

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.06.2016

CORAM:

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

Crl.A.No.284 of 2014

D.Somu ... Appellant/Accused

vs.

State, by
The Inspector of Police,
Chidambaram Taluk Police Station,
Chidambaram.
(Crime No.346 of 2012) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 03.12.2013 passed by the learned
Sessions Judge, Magalir Neethimandram, Mahila Court, Cuddalore
District, in S.C.No.73 of 2013.

For Appellant : Mr.J.Franklin

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 sole accused in Sessions
Case No.73 of 2013, on the file of the learned Sessions Judge,
Magalir Neethimandram, Mahila Court, Cuddalore. He stood charged
for an offence under Section 302 of IPC. The Trial Court by
judgement dated 03.12.2013 convicted the appellant/accused for
an offence under Section 302 of IPC, and sentenced him to
undergo a life imprisonment and also imposed a fine of
Rs.1000/-, in default, to undergo rigorous imprisonment for a
period of two years. 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 in this case one Banumathi was the wife
of the accused. The accused was a drunkard and used to quarrel

with the deceased every day. Apart from that he also suspected the fidelity of the deceased. On 28.12.2012 at about 12.00 a.m., the deceased was doing her regular domestic work in her house, at the time, the accused sexually assaulted the deceased and harassed her and being tired of that the deceased was sleeping in a cot in her house. At about 4.30 p.m., the accused poured kerosene on her and lighted a cigarette and throw the matchstick set her on fire. Immediately, the deceased came out of the house and fell into a small pond near her house. The neighbours called the ambulance and sent her to Government Hospital.

(ii) P.W.12, the Assistant Doctor, working in the Government Hospital, Chidambaram, admitted the deceased and issued Accident Register Ex.P6 and also sent a Memo Ex.P7 to the learned Judicial Magistrate No.I, Chidambaram for recording dying declaration of the deceased. At the time of admission, the deceased told him that her husband poured kerosene on her and set her on fire. P.W.17, the learned Judicial Magistrate No.I, Chidambaram, on receipt of the memo, went to the hospital and after ensuring that the deceased was conscious and in a fit state of mind to give dying declaration, and obtained necessary certificate from the Doctor recorded the dying declaration of the deceased, Dying declaration Ex.13.

(iii) P.W.15, the Special Sub Inspector of Police, in charge of the Chidambaram Taluk Police Station, on receipt of the memo from the Government Hospital, at about 8.00 p.m., he went to the Hospital and recorded the statement of the deceased (Ex.P11) and submitted the said statement to P.W.16, the regular Sub Inspector of Police. P.W.16, based on the said statement, registered a case in Crime No.346 of 2012 for the offence under Section 294(b), 342, 498(A) and 302 of IPC and prepared FIR (Ex.P.12) and sent the same to the higher officials.

(iv) P.W.18, the Inspector of Police, working in the Chidambaram Taluk Police Station, on receipt of the FIR, commenced investigation. At about 10.00 p.m., he reached the scene of occurrence and prepared Observation Mahazar Ex.P1, drew a Rough Sketch Ex.P.14. Then, he went to the hospital and recorded the statement of deceased and other witnesses. On 29.12.2012 at about 7.00 a.m, he arrested the accused in the presence of witnesses and on such arrest, he gave voluntary confession, based on the disclosure statement, he seized the 5 litres of plastic can M.O.1, Matchbox M.O.2 and burnt saree M.O.3 under Ex.P.15 seizure mahazar. Since the condition of the deceased was very serious, she was referred to the JIPMER Hospital, Pondicherry. P.W.13, the Doctor, working in the Jipmer Hospital, Pondicherry, admitted the deceased in the Hospital. At the time of admission, the deceased has given a dying declaration Ex.P9. According to him, at the time of admission,

the deceased told that her husband poured kerosene on her and set her on fire. Subsequently, on 09.01.2013, the deceased succumbed to injury. Hence, P.W.18 altered the FIR into Section 302 of IPC. Altered report Ex.P16. He conducted inquest over the dead body of the deceased in the presence of witnesses in the JIPMER Hospital and prepared Inquest Report Ex.P20.

(v) P.W.14 is the Doctor, working in the JIPMER Hospital, Pondicherry, conducted post mortem on the dead body and found the following injuries:-

External Injuries:

Dermo epidermal burn injuries involving the lower half of face, neck, anterior and posterior aspect of chest and abdomen, anterior and posterior aspect of both upper limbs, posterior aspects of both lower limbs, anterior aspect of upper 1/3rd of right and left thigh, anterior aspect of right leg, eye lashes, eye brows auxiliary hairs are signed. Green coloured pus points present over the chest abdomen and both the thighs. Area of the skin involved in burns in between 60 to 65 percentage.

Internal Examination:

Scalp seen intact. Skull was intact. Meninges - intact and congested. Brain intact and congested & oedematous and examining the neck structures it was found intact. It was seen thorax and abdomen and pelvis. Right & left lung was intact and congested and Oedematous. Stomach contents, liver, kidney 150 ml. Of blood and samples of preservatives were preserved, it has been sent for chemical analysis.

He opined that the deceased died due to septicaemia arising out of the burn injuries sustained, he issued Postmortem certificate Ex.P.10. P.W.18 continued the investigation and recorded the statement of postmortem Doctor and other witnesses and after completion of investigation, he laid the charge sheet before the Judicial Magistrate Court.

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 18 witnesses were examined and 20 documents and 3 material objects were marked.

4. Out of the above witnesses, P.W.1 is the father of the deceased. He spoke about the harassment met out by the deceased

and after hearing the news, he went to the Government Hospital, Chidambaram, where, the deceased told him that her husband poured kerosene and set her on fire. P.W.2 is the mother of the deceased. She also spoke about the frequent quarrel between the deceased and accused. P.W.3, a child witness, who is the daughter of accused and deceased. She spoke about the quarrel between the deceased and accused and she further states that the accused is a drunkard and he never allowed her to eat food peacefully and hence the deceased sent her and her brother to P.W.1's house. Her further evidence was that before the occurrence, the accused called her over the phone and told her that before she come back to his house, he will murder the deceased. P.W.4 is the son of accused and deceased and a minor witness, He also spoke about the harassment at the hands of the accused. P.W.5 is the neighbour of the deceased. He saw the deceased came out of the house with fire and fell into a nearby pond, she arranged the ambulance and sent her to the Hospital. P.W.6 is also a neighbour, he saw the deceased came out of the house with fire and fell down in the pond. P.W.7 is the Mahazar witness, witnessed to the Observation Mahazar and Rough Sketch. P.Ws.8 and 9 have turned hostile, P.W.10 is the sister of the deceased. According to her, after hearing the news, she went to the hospital and met the deceased and at the time, the deceased told her that her husband poured kerosene and set fire on her. P.W.11 is the Village Administrative Officer, he is witnessed to the arrest, confession statement of the accused and also recovery of material objects. P.W.12, the Doctor, who has admitted the deceased in the Government Hospital, Chidambaram. According to her, at the time of admission, the deceased told that her husband poured kerosene on her and set fire on her. He has issued Accident Register Ex.P6. P.W.13, the Doctor, working in the JIPMER Hospital, Pondicherry, who admitted the deceased in the Hospital and recorded the dying declaration of the deceased. Dying declaration Ex.P.9. P.W.14 working as Assistant Professor, Department of Forensic Medicine and Toxicology, JIPMER, Pondicherry. He conducted postmortem on the dead of the deceased and given postmortem certificate Ex.P10. P.W.15 is the Sub Inspector of Police, recorded the statement of the accused in the Government Hospital, Chidambaram and handed over the same to P.W.16 Sub Inspector of Police. P.W.16, on receipt of the complaint registered a case in Crime No.346 of 2012 for the offence under Sections 294(b), 342, 498(A) and 307 of IPC and sent the same to the higher officials and to the Judicial Magistrate Court. P.W.17 is the learned Judicial Magistrate No.I, Chidambaram, he recorded the dying declaration of the deceased. P.W.18 is the Inspector of Police, conducted investigation, examined the witnesses, recorded their statements, recovered the materials objects and after completion of investigation he filed the charge sheet before the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he examined one witness as D.W.1, but nothing was elicited from him, he did not mark any document.

6. Considering the above materials, 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.J.Franklin, the learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is a case of circumstantial evidence. The prosecution mainly relied upon the dying declarations of the deceased. In this case, there are four dying declarations. At the time of admission, on 28.12.2012 at about 5.00 p.m., in the Government Hospital, Chidhambaram, the deceased has given a dying declaration before P.W.12, the Assistant Doctor that her husband poured kerosene on her and set fire on her. The second dying declaration is Judicial dying declaration before P.W.17, the learned Judicial Magistrate No.I, Chidhambaram at about 7.10 p.m. According to him, on receipt of a memo from the Government Hospital, he went to the Government Hospital and after being fully satisfied that the deceased was conscious and in a fit state of mind to give dying declaration and after obtaining certificate from the Doctor, he recorded the dying declaration, wherein, the deceased has stated that her husband poured kerosene on her and set fire on her. She also narrated the earlier harassment of the accused. The 3rd dying declaration was given before P.W.15, the Sub Inspector of Police at about 8.00 p.m., reiterating the same. The 4th dying declaration has given before P.W.13, the Junior Doctor, at JIPMER Hospital, Pondicherry on 29.12.2012 at about 5.10 p.m., which was marked as Ex.P9. In all the dying declarations, the deceased has consistently stated that it is only the accused poured kerosene on her and set fire to her. In the Judicial dying declaration, the learned Judicial Magistrate recorded the dying declaration after fully satisfied herself that the deceased was conscious and in a fit state of mind to give dying declaration and also obtained necessary certificate to the effect from the Doctor. Hence, we have no reason to disbelieve the same.

9. It is settled principle law that the dying declaration can be made a sole basis for conviction without any corroboration provided the dying declaration was given in a conscious and fit state of mind and it must be voluntary, genuine, consistent, credible and untutored and inspire the confidence in the mind of Court. The Hon'ble Supreme Court in

State of U.P. v. Ram Sagar Yadav 1985 1 SCC 552 has held as follows:-

"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 Bombay, Harbans Singh v. State of Punjab, Gopalsingh 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 find out whether dying declaration is true. If it is so, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convicting that the court may, for its assurance, look for corroboration to the dying declaration."

Subsequently in PREMPAL v. STATE OF HARYANA reported in [(2014) 10 SCC 336 has 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.

10. In the instant case, there are four dying declarations, all the four dying declarations, the deceased consistently stated that it is only the accused poured kerosene on her and set fire to her. Hence, we have no reason to disbelieve the dying declaration. Therefore, we are of the considered view that the prosecution has proved the guilt of the accused. In the above said circumstances, the appeal fails and the same is liable to be dismissed.

11. In fine, this appeal is dismissed. The conviction and sentence passed in S.C.No.73 of 2013 dated 03.12.2013 by the learned Sessions Judge, Magalir Neethimandram, Mahila Court, Cuddalore, stands confirmed.

-s/d-

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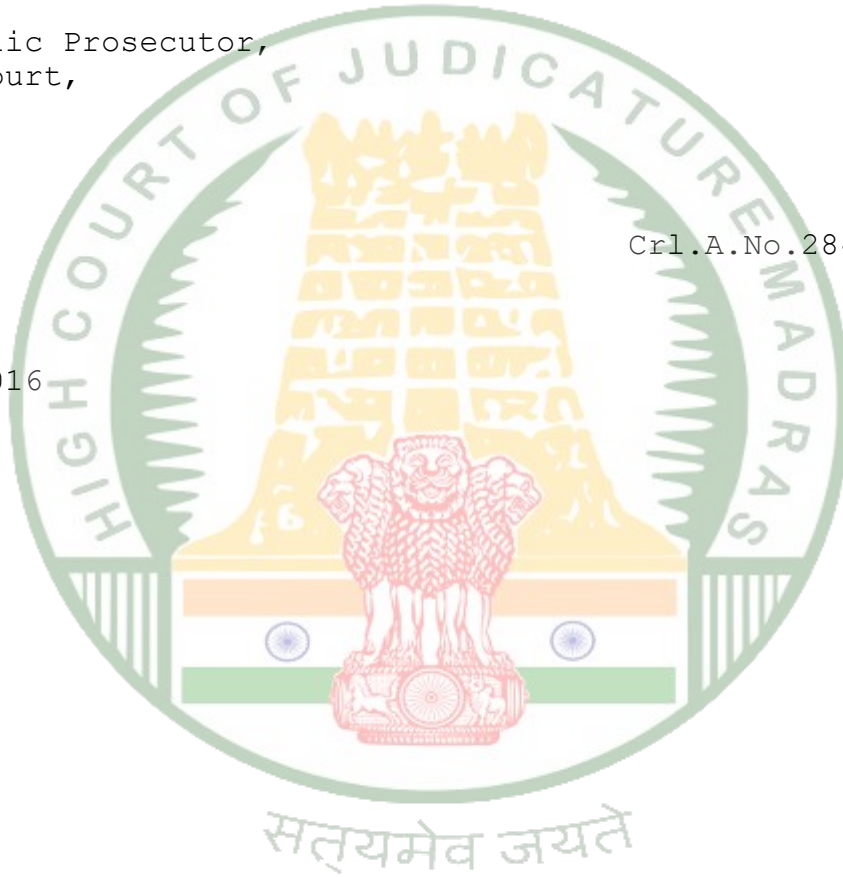
1.The Sessions Judge,
Magalir Neethimandram,
Mahila Court,
Cuddalore.

2.The Inspector of Police,
Chidhambaram Taluk Police Station,
Chidambaram.

3.The Public Prosecutor,
High Court,
Madras.

Cr1.A.No.284 of 2014

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