

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 03.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.175 of 2014

Balasundaram ... Appellant/Sole Accused
vs.

State,by

The Inspector of Police,
Arni Taluk Police Station,
Crime No.530 of 2007

Thiruvannamalai District. Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 26.02.2014 passed by the learned
Sessions Judge, Thiruvannamalai, in S.C.No.183 of 2008.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.183 of 2008, on the file of the learned Sessions Judge, Thiruvannamalai. He stood charged for an offence under Sections 302 and 201 of the Indian Penal Code. The Trial Court by judgement dated 26.02.2014 convicted the appellant/accused for the offence under Sections 302 and 201 of the Indian Penal Code, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.2000/-, in default, to undergo simple imprisonment for six months for the offence under Section 302 of IPC and to undergo 2 years rigours imprisonment and also imposed a fine of Rs.500/-, in default, to undergo simple imprisonment for one month for the offence under Section 201 of IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

(i) The deceased was the wife of the accused. Both of them are fish vendors. They were residing at Fishermen Street, Sevoor. The accused leading a wayward life, frequently demanded money from the deceased and quarrelled with her. While so, on 13.12.2007 at about 12.30 pm., the accused demanded money from the deceased, but she refused. Aggrieved over the same, he poured kerosene on the deceased and set fire on her.

(ii) Immediately, P.W.6, the brother of the deceased took her to the Government Hospital, Arni. P.W.7, Doctor, who was working at the Government Hospital, Arni, examined the deceased and treated her as out patient and at about 4.20 pm, he referred the deceased to Government Medical College Hospital, Vellore, where she was admitted as inpatient. From Vellore Government Medical College Hospital, a memo was sent to the Arni Police Station.

(iii) On receipt of the memo, P.W.22, Sub-Inspector of Police, working in Arni Police Station visited the Government Medical College Hospital, Vellore recorded the statement of the deceased under Ex.P18, on 14.12.2007, at about 1.30 pm., and registered a case in Crime No.530 of 2007 for the offence under Section 307 of IPC and sent the FIR, Ex.P19 to the higher officials and also to the Judicial Magistrate Court.

(iv) On receipt of the memo, one Malaisamy, Inspector of Police, in-charge of Arni Police Station, visited the scene of occurrence at about 4.30 pm., and prepared observation mahazar under Ex.20, drew rough sketch under Ex.P21, in the presence of witnesses and also examined the witnesses recorded their statements. Thereafter, on 15.12.2007 at about 2.00 pm., he arrested the accused in the presence of P.W.9 and P.W.10, and on such arrest, the accused voluntarily gave confession and based on the disclosure statement of the accused, he recovered a plastic can M.O.1 containing 1-1/2 liters of kerosene and a Match box M.O.2, two burnt match stick M.O.3, a piece of Beedi M.O.4, a burned Inskirt M.O.5, a half burnt saree M.O.6 and burnt piece of jacket M.O.7.

(v) In the meantime, on receipt of memo from Vellore Government Medical College Hospital, for recording dying declaration, P.W.20, the learned Judicial Magistrate No.V, Vellore, visited the hospital at about 4.30 pm., recorded the dying declaration of the deceased and the same was marked as Ex.P.14.

(vi) Subsequently, on 18.12.2007 at about 5.00 p.m., the injured succumbed to burn injuries. So on receipt of the above information, P.W.24, the Inspector of Police, Arni Police Station, altered the penal provisions under Section 302 and 201 of IPC, the altered FIR was marked as Ex.P24 and sent the same to the Judicial Magistrate Court. Then, P.W.24 conducted inquest on the dead body in the presence of panchayators between 11.30 a.m. and 1.30 p.m., the inquest report was marked as Ex.P25, thereafter he sent the dead body for post-mortem and recorded the statement of other witnesses. P.W.16 is the Doctor, he was working in the Medical College Hospital, conducted post-mortem of the dead body and he found the following injuries.

Appearance found at the post mortem...

Moderately nourished body of a female. Eyes closed. Finger and toe nails pale, Mucous membranes of mouth, lips and tongue pale. Blood stained mucous froths seen exuding from mouth and nostrils.

Infected first, second and mixed degree burns injuries were seen on the entire face including scalp, front and back of chest, front and back of upper limbs, front of right thigh and right leg, front of left leg, gluteal region, sparing the back of both lower limbs front and back of abdomen and genitalia.

The skins were peeled off in all the above areas and exposing the underlying inflamed and infected subcutaneous tissues. These wound were covered with foul smelling purulent greenish yellow coloured pus and slough materials and wound sepsis seen.

Other findings:

BRAIN: Scalp, vault, base and dura of skull bone intact. surface vessels congested and full. On cut section, congested, oedematous and petechial haemorrhages seen.

HYOID BONE : intact

LARYNX AND TRACHEA : Mucosa congested. All vital midline structures of neck were intact. NAD.

LUNGS : Both sides congested

HEART : Normal size. Great vessels normal, coronary vessels patent. Coronary ostia were normal. All chambers contained fluid blood.

STOMACH : 500 ml of partly digested food materials found. Mucosa congested. Sub mucosal petechial haemorrhage seen.

SMALL INTESTINE: Contained yellowish chyme with bile stained fluid. No specific characteristic smell perceived. Mucosa congested. Sub mucosal petechial haemorrhages seen.

LARGE INTESTINE : Distended with gas

LIVER, SPLEEN, KIDNEY: On cut section found congested

GALL BLADDER : Contained bile

PANCREAS : C/s congested

BLADDER : Empty

UTERUS : Empty

VERTEBRAL COLUMN AND SPINAL CORD: Intact and NAD

ALL OTHER INTERNAL ORGANS: On C/s found congested

He opined that the deceased would appear to have died of complications of burns injuries, septicemia. The post-mortem certificate was marked as Ex.P19. On 19.12.2007, P.Ws.1, 3 and 4 given a statement before the learned Judicial Magistrate, Arni under Section 164 of Cr.P.C. He sent the recovered material objects for chemical examination and he recorded the statement of other witnesses. On completion of investigation he filed a charge sheet for the offence under Sections 302 and 201 of IPC against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 24 witnesses were examined and 28 documents and 7 material objects were marked.

4. Out of the above witnesses, P.W.1, the sister-in-law of the accused, who turned hostile. P.W.2, the sister of the accused is also turned hostile. P.W.3, who is the daughter of P.W1. P.W.4 is the maternal uncle of the accused. P.W.5 is the resident of Savoor village, known to both the accused and the deceased. P.W.6 is the brother of the deceased, who took the deceased to the Government Hospital, Arni and thereafter shifted her to the Medical College Hospital, Vellore. All the above witnesses turned hostile. P.W.7 a Doctor, who was working at Arni Government Hospital, treated the deceased as out patient and issued an accident register Ex.P4 and his evidence was that at the time of treating the deceased, she told that her husband poured kerosene on her head and set fire on her. P.W.8, who is the resident of Savoor village, was also known to the accused, he also turned hostile. P.W.9, a leader of fishermen community, in Savoor Village, he has also turned hostile. P.W.10 is a resident of Savoor village and he is known to the accused. P.W.11 is the son and P.W.12 is the daughter of the deceased and accused. P.W.14 is the uncle of the accused.

P.W.15 is also a resident of Savoor village, who is known to the accused and deceased, all of them turned hostile. P.W.16 is the Doctor, who conducted post mortem on the dead body and prepared Ex.P19 Post-mortem certificate. P.W.17-Doctor who was working at Arni Government Hospital, treated the accused, who claimed to have sustained burn injuries and also suffering from fever and he has given accident register Ex.P.11, according to P.W.17 there was no injury found on the body of the accused. P.W.18 was also working as a Doctor at Arni Government Hospital, he collected saliva of the accused. P.W.19, who was working as Assistant Director, Forensic Department, Villupuram, examined the material objects and submitted a chemical analysis report under Ex.P.13. P.W.20, the learned Judicial Magistrate No.V, Vellore, recorded the dying declaration of the deceased and the dying declaration is Ex.P14. P.W.21 was the then Judicial Magistrate No.II, Cheyyar, he recorded the statements from P.Ws.1, 3 and 4 under Section 164 of Cr.P.C. Exs.P15,16 and 17 are the statements of P.Ws.1, 3 and 4. P.W.22 was the Sub Inspector of Police, Arni Rural Police Station, he recorded the statement of the deceased and registered the First Information Report for the offence under Section 307 of IPC and prepared Ex.P.19 FIR. P.W.23, the Head Constable took the body of the deceased to the hospital for post mortem. P.W.24, the Investigation Officer, on completing the investigation filed the charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.L.Mahendran, learned counsel for the appellant and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In the instant case, all the material witnesses turned hostile and the entire prosecution case is stand on the dying declaration of the deceased. The law is well settled that if the Court finds the dying declaration is true and voluntary and given in a fit state of mind, it can be a basis for conviction without any corroboration. The Hon'ble Supreme Court in a Judgment in PREMPAL Vs. STATE OF HARYANA reported in [(2014) 10 SCC 336] is held as follows:-

12. When reliance is placed upon dying declaration, the Court must be satisfied that the dying declaration is true, voluntary and not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind. In State of U.P. v. Ram Sagar Yadav, this Court held that if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. In this context, the observation made in para 13 of the judgment are relevant to be noted:

"13. It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. (See Khushal Rao v. State of M.P.) There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the court may, for its assurance, look for corroboration to the dying declaration."

9. Keeping the above principle in mind, the dying declaration given by the deceased in this case has to be considered. The occurrence took place at 12.30 pm., on 13.12.2007. P.W.6-Murugan, the brother of the deceased took her to Government Hospital, Arni, where she was treated as out-patient by P.W.7. At the time, the deceased informed the Doctor P.W.7, that her husband has poured kerosene on her head and set her on fire. P.W.7 has also issued the accident register Ex.P4 to that effect. Thereafter, she was shifted to Government Medical College Hospital, Vellore, where P.W.20, the learned Judicial Magistrate No.V, Vellore recorded the dying declaration upon complying with the procedure. The dying declaration is marked as Ex.P.14. In the said dying declaration, the deceased stated that both the accused and deceased were fish vendors and on the date of occurrence at about 12.30 p.m, the accused demanded money from the deceased, but she refused. Infuriated by such refusal, the accused poured kerosene on her head and set her on fire. P.W.21, the learned Judicial Magistrate, before

recording the statement of the deceased, obtained the certificate from the Doctor. In the said certificate, it is stated that she was conscious and in a fit state of mind to give the dying declaration. After recording the dying declaration, the Judicial Magistrate obtained certificate from the Doctor that the deceased was in conscious and in fit state of mind through out recording statement, the Judicial Magistrate put necessary questions to the deceased and personally satisfied that the deceased was conscious and in a fit state of mind to give the dying declaration and recorded the statement. The deceased consistently stated that the accused only poured kerosene on her head and set her on fire, hence we have no reason to disbelieve such dying declaration. From the perusal of the dying declaration, it is clear that the learned Judicial Magistrate put necessary questions to the deceased to satisfy himself that whether the dying declaration is given voluntarily and whether the deceased was conscious and in a fit state of mind to give the dying declaration and there is no other suspicious circumstance available to disbelieve the same. Apart from that the occurrence took place inside the house of the accused and he was also present at the time of occurrence and there is no explanation from the accused explaining the reason for the occurrence, hence an adverse inference also could be drawn against the accused.

10. In the above circumstances, we are fully satisfied that the deceased was conscious and in a fit state of mind to give the dying declaration voluntarily and it was not as a result of either tutoring or prompting or a product of imagination, as there is no evidence for tutoring of the deceased before giving the dying declaration. Therefore, we find no reason to disbelieve the dying declaration and the dying declaration clearly indicate the guilt of the accused.

11. In such circumstances, we find no merit in the appeal and the same fails and consequently it is dismissed. The conviction and sentence passed in S.C.No.183 of 2008 by the learned Sessions Judge, Thiruvannamalai, stands confirmed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Thiruvannamalai District.
- 2.The Judicial Magistrate,
Arani.
- 3.-Do- Thro The Chief Judicial Magistrate,
Thiruvannamalai.
- 4.The Inspector of Police,
Arni Taluk Police Station,
Thiruvannamalai District.
- 5.The Superintendent of Police,
Thiruvannamalai.
- 6.The Superintendent,
Central Prison,
Vellore.
- 7.The District Collector,
Thiruvannamalai.
- 8.The Director General of Police,
Mylapore, Chennai-4.
- 9.The Public Prosecutor,
High Court,
Madras.

Cr1.A.No.175 of 2014

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