

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 3.6.2016

CORAM:

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

Crl.A.No.72 of 2014

Rajasekar ... Appellant

vs.

State,by
Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
Crime No.325/2009.

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 29.8.2013 passed by the District and
Sessions Judge, Nagapattinam in S.C.No.177 of 2010.

For Appellant : Mrs.K.Parameswari

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

JUDGMENT

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

The sole accused in S.C.No.177 of 2010 on the file of the
District and Sessions Judge, Nagapattinam, is the appellant in this
appeal. He stood charged for the offence punishable under Section
302 of the Indian Penal Code and the Trial Court, after trial,

convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment and also imposed a fine of Rs.500/-, in default, to undergo rigorous imprisonment for a further period of two months. Challenging that conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The deceased one Rajeswari is the wife of the appellant/accused. Both of them lived together with their minor children at Orathur in Vadakudi within the limits of Velankanni Police Station. The appellant/accused suspecting the fidelity of his wife, the deceased, frequently quarrelled with her. On 3.9.2009, at about 9.15 pm, there was a quarrel between the accused and the deceased and the accused poured kerosene on the deceased and set her on fire. On hearing the noise, PW3 and PW5, who are neighbours, rushed to the scene and they saw the deceased fighting with flames. Immediately, they poured water and doused the fire and admitted her at Government Hospital, Nagapattinam.

(b) PW13, Doctor working at Nagapattinam Government Hospital, admitted the deceased as an inpatient and issued accident register, Ex.A4. Immediately, he sent a memo to the Judicial Magistrate, Nagapattinam, for recording dying declaration of the deceased and also sent a memo to the respondent police. At about

10.20 pm, the Judicial Magistrate, Nagapattinam, reached the Hospital and recorded the dying declaration of the deceased. Before recording the statement, he satisfied himself that the deceased was conscious and in a fit state of mind to give dying declaration and also obtained a certificate from the Doctor PW14, which is marked as Ex.P11.

(c) On receipt of the memo from the Government Hospital, PW1, Sub Inspector of Police, working in the respondent police station, reached the hospital and obtained a statement from the deceased on 4.9.2009 at about 2.00 a.m. and registered a case in Crime No.325 of 2009 under section 307 of the Indian Penal Code and section 4 of the Protection of Women from Domestic Violence Act and sent the FIR to the Judicial Magistrate Court concerned and higher police officials for further investigation, marked as Ex.P2. On receipt of the FIR, one Chellamuthu, who was working as Inspector of Police (since dead), commenced investigation and during the investigation, he reached the scene of occurrence on 4.9.2009, prepared an observation mahazar and drew a rough sketch, Exs.P3 and P13, in the presence of PW6 and other witnesses viz., P.Ws.2 and 3. Thereafter, he visited Nagapattinam Hospital and recorded the statement of the deceased, marked as Ex.P14. On 5.9.2009 at about 8.30 am, he arrested the accused in the presence of PW7, Village Administrative Officer and Village Assistant and on such

arrest, the accused gave a voluntary confession, based on the disclosure statement of the accused, the investigation officer recovered M.O.1 water can and M.O.2 match box, under Ex.P5, in the presence of PW7 and other witnesses. Since the above said Chellamuthu, Investigation Officer, retired from service, PW14, Inspector of Police, took up the investigation on 22.9.2009. In the meantime, on 22.9.2009, the injured Rajeswari succumbed to the injuries sustained. On receipt of death intimation, Ex.P15, PW14 altered the case into one under section 302 of the Indian Penal Code and sent the altered FIR to the Judicial Magistrate concerned. Thereafter, he conducted inquest on the body in the hospital, in the presence of panchayatdars viz., P.Ws.2, 3 and 4 and he prepared an inquest report Ex.P16, and sent the body of the deceased for post-mortem.

(d) PW8, Doctor, conducted post-mortem on the body on 23.9.2009 at about 9.00 am and found the following injuries:-

Body was found at PM shed - GH Nagapattinam. Body lying on the back arms by the side. Moderately built. Symmetrical. Burns all over the body-sparing no area. Ulcer & pus discharge on the neck, chest, lower abdomen & genitals. Hair - Scalp -burnt (about 1 foot). Heart - 250 gms. C/s - Chambers empty. Lungs Spleen, Kidney, liver - C/s - Congested. Uterus - empty, bladder-

empty. Hyoid, spinal cord, rib, skull - no #.
Membranes of brain - intact. Brain - no
haemorrhage. RM present in all 4 limbs. No
discharge from ears, nose, mouth, vagina.
Teeth-complete. Tongue within the mouth.
Viscera not preserved.

He opined that the deceased would appear to have died of burn injuries and issued post-mortem certificate Ex.P6. On completion of investigation, PW14, the investigation officer, filed charge sheet against the accused.

(e) 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 14 witnesses were examined and 16 documents and 2 material objects were marked.

3. Out of the said witnesses, PW1 is the Sub Inspector of Police working in the respondent police station. He has spoken about the registration of FIR, after obtaining statement from the deceased. PW2 is residing near to the scene of occurrence and also related to the accused. She has spoken in her evidence that at 8.00 pm, she saw the deceased coming out of her house with flames. Thereafter, she turned hostile. PW3 is also a neighbour and related to the accused, turned hostile. PW4 is the father of the deceased and he has spoken about the quarrel between the deceased and the

accused and the cruelty meted out by the deceased, and his evidence was that when he met the deceased at the Hospital, she informed him that she was set fire by her husband. PW5 is a neighbour of PW3. He has spoken about the frequent quarrels between the accused and the deceased. PW6 is a witness to the observation mahazar, Ex.P3. PW7 is the Village Administrative Officer of Nagapattinam Village and he was the witness to the arrest of the accused and also confession given by the accused and recovery of M.Os.1 and 2. PW8 is the Doctor, who conducted post mortem on the dead body and gave post mortem certificate Ex.P6, opining that the deceased would appear to have died of burn injuries. PW9 is the Special Sub Inspector of Police, who submitted the FIR to the Judicial Magistrate court concerned. PW10 is another Special Sub Inspector in the respondent police station, who submitted the altered FIR to the Judicial Magistrate Court. PW11 is the Head Constable who handed over the body for post mortem. PW12 is the Judicial Magistrate, who recorded the dying declaration of the deceased and he has spoken that at the time of recording the statement, the deceased was conscious and in a fit state of mind to give dying declaration. He has also obtained a certificate from the Doctor before recording the dying declaration. Further evidence of PW12 is that at the time of recording the dying declaration from the deceased, except the Doctor and himself, no other person was

present. PW13 is the Doctor, who admitted the deceased in the hospital at about 9.20 pm on 3.9.2009 and has issued the accident register, Ex.P12, to the effect that the deceased was conscious and in a fit state of mind to give dying declaration and he was also present during the recording of the dying declaration. PW14 is the Inspector of Police, who completed the investigation and filed final report in the court.

4. When the above incriminating materials were put to the accused under section 313 of the Code of Criminal Procedure, he denied the same as false. His defence was a total denial. He has not chosen to examine any witness or to mark any document.

5. Having considered all the above, the Trial Court convicted the accused for the offence under section 302 of the Indian Penal Code and imposed sentence as stated in the first paragraph of the judgment. Challenging the above conviction and sentence, the accused is before this Court.

6. We have heard Mrs.K.Parameswari, learned counsel for the appellant and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. The learned counsel for the appellant would submit that

except the dying declaration, there is no material available on record to prove the guilt of the accused and two witnesses viz., P.Ws.2 and 3, who have been examined to speak about the occurrence, have also turned hostile and the prosecution has failed to examine the children of the accused and the deceased who said to have present at the time of occurrence. Hence, in the absence of any corroborating evidence, the court below ought not to have convicted the appellant/accused based on the dying declaration alone.

8. Per contra, the learned Additional Public Prosecutor would state that the dying declaration of the deceased is true and voluntary one and there is no inconsistency or discrepancy in the dying declaration and the deceased was conscious and in a fit state of mind to give dying declaration, as per the evidence of the Doctor PW13 and Judicial Magistrate, PW12 and hence, the dying declaration can be relied upon to convict the accused.

9. We have carefully considered the rival submissions and perused the records. As per the prosecution, the occurrence took place inside the house of the accused and at the time of occurrence, the accused was present in the scene of occurrence, as spoken by PW2. Even though PW2 turned hostile, so far as her evidence to that extent can be taken into consideration to hold that the occurrence has taken place in the house of the deceased and the

accused was also present at the time of occurrence. Immediately, the deceased was taken to Government Hospital and PW13, the Doctor, attached to Nagapattinam Government Hospital, has admitted her and sent memo, Ex.P8 at 9.30 pm to the Judicial Magistrate for recording dying declaration. After receipt of the memo, immediately at about 10.10 pm, PW12, the Judicial Magistrate II, Nagapattinam reached the Hospital and obtain a certificate from the Doctor, PW13, that the deceased was conscious and in a fit state of mind to give dying declaration which was marked as Ex.P10. After being satisfied with the fitness of the deceased, the Judicial Magistrate has recorded the dying declaration wherein the deceased has categorically stated that there was a quarrel between the deceased and the accused and suspecting her fidelity, on the date of occurrence, at about 6.15 pm, the accused, in an intoxicated mood, poured kerosene on her and set fire on her. Hearing the alarm raised by her, neighbours admitted her in the hospital. Further, the deceased had given statement that the accused should be arrested. After completing the recording of dying declaration, once again PW13, the Doctor, has given another certificate, Ex.P11, that the deceased was conscious and in a fit state of mind till she completed the dying declaration. It is also recorded by the Judicial Magistrate that at the time of recording the dying declaration, except he and the Doctor, PW13, none was

present and the Judicial Magistrate was also fully satisfied that the deceased was conscious and in a fit state of mind to give dying declaration. The above statement of the Judicial Magistrate was not disputed by the accused.

10. On perusal of the dying declaration and the doctor/ PW13's evidence and the evidence of the learned Judicial Magistrate, PW12, it is clear that the dying declaration has been given by the deceased within a short time after the occurrence and it is the evidence of PW12, the learned Judicial Magistrate, that during the recording of dying declaration, the deceased was conscious and in a fit state of mind to give dying declaration and there is no suspicious circumstances with regard to the dying declaration recorded by PW12 and endorsed by PW13. Hence, absolutely there is no reason to disbelieve their evidence. Apart from that, on a perusal of the dying declaration, it is clear that the learned Judicial Magistrate has put necessary questions to the deceased to satisfy himself that whether the deceased was giving statement voluntarily and whether the deceased was conscious and in a fit state of mind to give dying declaration.

11. In the above circumstances, we are fully satisfied that the deceased was conscious and in a fit state of mind to give dying

declaration and there is no evidence for tutoring the deceased before giving the dying declaration. Therefore, we find no reason to disbelieve the dying declaration and the dying declaration clearly indicate that it is only the accused, who set fire on the deceased. 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.177 of 2010 by the District and Sessions Judge, Nagapattinam is confirmed.

(S.N.J.) (V.B.D.J.)
3.6.2016

ssk.

Index:Yes/No
Internet:Yes/No

To

1. The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
2. District and Sessions Judge,
Nagapattinam.
3. The Public Prosecutor,
High Court, Madras.

**S.NAGAMUTHU,J.
and
V.BHARATHIDASAN,J.**

ssk.

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