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Crl.A.No.860 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.860 of 2019

Thamas

... Appellant/Accused

VS.

State rep by
Inspector of Police
Pudupettai Police Station
Cuddalore District.
(Crime No.110/2018)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to set aside the order passed in S.C.No,279 of 2018 on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.T.Saravanan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 10.10.2019 in S.C.No.279 of 2018 on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

2(i). It is the case of the prosecution that the appellant and the deceased were husband and wife; that there was difference of opinion between them; that the appellant always suspected the character of the deceased; that enraged by the conduct of the deceased, the appellant decided to do away with the deceased; that on 02.04.2018 at about 11.00 a.m. the appellant went to the house of P.W.1/the father of the deceased, where the deceased was living, poured petrol on her and set fire with intention to cause death; that the deceased sustained burn injuries; and that she died on 08.04.2018, due to the burn injuries.

(ii) It is further the case of the prosecution that the deceased



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was taken to the hospital; that she was oriented, conscious, and she gave a complaint [Ex.P11] to the Sub Inspector of Police/P.W.10. P.W.10, in turn, registered the First Information Report [Ex.P12] for the offences under Sections 294 (b) and 307 of the IPC.

(iii) P.W.11/the Inspector of Police, took up the investigation and went to the scene of the occurrence, and prepared Rough Sketch [Ex.P13] and Observation Mahazar [Ex.P1]. He seized a 500-ml bottle, that smelt of petrol [M.O.1], a match box [M.O.2], and a match stick [M.O.3] from the scene of the occurrence. Thereafter, he examined the deceased, her father (P.W.1), other witnesses and recorded their statements. Her mother was not examined.

(iv) On 02.04.2018, P.W.11/the Inspector of Police, made a request to P.W.9/the learned II-Metropolitan Magistrate, Egmore, Chennai to record the Dying Declaration of the deceased. P.W.9/the learned Magistrate, Chennai recorded the Dying Declaration of the deceased at 01.30 p.m. on 03.04.2018. The Dying Declaration was marked as Ex.P9. P.W.11/the



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Inspector of Police, thereafter arrested the accused and recorded the confession of the accused. He thereafter, examined the other witnesses, and on coming to know that the deceased died on 08.04.2018, he altered the offences to Sections 294 (b) and 302 of the IPC and sent the alteration report before the learned Judicial Magistrate – II, Panrutti.

(v) On 08.04.2018 at about 8.00 a.m. P.W.11, conducted an inquest and prepared an inquest report [Ex.P14]. He thereafter made a request for post-mortem of the deceased. P.W.6/Doctor conducted post-mortem and issued post-mortem certificate [Ex.P4]. P.W.11, examined P.W.7 and P.W.8/Doctors, who treated the deceased initially and made entries in the accident register, which was marked as Ex.P5, and prepared the other medical records, which were marked as Ex.P6. Thereafter, P.W.11 examined other witnesses and filed the Final Report for the offences under Sections 294 (b) and 302 of the IPC before the learned Judicial Magistrate – II, Panrutti.

(vi) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court



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of Session in S.C.No.279 of 2018 and was made over to the learned Sessions Judge, Mahila Court, Cuddalore, for trial. The trial Court framed charges u/s. 294 (b) and 302 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty.

(vii) To prove the case, the prosecution examined 11 witnesses as P.W.1 to P.W.11, marked 14 exhibits as Exs.P1 to P14, and marked three Material Objects as M.O.1 to M.O.3. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, one witness was examined as D.W.1, and one document was marked as Ex.D1.

(viii) On appreciation of oral and documentary evidence, the Trial Court found that the prosecution had established the case beyond reasonable doubt, and held the accused guilty of the offences under Sections 294(b) and 302 of the IPC. No separate sentence for the offence under Section 294 (b) of the IPC was awarded to the appellant. The Trial Court sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months for the



offence under Section 302 of the IPC. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard Mr.T.Saravanan, the learned counsel appearing for the appellant/accused, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4.(i) Mr.T.Saravanan, the learned counsel for the appellant, submitted that the case has been foisted by the father of the deceased and the Dying Declarations said to have been recorded by the Sub Inspector of Police and by the learned Magistrate are tutored versions, and there are several inconsistencies in the two Dying Declarations; that the prosecution had not examined any independent witness, and that the witness, who was examined by the defence as D.W.1, falsifies the prosecution case of murder and proves the defence case that the deceased committed suicide.

(ii) The learned counsel further submitted that the other witnesses are interested witnesses and they cannot be relied upon to record a finding of



guilt against the appellant; and hence, he prayed for acquittal of the appellant.

5. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that there are very minor discrepancies in the evidence of witnesses, which are natural; that the evidence of D.W.1, who is an interested witness, cannot be believed; and that the two Dying Declarations given by the deceased, coupled with the evidence of the child witness and the other circumstances, show that the prosecution case has been established beyond reasonable doubt; hence, he prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and perused the materials on record.

7. P.W.1 is the father of the deceased. P.W.2 is the child witness and daughter of the deceased and the accused. P.W.3 is also related to both the deceased and the accused. P.W.4 is the witness to the Observation Mahazar



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[Ex.P1]. P.W.5 is the Village Administrative Officer, who signed as a witness in the confession of the accused. P.W.6 is the Post-mortem Doctor. P.W.7 and P.W.8 are the Doctors, who treated the deceased. P.W.9 is the Magistrate, who recorded the Dying Declaration. P.W.10 is the Sub Inspector of Police, who registered the FIR. P.W.11 is the Investigating Officer.

8. The evidence of Doctors/P.W.7 and P.W.8, reveals the treatment given to the deceased for the burn injuries. P.W.6/the Doctor, in his report [Ex.P4] stated that the deceased “*DIED OF COMPLICATIONS DUE TO BURNS – SEPTICEMIA*”. Therefore, the fact that the deceased had suffered an unnatural death has been established by the prosecution. The question is whether the prosecution has established that the appellant caused the burn injuries or was it self inflicted. The prosecution relies upon Ex.P11/the complaint, given by the deceased herself, which has to be treated as a Dying Declaration as it satisfies the conditions under Section 32 of the Indian Evidence Act, 1872. The prosecution also relies upon the Dying Declaration recorded by P.W.9/the learned Magistrate, which was marked as Ex.P9. Thus, there are two Dying Declarations relied upon by the



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prosecution. However, we find that there are material contradictions in the two versions. In the complaint that was recorded at 15.30 hours on 02.04.2018, there is an elaborate narration of the facts. In Ex.P11/complaint, the deceased stated that the appellant came to her house with a bottle containing petrol and poured kerosene on the face of the deceased, stating that “you are going around with people because you are beautiful, and this would deter you from doing so,” and set fire by throwing a matchstick. She had also stated that her father (P.W.1), her mother (not examined), one Seethalakshmi (her sister-in-law) (not examined), and one Dakshnamoorthy (D.W.1) doused the fire. However, in the Dying Declaration [Ex.P9] recorded by the learned Magistrate, she stated that there was continuous harassment by the deceased demanding dowry and that when she went to the house of the accused to hand over a cellphone belonging to him, the accused took petrol from the tractor and poured it on her. The two versions are totally different.

9. It is well settled that if there are multiple Dying Declarations, the Dying Declaration given to a higher authority namely the learned Magistrate, can be relied upon provided it is truthful and voluntary. The law



on this subject has been dealt with the Hon'ble Supreme Court in *Abhishek*

Sharma Vs. State (Govt. of NCT of Delhi) reported in **2023 SCC Online**

SC 1358. The relevant portions are extracted hereunder:

"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.



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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 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.

As stated earlier, in the Dying Declaration [Ex.P.9] given to the learned Magistrate the deceased stated about the alleged dowry demand. It is nobody's case that the deceased was subjected to dowry harassment. Further, it is also no one's case that the petrol was taken from a tractor and



poured on the deceased. Therefore, we are of the view that it is highly unsafe to rely upon either of the two Dying Declarations, which are not only contrary to each other but inconsistent with the other evidence on record. The possibilities of tutoring by P.W.1 also cannot be ruled out. The contradictions in the two versions, which are material, make us conclude that the Dying Declaration given to the learned Magistrate also cannot be truthful and voluntary.

10. Now coming to the witnesses namely P.W.1 to P.W.3. All the three witnesses are interested witnesses. The defence had specifically asked P.W.1/father of the deceased, as to whether he had advised his daughter to behave properly, so that the accused did not entertain any doubt with regard to her character. P.W.1 had stated it in the affirmative. The relevant portions read as follows: "

"5. கேள்வி அவ்வாறு காவல்நிலையத்தில்
சமாதானம் செய்தபோது உங்கள் மகளிடம் இனிமேல்
சந்தேகம் வராத அளவிற்கு நடந்துக்கொள்ள கண்டித்து
அறிவரை சொல்வோம் என்று சொன்னீர்களா?
பதில் சொன்னேன்."



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From the above evidence, it is clear that there has been a dispute between the husband and wife, and P.W.1 himself advised the deceased to act in a responsible manner and not to give room for any doubt. P.W.2 is the daughter of the deceased and was 12 years old at the time of the occurrence. She would also state that the accused took the bottle and poured kerosene on her mother. P.W.3 is also closely related to the deceased and the accused.

11. It is pertinent to point out here that the appellant himself was closely related to the deceased even before the marriage. He is the sister's son of P.W.1. The versions of P.W.1 and P.W.2 are parrot-like in nature. We find that the deceased herself stated in Ex.P11 about the presence of one Dakshanamoorthi and one Seethalakshmi. Strangely, the prosecution had not examined both these witnesses, who had helped the deceased in dousing the fire. However, the defence had examined the said Dakshnamoorthi as D.W.1. Though, he is related to the accused, we are of the view that it would hardly make any difference because the accused and the deceased were closely related to each other. He had deposed that he doused the fire, and the deceased had told him that since both the appellant and P.W.1/the



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father of the deceased, had abandoned her, she decided to set fire to herself.

The relevant portion of D.W.1's evidence reads as follows:

"தாமஸின் மனைவி மண்ணெண்ணை
ஊற்றி கொளுத்திக்கொண்டு எரிந்துகொண்டிருந்ததை
பார்த்தேன். ஏன் இவ்வாறு செய்தீர்கள் என்று
கேட்டதற்கு, என் கணவரும், அப்பாவும் வீட்டில்
சேர்க்கவில்லை, அதனால் கொளுத்திக்கொண்டேன்,
ஏன்னை காப்பாற்று தட்சிணாமூர்த்தி என்று
சொன்னார்"

Normally, we would not have given much weight to the evidence of D.W.1.

However, in the facts, we find that the presence of D.W.1 was mentioned by the deceased herself and was also accepted by P.W.1 in the cross-examination. His evidence, therefore, assumes significance.

12. Further, the Investigating Officer had deliberately not chosen to examine D.W.1 in his investigation, when his name was found in the complaint given by the deceased. When the defence questioned the Investigating Officer, regarding his non examination, he had no explanation to offer and simply stated that both D.W.1/Dakshanamoorthi and the above



mentioned Seethalakshmi were not examined. The conduct of the Investigating Officer of not examining these two vital witnesses raises a doubt with regard to the prosecution case. The prosecution has not been able to discredit the evidence of D.W.1 except for stating that he was distantly related to the accused. As stated earlier, the accused and deceased are close relatives, and that cannot be a reason to discredit D.W.1.

13. The accused has offered an explanation and has made a statement under Section 313(b) of Cr.P.C. He had stated that he was not present when the alleged occurrence took place, and on the date of the occurrence, P.W.1/father of the deceased requested him to take back his daughter, which he refused to do, and as a result of which, he came to know later that the deceased poured kerosene and set fire to herself.

14. Considering, the overall circumstances of the case, we are of the view that the case of the accused appears to be probable in the light of the infirmities, we have pointed out in the prosecution case and the evidence of D.W.1, whose presence at the time of the occurrence has not been disputed. The prosecution had also not sent the bottle, which allegedly smelt of petrol,



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for chemical analysis. Further in Ex.P6, it is recorded that kerosene was poured on the deceased.

15. For the aforesaid reasons, we are of the view that it is not safe to conclude that the appellant set fire to the deceased by pouring kerosene. The prosecution therefore has not established its case, and the judgment of conviction and sentence passed in S.C.No.279/2018 dated: 10.10.2019 on the file of learned Session Judge, Mahila Court, Cuddalore, is liable to be set aside.

16. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charges u/s.294 (b) and 302 of the Indian Penal Code. The conviction and sentence passed in S.C.No.279/2018 on the file of the learned Session Judge, Mahila Court, Cuddalore, *vide* Judgment dated 10.10.2019 are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.



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(M.S.R.,J.) (S.M.,J.)

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Index : yes/no
Neutral citation : yes/no
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Copy to:-

- 1.The Sessions Judge
Mahila Court,
Cuddalore.
- 2.The Inspector of Police Station
Pudupettai Police Station
Cuddalore District.
3. The Superintendent
Central Prison,
Cuddalore.
- 4.The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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M.S.RAMESH,J.

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SUNDER MOHAN,J.

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