03.2018 at about 15:30 hours, and made arrangements to remand him to the judicial custody. Since the marriage between the accused and the deceased had taken place within 7 years from the date of occurrence, all the records were forwarded to the Deputy Superintendent of Police and the Revenue Divisional Officer for further enquiry.

4. Mr.M.Prakash Babu, Deputy Superintendent of Police [PW18] after receipt of the case records, recorded the statement of the Revenue Divisional Officer, and the postmortem Doctor. On completion of the investigation, he



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laid the charge sheet under Section 302 IPC against the accused.

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5. During the trial, the prosecution examined 18 witnesses as PW1 to PW18 and marked 21 documents as Exs.P1 to P21. On the side of the defence, Mr.Althaf, who was the neighbour of the accused was examined as DW1.

6. The Trial Court after having considered the oral and documentary evidences had found that the charge against the accused as proved beyond reasonable doubts and passed a judgment of conviction and sentenced him to life imprisonment.

7. Assailing the said order, the learned counsel for the appellant would vehemently contended that, there are no eyewitnesses to the incident and the entire case rests upon the dying declarations. It is his further submission that, there are multiple dying declarations, qua oral and written dying declarations in the form of a complaint to the police Ex.P11, and through the accident register [Ex.P4]. Apart from the above dying declarations, the deceased had also given dying declaration before the learned Judicial



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Magistrate Mr.Chandrakesa Boopathi [PW13]. It is the submission of the learned counsel that there are inconsistencies among those dying declarations. He would contend that the possibility of tutoring cannot be ruled out in as much as the deceased was surrounded by her relatives, when the learned Judicial Magistrate reached the hospital for recording the dying declaration. He also invited our attention to Ex.P4, the earliest dying declaration viz., Accident Register, which projects the occurrence as a case of suicide and thereby submitted that the death of the deceased was not a case of uxoricide, but suicide. He thus submitted that the prosecution has miserably failed to prove the charges beyond reasonable doubts and therefore, prayed to interfere with the order of conviction and sentence.

8. Per contra, the learned Additional Public Prosecutor would vehemently contend that all the witnesses viz., PW1 to PW6 had spoken about the information provided by the deceased about her cause of death, and that all the witnesses would consistently state that it was the accused who set the deceased on fire, and such statements were further reinforced through the deceased's dying declaration recorded by the learned Judicial Magistrate [PW13]. It is in this background, the learned Additional Public Prosecutor



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would contend that the prosecution has proved the charge beyond reasonable doubts and therefore, submitted that there are no grounds to interfere with the order of the Trial Court and thus, prayed to dismiss the instant Criminal Appeal.

9. We have given our anxious consideration to either side submissions.

10. The entire prosecution's case rests upon the dying declarations, and there are no eye witnesses to the occurrence. PW1 to PW5 had spoken about the information provided by the deceased, about her cause of death. To put it differently, each of the above witnesses spoke about the alleged oral dying declaration of the deceased. The next available record to be considered as dying declaration is the Accident Register recorded by the Doctor [PW9]. In the Accident Register [Ex.P4], the Doctor has recorded that the deceased had attempted to commit suicide. Yet another document, which is morphed as a dying declaration is the complaint [Ex.P11]. The Exs.P4 and P11 qua the AR copy and the complaint, unequivocally reflect the attempt of the deceased to commit suicide.



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11. But, contrary to the above documents, the prosecution relied upon the evidences of PW1 to PW5 as the oral dying declaration. Let us consider the veracity of the above oral dying declaration.

12. According to PW1, the deceased was set ablaze by the accused and was kept under lock. But, the other witnesses viz., PW2 to PW5 would state that after hearing the humiliating pejorative accusation, questioning her fidelity, the deceased poured the kerosene on herself, and the accused exacerbated the situation, by setting her on fire. The contradicting statements between PW1 on the one side, and PW2 to PW5 on the other side would make the case projected by the prosecution doubtful. We deem it appropriate to record here that all the above witnesses consistently stated that more than 10 to 15 relatives of the deceased were present in the hospital along with the deceased.

13. It is well settled principle of law that when there are multiple dying declarations, it is the duty of the Court to consider each one of them, in its correct perspective, and satisfy itself as to whether each one of them reflects true state of affairs. The above proposition has been laid down in the



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judgment of the Hon'ble Supreme Court in ***Raju Devade v. State of Maharashtra***, reported in ***(2016) 11 SCC 673***. In the light of the above settled legal position, this Court has got a primordial duty to find out which, among those multiple dying declarations, is true?

14. As already stated, among the eight dying declarations, three are written dying declarations, qua Ex.P4-Accident Register, Ex.P11-complaint and Ex.P9 recorded by the learned Judicial Magistrate. Apart from these written dying declarations, there were 5 oral dying declarations made to the witnesses, PW1 to PW5.

15. On the face of it, this Court finds it difficult to gather true nature of their statements from PW1 to PW5. To once again demonstrate the untrustworthiness of those witnesses, we deem it appropriate to refer the evidences of PW2, who is the aunt of the deceased. Her statement is logically fallacious, as she had proceeded to the scene of occurrence only after knowing the death of the deceased, but in contrast, she deposed about the statement of the deceased to the Doctor and police. For ready reference, her admission is extracted as follows:-



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“29.03.2018 அன்று சுல்தானா இறந்துவிட்டதாக போன் வந்தது. தகவலின் பேரில் போர்ணாம்பட்டு மருத்துவமனை சென்றுப்பார்த்தோம். நான் சென்று பார்த்தபோது சுல்தானா போலீசாரிடமும் டாக்டரிடமும் வாக்குமூலம் கொடுத்தார்.”

The above evidence would make PW2 a wholly unreliable witness.

16. Similarly, PW1 had also stated that it was the accused, who set her ablaze and kept her under lock. But, this evidence is contradictory to the statement of PW3 to PW5. Her [PW1] admission is as follows:-

“அப்போது ஆஜர் எதிரி தன் மீது மண்ணெய் ஊற்றி கொளுத்தி சுல்தானாவை உள்ளே தள்ளி தாழ் போட்டதாகவும் கதவை தட்டியும் திறக்கவில்லை எனக்கூறினார்.”

17. In contrast, the other witnesses PW3 to PW5 had deposed that the accused instigated the deceased to pour kerosene on herself and he then set her on fire. From the above discussion, it is explicit that reliance on PW1 to PW5 could not be fathomed. If we accept the above oral dying declaration of PW1, qua theory of the accused pouring kerosene and setting fire, then the other oral dying declaration, propounded by PW2 to PW5, would become false, as they stated that the accused did not pour the kerosene. Accordingly, this Court has its own apprehension and serious doubt about the truthfulness of the statement made by PW1 to PW5. In the light of the



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above discussions, we do not find any difficulty to reject their [PW1 to PW5] statements, since they are full of material contradictions.

18. Coming to the written dying declaration AR copy [Ex.P4] prepared by PW9-the Doctor, on 29.03.2018 at about 13:45 hours, it was the deceased, who set her on fire. To put it differently, it was an attempt to commit suicide. The statement of PW9 is as follows:-

“29.03.2018 அன்று மதியம் 02.15 மணிக்கு பணியிலிருந்தபோது திருமதிசுல்தானா என்பவர் தான் 29.03.2018 அன்று மதியம் சுமார் 01.45 மணிக்கு தன்னுடைய வீட்டில் மண்ணெய் ஊற்றி தற்கொலைக்கு முயன்றதாக கூறினார்.”

19. On perusal of Ex.P4-AR copy, there is a reference that the deceased was brought to the hospital by her husband. It was also recorded therein by the doctor that the deceased attempted to commit suicide by pouring kerosene around 1:45 PM on 29.03.2018. This statement was further fortified through Ex.P11-complaint, wherein the deceased had stated to PW14 police, that since the accused had doubted her fidelity, she had poured kerosene on herself and set fire. For ready reference, we deem it appropriate to extract the statement of the deceased found in Ex.P11-complaint:-



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“29.03.2018ம் தேதி பகல் 12 மணிக்கு நான் வீட்டில் இருந்த போது என் கணவர் நீ யாரையோ வைத்துக் கொண்டு இருக்கிறாய் ராத்திரியில் வந்து போறான், பகல் வந்து போறான் என்று என்னை சந்தேகப்பட்டு என்னிடம் சண்டை போட்டார். இதனால் 29.03.2018ம் தேதி பகல் 1.45 மணிக்கு நாம் உயிரோடு இருப்பதனால் தான் சந்தேகப்படுகிறான். சந்தேகப்படுற கணவனிடம் நான் வாழ் கூடாது என்று வீட்டில் இருந்த மண்ணெண்ணை எடுத்து நானே என் மீது ஊற்றி கொண்டு தீ வைத்துக் கொண்டேன். வலி தாங்க முடியாமல் கூச்சல் போட்டதில் என் கணவர் சத்தம் கேட்டு ஓடி வந்து தீயை அணைத்து 108 ஆம்பூலன்ஸ் மூலம் போணாம்பட்டு கவர்ன்மென்ட் ஆஸ்பத்திரியில் கொண்டு வந்து சேர்த்தார்.”

20. The above statement of the deceased, tallies with the Accident Register [Ex.P4], which records that the deceased was brought by the accused. Even the postmortem Doctor [PW16], in his opinion [Ex.P20], states that the deceased had died of septic shock, due to infected burn injuries. As such, the burn injury on the body of the deceased is not in dispute. Now the only issue is, whether it is a suicide or uxoricide. As already stated, the evidences of PW1 to PW5 are untrustworthy, which projects it to be a case of uxoricide. However, the documents Exs.P4 and P11 would demonstrate a case of suicide.

21. With this backdrop, let us now examine the evidence of the learned Judicial Magistrate [PW13], who had recorded the dying declaration of the deceased. From the dying declaration [Ex.P9], what emerges is, though the



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deceased had poured kerosene on herself, it was the accused who set the fire.

The statement given by the deceased about the cause of her death in Ex.P9-

Dying declaration, in this regard, reads as follows:-

“எனது கணவர் என்னை யாரை வைத்துள்ளாய் என கேட்டு செத்து போ எனக் கூறினார். கோபத்தில் நான் மண்ணெண்ணெயை ஊற்றிக்கொண்டேன் என கணவர் சையது பற்றவைத்தார்.”

22. As a matter of fact, Ex.P4-AR copy and Ex.P11-complaint were recorded immediately after the deceased reached the hospital, but the learned Judicial Magistrate reached the hospital on 29.03.2018 at 4:20.PM. In the meanwhile, according to the evidences of PW1 to PW5, there were 10 to 15 relatives of the deceased, assembled at the hospital and who admittedly had spoken to the deceased. The learned counsel for the appellant would vehemently contend that there was a possibility of tutoring the deceased.

23. Apparently, from the evidences of PW1 to PW5, we are able to perceive a possible rift between the accused and the above witnesses. Those witnesses were conversing with the deceased till the learned Judicial Magistrate reached the hospital. In such a view of the matter, the contention of the appellant that there was a possibility of tutoring, cannot be outrightly



24. In this regard, it is useful to refer to the evidence of the Deputy Superintendent of Police, who was also the investigating officer in the present case, and was examined as PW18. During his cross-examination, he admitted that it was the accused, who saved the deceased. His admission is as follows:-

“என்னிடம் கூறிய சாட்சிகள் அனைவரும் எதிரி கதவை உடைத்துக்கொண்டு தான் சுல்தானாவை காப்பாற்றியதாக கூறியுள்ளார்கள் என்றால் சரிதான்.”

This evidence is further reinforced from the evidence of PW6 [Munwar], who had stated that the accused broke open the door and saved the deceased.

For ready reference, the evidence of PW6 is extracted hereinbelow:-

“என்னிடம் சம்பவத்தை பற்றி சொன்னவர்கள் உள்பக்கமாக தாழ்பாள் போட்டிருந்தது. அதை உடைத்து தான் சுல்தானாவை காப்பாற்றினோம் என்று அருகில் உள்ளவர்கள், பக்கத்தில் உள்ளவர்கள் சொன்னார்கள் என்றால் சரிதான்.”

25. If really the accused intended to murder the deceased, his natural propensity would be to flee from the scene of occurrence. However, from the evidence of all the witnesses and through the evidence of Doctor and Ex.P4-AR copy, it was the accused, who saved the deceased from the fire and



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admitted her in the hospital. It is in this background, this Court is of the indubitable view that the possibility of tutoring should also be borne in mind, while considering Ex.P9-dying declaration.

26. The legal position with regard to appreciation of evidence in a case of multiple dying declarations, was dealt in the judgment of the Hon'ble Supreme Court in ***Suguna Vs. State by Inspector of Police*** reported in **2024 SCC OnLine Mad 5621**. The relevant paragraphs are as follows:-

*“17. In a latest Full Bench judgment of the Hon'ble Supreme Court in **Irfan @ Naka v. State of Uttar Pradesh, 2023 Live Law (SC) 698**, the Hon'ble Supreme Court has enunciated the factors to be considered while dealing with the dying declaration, the same reads as follows:*

“62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility : -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”



(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for*



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the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.”

(emphasis supplied by this Court)

18. In yet another judgment of the Hon'ble Supreme Court in Abishek Sharma v. State (Govt. of NCT of Delhi) reported in 2023 INSC 924, wherein the Hon'ble Supreme Court once again restated the principles, after elaborately going into the various precedence, and the same reads as follows:

“9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has



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been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”

19. Therefore, the underlining principles in all those precedents are that, in cases of multiple dying declarations, when there are discrepancies among them, the Court should always expect a corroboration, and furthermore, the Court must prefer the earliest one. Keeping in mind with the above principles, let us consider the facts involved in this case.”

[Emphasis supplied by this Court]

27. In view of the above settled legal principle, among the multiple dying declarations, it is always safe to prefer the earliest one. In this case, the earliest dying declaration viz., Ex.P4 and Ex.P11, reveals it to be a case of suicide. Hence, we are of the firm view that the Trial Court, without going into these aspects, have proceeded in tangent and arrived at a wrong conclusion, which necessitates us to interfere with the order of conviction and sentence.

28. In the result, this Criminal Appeal stands allowed. The conviction and sentence passed in S.C.No.45 of 2019 by the learned Additional District



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Judge, Fast Track Court, Vellore dated 29.04.2019, is set aside. As a concomitant, the appellant is acquitted from all the charges and the fine amount paid by him, if any, is directed to be refunded. The bail bond executed by the accused, if any, shall stand cancelled.

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

Index:Yes

Speaking order

Neutral Citation: Yes
kmi

To

1. The Additional District Court,
Vellore.
- 2.The Inspector of Police,
Pernambut Police Station,
Pernambut, Vellore District.
3. The Public Prosecutor,
High Court,
Chennai-104.



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

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Pre-delivery judgment made in
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20.12.2024