

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.439 of 2012

Raja

.. Appellant./ Accused

Versus

State rep. by the Inspector of Police,
Cuddalore Port Police Station,
Cuddalore.

.. Respondent/ Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by District Sessions Judge, Mahalir Neethimandram, Cuddalore, in S.C.No.309 of 2010, dated 29.12.2010.

For Appellant : Mr.I.Siddharthan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in the Sessions case, in S.C.No.309 of 2010, on the file of the District Sessions Judge, Mahalir Neethimandram, Cuddalore. The appellant stood charged for the offences under Sections 342 and 302 of the Indian Penal Code and under Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 1998. By the judgment, dated 29.12.2010, the trial court had convicted him, under Section 302 of the I.P.C and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/-, and in default to undergo rigorous imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this court, by way of the present criminal appeal.

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

2.1) The accused is the husband of the deceased Rajathi. The accused has been causing mental agony to the deceased by making aspersions against her character. While so, on 30.7.2010, the accused had pretended as though he was leaving the house, for carrying on the fishing activities. Thereafter, he had entered the house, after his wife had gone out. He had hidden himself inside the house without the deceased Rajathi knowing about it. At 7.00 a.m, when Rajathi had returned to the house, the accused had

shouted at her saying that he knew about her affairs with many persons in the village and that he would kill her so that she cannot carry on such illegal activities. The accused had closed the door from inside, poured kerosene on the deceased and had set her on fire, leading to her death. Therefore, the accused had been charged with the offences under Section 342 and 302 of the Indian Penal and Code and under Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 1998.

3. In order to prove the charges, on the side of the prosecution 10 witnesses had been examined as P.Ws.1 to 10 and Ex.P-1 to 14 had also been marked. 5 Material objects had also been marked as M.Os.1 to 5.

4. Rajavalli, who had been examined as P.W.1, had stated in her evidence that the deceased Rajathi was her daughter and the accused is the husband of the deceased. The marriage between the accused and the deceased had taken place 14 years before the occurrence. She had further stated that, on 30.7.2010, at 7.00 a.m, when she was in her house the accused had called her over phone and informed her that her daughter Rajathi had set fire to herself and that she had been admitted in the Government Hospital, at Cuddalore, for treatment. On reaching the Hospital she had found that her daughter had suffered severe burn injuries and that she was told that the accused had set her on fire, after pouring kerosene on her. Later the deceased had been taken to the JIPMER Hospital, at Puducherry, for further treatment. However, she had succumbed to her injuries, after a week, in spite of the treatment given to her.

5. P.W.2, the Judicial Magistrate, Damodaran, had stated that on 30.7.2010, at 9.05 p.m., a request had been made by the Sub Inspector of Police, Cuddalore Port Police Station. On the request made by the Sub Inspector of Police, Cuddalore Port Police Station, at 9.05 p.m. on 30.7.2010, he had proceeded to the Emergency Ward of the JIPMER Hospital, where the deceased had been admitted for treatment. The Doctor who was treating the deceased had examined her and had informed that she was in a conscious and fit state of mind to make a dying declaration. The dying declaration made by the deceased had been marked as Ex.P-1. The Magistrate had posed certain questions to the deceased and had confirmed that she was in a fit state of mind to make the dying declaration. In her dying declaration, the deceased had stated that her husband Raja, the accused, had abused her suspecting her fidelity, and had set her on fire after pouring kerosene on her. She had further stated that the injuries caused to her were due to the act of the accused. Both P.W.3 Doctor Vijayaganapathi, who was working in JIPMER Hospital and P.W.4 Dr.Senthil Kumar, who was working in Cuddalore Government Hospital, had stated about the mental condition of the deceased, at the time of the making of the dying declaration.

6. P.W.5, Dr.Vijayaragahavan, who was also working in the JIPMER hospital had also talked about the state of the mind of the deceased. P.W.6, Dr.Ambrose, the Doctor who had conducted the postmortem had also been examined. P.W.6 had given the medico legal postmortem certificate, dated 6.8.2007, marked as Ex.P-6. He had given his opinion regarding the cause of the death as septicemia, following burns. P.W.7 is the mahazar witness. P.W.8 to P.W.10 are the other official witnesses.

7. The appellant/accused was questioned, under Section 313 Cr.P.C, with regard to the incriminating materials made out against him in the evidence rendered by the prosecution. He had denied the allegations made against him and had stated that the charges levelled against him are false. However, he did not examine any witness, nor had he marked any document in his favour.

8. On considering the evidence, both oral as well as documentary, the trial Court had arrived at the conclusion that the accused was guilty of the offence of murder and had imposed the sentence of life imprisonment, on the accused, under Section 302 of Indian Penal Code. As there was no eye witness, the trial court had based its conviction, substantially, on the dying declarations made by the deceased, marked as exhibits P-1, P-3 and P-9.

9. The learned counsel appearing on behalf of the accused had pointed out that there was a long and unexplained delay in the registering of the first information report, even though the distance between the scene of occurrence and the police station was not very long. He had also submitted that there were certain contradictions between the statements recorded in the first information report and in the dying declarations given by the deceased, with regard to the description of the occurrence. He had further submitted that no independent witness had been examined. Even, Valli, a relative of the deceased who had accompanied her to the hospital, had not been examined as a witness. He had also attempted to point out certain flaws in the observation mahazar.

10. The learned counsel had further submitted that there was a possibility of the deceased having been tutored before she had made the dying declarations. He had further submitted that no previous complaints had been made against the accused, by the victim, alleging domestic violence. He had submitted that the contradictions found in the complaint, marked as Ex.P-10 and in the dying declaration marked as Ex.P-3, had not been considered by the trial Court, while holding the accused guilty of the offence alleged against him. Therefore, this court may be pleased to allow the present criminal appeal by setting aside the conviction and sentence imposed on the accused, by the judgment of the trial court, dated 29.12.2010, made in S.C.No.309 of 2010.

11. We have considered the submissions made by the learned counsels appearing on behalf of the appellant/accused and the learned Additional Public Prosecutor appearing on behalf of the respondent. We have also perused the records, carefully.

12. There is evidence that the occurrence, resulting in the death of the wife of the deceased, had taken place in her house. It is the case of the prosecution that the accused, having suspicion about her fidelity, had committed the offence, by pouring kerosene on the deceased and setting her on fire, while she was inside her house. It is not in dispute that there was no eye witness to the occurrence.

13. At the earliest point in time, when the deceased was in a conscious and fit state of mind, she had told the doctor that her husband had poured kerosene and had set her on fire. The said incident had taken place in her house. This is the earliest dying declaration given by the deceased. There was no chance of tutoring, at any point of time, before she had been admitted in the hospital, as none of her relatives had accompanied her at that time.

14. On the request, having been made by Sub Inspector of Police, Cuddalore Port Police Station, the learned Judicial Magistrate had gone to the hospital where the deceased had been admitted, on 30.7.2010. He had satisfied his judicial conscience about the fit state of mind of the deceased, for making the dying declaration, from the statement made by the doctor concerned and from the answers elicited by him. In the dying declaration made by the deceased, before the Judicial Magistrate, she had repeated her statements made in her earlier dying declaration, relating to the occurrence. This is the second dying declaration made by the deceased. It is also seen that in the statement made by the deceased, to the Sub Inspector of Police, Cuddalore Port Police Station, around 10.00 p.m., the same version relating to the incident had been repeated by the accused. This is the third dying declaration made by the accused.

15. On considering the consistent statements made by the deceased, in all the three dying declarations made by her, and from the evidence elicited from the other prosecution witnesses, corroborating the sequence of events leading to the death of the deceased, we are compelled to hold that the prosecution had proved the guilt of the accused beyond reasonable doubt. In this regard, it would be pertinent to refer to the decision of the Supreme Court, reported in Bhajju @ Karan Singh Vs. State of M.P. (Criminal Appeal No.301 of 2008, dated 15.3.2012)

"10. The law is very clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form

the sole piece of evidence resulting in the conviction of the accused. This Court has clearly stated the principle that Section 32 of the Indian Evidence Act, 1872 (for short 'the Act') is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of Section 32 makes the statement of the deceased admissible, which is generally described as a 'dying declaration'. The 'dying declaration' essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that the conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth. Once the Court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence.

11. There is a clear distinction between the principles governing the evaluation of a dying declaration under the English law and the Indian law. Under the English law, credence and relevancy of a dying declaration is only when the person making such a statement is in hopeless condition and expecting an imminent death. So under the English law, for its admissibility, the declaration should have been made when in the actual danger of death and that the declarant should have had a full apprehension that his death would ensue. However, under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration. The dying declaration is admissible not only in the case of homicide but also in civil suits. The admissibility of a dying declaration rests upon the principle of *nemo meritorius praesumuntur mentiri* (a man will not meet his maker with a lie in his mouth).

12. The law is well-settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece

of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the Court, the same may be refused to be accepted as forming basis of the conviction.

13. Another consideration that may weigh with the Court, of course with reference to the facts of a given case, is whether the dying declaration has been able to bring a confidence thereupon or not, is it trust-worthy or is merely an attempt to cover up the latches of investigation. It must allure the satisfaction of the Court that reliance ought to be placed thereon rather than distrust.

14. In regard to the above stated principles, we may refer to the judgments of this Court in the cases of [Ravikumar @ Kutti Ravi v. State of Tamil Nadu](#) (2006) 9 SCC 240, [Vikas and Others v. State of Maharashtra](#) (2008) 2 SCC 516, [Kishan Lal v. State of Rajasthan](#) (2000) 1 SCC 310, [Laxmi \(Smt.\) v. Om Prakash & Ors.](#) (2001) 6 SCC 118, [Panchdeo Singh v. State of Bihar](#) (2002) 1 SCC 577.

15. In the case of [Jaishree Anant Khandekar v. State of Maharashtra](#) (2009) 11 SCC 647, discussing the contours of the American Law in relation to the 'dying declaration' and its applicability to the Indian law, this Court held as under: -

"24. Apart from an implicit faith in the intrinsic truthfulness of human character at the dying moments of one's life, admissibility of dying declaration is also based on the doctrine of necessity. In many cases victim is the only eyewitness to a crime on him/her and in such situations exclusion of the dying declaration, on hearsay principle, would tend to defeat the ends of justice.

25. American law on dying declaration also proceeds on the twin postulates of certainty of death leading to an intrinsic faith in truthfulness of human character and the necessity principle. On certainty of death, the same strict test of English law has been applied in American jurisprudence. The test has been variously expressed as "no hope of recovery", "a settled expectation of death". The core concept is that the expectation of death must be absolute and not

susceptible to doubts and there should be no chance of operation of worldly motives."

16. It will also be of some help to refer to the judgment of this Court in the case of [Muthu Kutty and Another v. State](#) by Inspector of Police, T.N., (2005) 9 SCC 113 where the Court, in paragraph 15, held as under:-

"15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be.

This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was 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 after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in [Paniben v. State of Gujarat](#) [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. ([Munnu Raja v. State of M.P.](#))

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. ([State of U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar.](#))

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. ([K. Ramachandra Reddy v. Public Prosecutor](#))

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. ([Rasheed Beg v. State of M.P.](#))

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. ([Kake Singh v. State of M.P.](#))

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu.)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Ojha v. State of Bihar.)

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan.)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (Mohanlal Gangaram Gehani v. State of Maharashtra.)"

16. We are also of the considered view that the contradictions pointed out by the learned counsel appearing on behalf of the appellant/accused, between the statement recorded by P.W.8 and the dying declaration made by the deceased, are minor in nature. We are also not impressed with the other contentions raised on behalf of the appellant/accused.

17. Therefore, we find it to be fit and proper to dismiss the present criminal appeal, filed by the appellant/accused, confirming the conviction and sentence imposed on the appellant/accused, by the trial Court, by its judgment, dated 29.12.2010, in S.C.No.309 of 2010. Accordingly, the present criminal appeal stands dismissed. The period of sentence already undergone by the appellant shall be set off, under Section 428 of the Code of Criminal Procedure. The lower Court is directed to issue necessary warrant to secure the custody of the accused and to commit him to prison to undergo the remaining period of sentence, if any.

18. We place on record our appreciation for the assistance rendered by the learned counsel I.Siddharthan appointed by this court, as a legal aid counsel, for the appellant. The learned

counsel shall be paid the appropriate remuneration, by the Tamil Nadu State Legal Services authority, Chennai.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The District Sessions Judge,
Mahalir Neethimandram, Cuddalore,
2. The Judicial Magistrate II
Cuddalore
3. do thro the Chief Judicial Magistrate
Cuddalore
4. The Inspector of Police
Cuddalore Port Police Station
Cuddalore
5. The Superintendent
Central Prison,
Cuddalore
6. The District Collector
Cuddalore
7. The Superintendent of Police
Cuddalore
8. The Public Prosecutor,
Madras High Court
9. The Member Secretary
High Court Legal Service Authority
High Court, Madras

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