

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.08.2016

CORAM:

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

Cr1.A.No.569 of 2009

State, rep by  
The Inspector of Police,  
Paravakkottai Police Station,  
Thiruvarur District. .... Appellant/complainant

vs.

Peramaiyan ..... Respondent/Accused

Criminal Appeal preferred under Section 378 Cr.P.C.,  
against the judgement dated 18.11.2008 passed by the learned  
Sessions Judge, Thiruvarur, in S.C.No.2 of 2008.

For Appellant : Mr.E.Raja, Addl. P.P.

For Respondent : No Appearance

JUDGMENT

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

The State has filed this appeal against the order of acquittal passed in S.C.No.2 of 2008 dated 18.11.2008 on the file of the learned Sessions Judge, Thiruvarur. The respondent, in this appeal, is the sole accused in the said Sessions Case. He stood charged for the offence under Section 302 IPC. The Trial Court, after trial, acquitted the accused, against which the present criminal appeal has been filed by the State.

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

(i) The deceased, in this case, one Kalavathi, is the wife of the accused. There were frequent quarrel between the accused and the deceased. On 13.07.2007 at about 4.00 p.m., there was a quarrel between the accused and the deceased and during the said quarrel, the accused poured kerosene and set fire on her. P.W.1 is the mother of the deceased. On coming to know about the occurrence, P.W.1 rushed to the house of the deceased, took the deceased to the Government Hospital, Mannargudi, from where she was referred to the Government Medical College & Hospital, Thanjavur. P.W.6, Assistant Professor, working in the Government Medical College &

Hospital, Thanjavur, admitted the deceased in the Hospital and found 95 % burn injuries. He issued Accident Register [Ex.P4] and sent a memo to the Judicial Magistrate Court for recording dying declaration.

(ii) P.W.8, learned Judicial Magistrate No.III, Thanjavur, on receipt of the memo from the hospital, went to the hospital and recorded the dying declaration of the deceased, where the deceased told her that the accused poured kerosene and set fire on her.

(iii) P.W.9, Sub Inspector of Police attached to the respondent police, on receipt of a memo from the Hospital, went to the hospital, recorded the statement of the deceased and based on the statement of the deceased, registered a case in Crime No.80 of 2007 under Section 307 IPC and prepared First Information Report [Ex.P10], sent the same to the learned Judicial Magistrate No.2, Mannargudi and copies of the same were forwarded to the higher police officials.

(iv) P.W.11, Inspector of Police attached to the respondent police station, on receipt of the First Information Report, on 14.04.2007, commenced investigation, visited the scene of occurrence, made an observation, prepared an Observation Mahazar [Ex.P1], drew rough sketch [Ex.P12], examined some witnesses and recorded their statements. On the same day, P.W.11 arrested the accused. On such arrest, the accused voluntarily gave a confession and based on the disclosure statement [Ex.P13], P.W.11 recovered a plastic bottle [M.O.2], and a Match Box [M.O.3] under a Mahazar [Ex.P14]. Subsequently, on 15.07.2007 at about 1.10 a.m., the deceased succumbed to injuries. Then, P.W.11, altered the case into one under Section 302 IPC and alteration report [Ex.P15] was sent to the Judicial Magistrate Court. On the same day at about 7.30 a.m., he conducted inquest over the dead body of the deceased in the presence of panchayatdars and prepared inquest report [Ex.P16]. Then, P.W.11 sent a requisition to the Government Hospital for conducting autopsy on the dead body.

(v) P.W.7, Doctor, working in the Government Medical College & Hospital, Thanjavur, conducted postmortem on the dead body of the deceased and found the following injuries:-

(1) Infected dermo epidermal burns noted all over the body surface except over the front of lower abdomen. External Genitalia and lateral aspect of upper half of left thigh - total amounting to 95% of burns.

(2) Peeling of the cuticles, Reddening of the skin, Evidence of carbonisation and below with blisters in patches noted over the burns affected area.

(3) Singeing of scalp hair, eyebrows, eyelashes and axillary hair noted.

(4) The above mentioned burns injuries were of antemortem in nature. Extremities - cyanosed. Heart - Normal in size. All the chambers contained dark coloured fluid blood. Valves - Normal, Coronary vessels - patent, great vessels - Normal. Lungs - C/s both congested and oedematous. Larynx and hyoid bone - intact. Stomach - contained 200 ml of bile stained yellowish brown coloured semi solid material with no specific smell, Mucosa congested. Liver, spleen, kidneys c/s congested. Small intestine - Empty, Mucosa - congested. No specific smell made out. Bladder-empty, Uterus Normal in size. Brain surface vessels were congested c/s brain was found to be oedematous.

She opined that the deceased would appear to have died due to burn injuries and she issued Postmortem Certificate [Ex.P7].

(vii) P.W.11, continued the investigation, examined the Doctor, who conducted autopsy, and some other witnesses and recorded their statements. After completing the investigation, P.W.11 laid charge sheet 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 11 witnesses were examined, 16 documents were exhibited and 3 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the mother of the deceased. According to her, after hearing about the occurrence, she rushed to the house of the deceased and took the deceased to the Government Hospital, Mannargudi, from where the deceased was referred to the Government Medical College & Hospital, Thanjavur. P.W.2 is the father of the deceased. According to him, he came to know about the occurrence, rushed to the Government Medical College & Hospital, Thanjavur, where the deceased was admitted in an unconscious stage and she died without regaining conscious. P.W.3 turned hostile. P.W.4 is a witness to the observation mahazar. P.W.5 also turned hostile. P.W.6 is the Doctor working in the Government Medical College & Hospital, Thanjavur. According to her, she admitted the deceased in the hospital and issued accident register. She has further stated that at the time of admission, the deceased told him that a known person poured kerosene and set fire on her. P.W.7 is the Doctor, working in the Government Medical College & Hospital, Thanjavur, who conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate. P.W.8 is

the learned Judicial Magistrate No.III, Thanjavur, who recorded the dying declaration of the deceased. P.W.9 is the Sub Inspector of Police working in the respondent police station. He has stated that on receipt of a memo from the Hospital, he went to the Hospital, recorded the statement of the deceased and based on the said statement, registered a case and sent the First Information Report to the Magistrate Court and copies thereof to the higher police officials. P.W.10 is the Head Constable working in the respondent police. According to him, he identified the dead body for postmortem and after postmortem, he recovered saree[M.O.1] from the dead body. P.W.11 is the Inspector of Police attached to the respondent police. He has stated that on receipt of the first information report, he commenced investigation, arrested the accused and recovered the material objects, examined the witnesses and recorded their statements and after completion of the investigation, laid 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. He did not examine any witness nor marked any document on his side.

6. Having considered all the above materials, the Trial Court acquitted the accused from the charges levelled against him. Challenging the above order of acquittal, the State has filed this appeal before this Court.

7. We have heard Mr.E.Raja, learned Additional Public Prosecutor appearing for the State. There is no representation for the accused and we have perused the records carefully.

8. It is a case of circumstantial evidence. The prosecution mainly relied upon the dying declaration of the deceased. In this case, there are multiple dying declaration recorded. The first dying declaration is said to have been given by the deceased before P.W.7/Doctor, who admitted the deceased in the hospital. According to him, at the time of admission, the deceased told him that a known person poured kerosene and set fire on her. Subsequently, P.W.8, the learned Judicial Magistrate, has recorded judicial dying declaration. While recording the dying declaration, the learned Judicial Magistrate did not follow the mandatory procedure. On perusal of the dying declaration, it is seen that the dying declaration is in a typed form. Before recording the dying declaration, the learned Judicial Magistrate ought to have satisfied herself that the deceased was conscious and in a fit state of mind to give dying declaration. But, no such satisfaction has been recorded by the Judicial Magistrate and also the learned Judicial Magistrate has admitted in the cross examination that she did not record her satisfaction in the dying declaration. Apart from that, she has not recorded the dying declaration and some portion of the dying declaration is typed. In the above

circumstances, it is very difficult to accept the judicial dying declaration. It is also pertinent to note that P.W.2, the father of the deceased, has categorically admitted even in the chief examination that the deceased did not talk to him and in his cross examination, he has categorically admitted that in the Hospital the deceased was totally unconscious and the deceased died without regaining consciousness. Hence, from the evidence of P.W.2, it could be seen that the evidence of P.W.2 is true regarding the consciousness of the deceased to give dying declaration. The trial Court considering the above, disbelieved the dying declaration and acquitted the accused. It is true that dying declaration can be the sole basis for convicting the accused, provided it must be given by the deceased in a conscious and fit state of mind and it should be genuine and untutored. But, in the instant case, it is highly doubtful whether the deceased was conscious and fit state of mind while giving dying declaration and hence, it is highly unsafe to convict the accused based on the above dying declaration alone. It is settled law that in a case of appeal against acquittal, there is a double presumption in favour of the accused. Firstly, every person should be presumed to be innocent, unless he or she is found guilty by a competent court of law. Secondly, the accused having secured an order of acquittal, the presumption of innocence is in his favour, as reaffirmed and strengthened by the trial Court. Further if two views are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court and the benefit of doubt has to be extended in favour of the accused. The Trial Court has elaborately considered all the evidence and disbelieved the dying declaration and acquitted the accused. Hence, we find no perversity in the judgement of the trial Court and the appeal fails and the same is deserved to be dismissed.

9. In fine, this appeal is dismissed. The order of acquittal passed in S.C.No.2 of 2008, dated 18.11.2008 by the learned Sessions Judge, Thiruvarur, stands confirmed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

rrg

To

1.The Sessions Judge,  
Thiruvarur.

2.-do- Thru The Principal Sessions Judge,

Assistant Registrar,  
Tiruvarur.

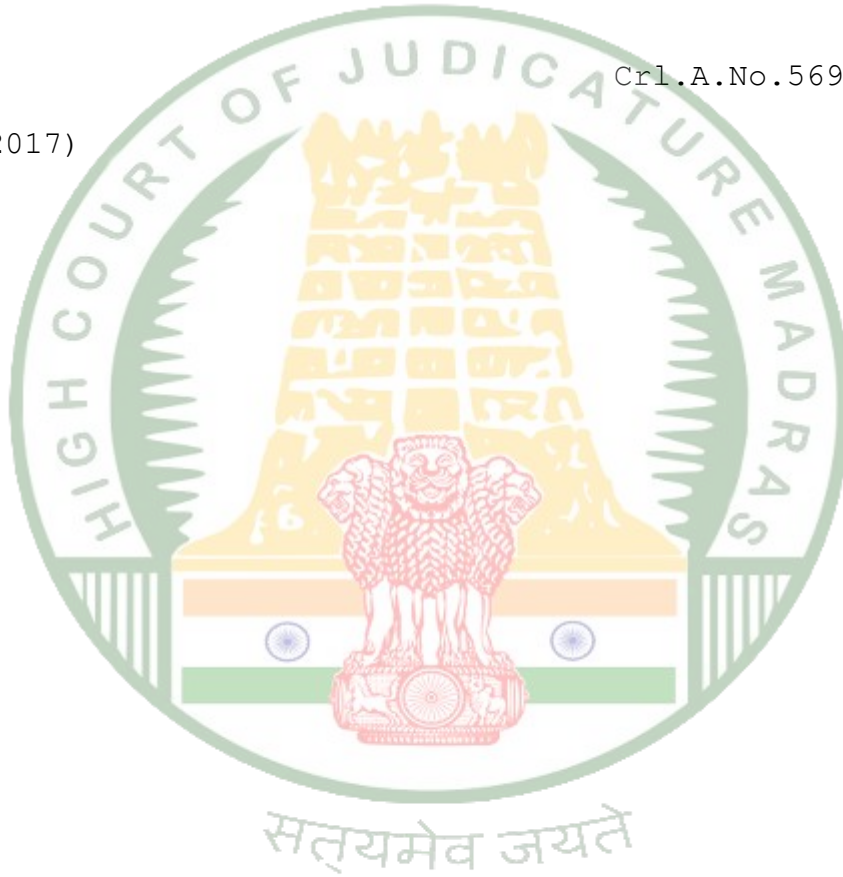
3.The Inspector of Police,  
Paravakkottai Police Station,  
Thiruvarur District.

4.The Superintendent of Central Prison,  
Trichirapalli.

5.The Public Prosecutor,  
High Court, Madras.

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Mp (CO)  
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