

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.452 of 2013

M.Raja ... Appellant/1st accused

vs.

The State, by
The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District
(Crime No.92 of 2008) Respondent/complainant

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 14.11.2011 passed by the
learned District and Sessions Judge, Nagapattinam, in
S.C.No.18 of 2009.

For Appellant : Mr.A.M.Rahamath Ali for
Mr.K.Govi Ganesan

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 first accused in Sessions Case No.18 of 2009, on the file of the learned District and Sessions Judge, Nagapattinam. Totally, there are two accused in this case. The first accused stood charged for an offence under Sections 498(A), 302 of IPC and the second accused stood charged for an offence under Sections 498(A) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 1998. The Trial Court, after trial, by judgement dated 14.11.2011, convicted the accused under Section 498(A) IPC., and sentenced them to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for three months and convicted

the appellant/first accused under Section 302 IPC., and sentenced him to undergo life imprisonment and also to pay a fine of Rs.10000/-, in default, to undergo simple imprisonment for three years. The second accused was acquitted under Section 4 of Tamil Nadu Prohibition of Women Harassment Act,1998. The sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellants/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 Meena is the wife of the first accused. Their marriage was a love marriage. The deceased, appellant/first accused and second accused, mother of A-1, were living together. There were frequent quarrel between the appellant and the deceased. A-2 also quarrelled with the deceased and she demanded dowry. On 13.06.2008, there was a quarrel between the accused and deceased. On that day P.W.1, mother of the deceased, and one Valli, sister of the deceased, came to their house and questioned the first accused and at that time the first accused tried to beat the sister of the deceased. Hence, they went their relative house. On the same day, at about 5.00 p.m., again there was a quarrel, during which, the accused poured kerosene on the deceased and set fire on her and ran away from the scene. Immediately, one Sumathi, neighbour of the deceased, took her to the Government Hospital, Mayiladuthurai. P.W.3, Doctor, working in the Government Hospital, Mayiladuthurai, admitted the deceased in the Hospital. According to him, at the time of admission, the deceased told him that due to quarrel, her husband poured kerosene and set fire on her. Immediately, P.W.3 sent memo to the learned Judicial Magistrate and also to the respondent Police and issued Accident Register, Ex.P2.

(ii) P.W.13, learned Judicial Magistrate No.I, Mayiladuthurai, on receipt of the memo, proceeded to the Hospital. At about 6.25 p.m., after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration and after obtaining certificate from the Doctor, who was giving treatment, at about 6.45 p.m., recorded the dying declaration, wherein, the deceased had stated that due to quarrel, her husband poured kerosene and set fire on her. Ex.P19 is the Dyeing Declaration.

(iii) P.W.6, Sub Inspector of Police, on receipt of the memo from the Government Hospital, proceeded to the Hospital and obtained a statement, Ex.P10 from the deceased in the presence of Doctor and based on the said statement, he registered a case in Crime No.330 of 2008 for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act,1998 and Section 307 IPC, prepared FIR, Ex.P9 and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

<https://hcservices.ecourts.gov.in/hcservices/> P.W.11, Deputy Superintendent of Police,

Mayiladuthurai, on receipt of the FIR, commenced the investigation and proceeded to the scene of occurrence, prepared an Observation Mahazar, Ex.P7, drew a Rough Sketch, Ex.P11 and recovered a Plastic can M.O.1, Match Box M.O.2, Bra M.O.3, Burnt Inskirt M.O.4 and a Burnt Cloth piece M.O.5 under Ex.P12 Seizure Mahazar in the presence of witnesses. He examined some witnesses and recorded their statements. In the meantime, the deceased succumbed to injuries at about 9.15 p.m. Hence P.W.11 altered the FIR into Sections 4 of Tamil Nadu Prohibition of Women Harassment Act, 1998 and under Sections 498(A) and 302 IPC. On 17.06.2008, P.W.11 arrested the accused. Based on the investigation, he found that it is a case of murder and hence he sent the case diary to P.W.12, the Inspector of Police, Manalmedu Police Station for further investigation. Mr. Mohamed Haniba, Revenue Divisional Officer, conducted inquest over the dead body of the deceased and gave Inquest Report, Ex.P18.

(v) P.W.4, the Doctor, working in the Government Hospital, Mayiladuthurai, conducted postmortem on the dead body of the deceased and found the following injuries.

A body of a female lying flat on the PM table with by th side of the body. Hands empty. RM present in all four limbs. Eyes closed. Mouth closed. Blood stained discharge coming from the nose and mouth. 95% burns present. Burns present in all over the body except sole and scalp. Blisters present more than 50% of the burns area. Neck Soft tissues normal. Thyroid, Hyoid bone intact. Thorax - No fracture ribs, lungs congested. Carbon particles present in lung tissues. Heart Chambers empty. Abdomen - Stomach contain 100 ml of digestive juice. Nucosa ulcerated, liver, spleen, kidney congested. Intestine distended with gas. Utrus non gravid normal. Skull- No fracture, Membrane intact. Brain Normal. No EDH or SDH. Spine and pelvis normal. Stomach intestine, liver, Kidney and preservative solution sent for chemical analysis.

He opined that the deceased would appear to have died due to 95% of burn injuries and he issued Postmortem Certificate, Ex.P5.

(vi) P.W.12, the Inspector of Police, Manalmedu Police Station, conducted further investigation, examined the Doctor, who conducted postmortem, and other witnesses and recorded their statements. After completing the investigation, he laid charge sheet.

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 13 witnesses were examined and 19 documents exhibited and 5 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the mother of the deceased and she turned hostile. P.W.2 is the sister of the deceased and she also turned hostile. P.W.3 is the Doctor, who admitted and examined the deceased in the Government Hospital, Mayiladuthurai. According to him, at the time of admission, the deceased was conscious and in a fit state of mind and she stated that due to quarrel, her husband poured kerosene and set fire on her and he sent memo to the Judicial Magistrate as well as the respondent police and issued Accident Register Ex.P1. P.W.4 is the Doctor working in the Government Hospital, Mayiladuthurai. He has deposed that he conducted postmortem on the dead body of the deceased and issued Postmortem certificate Ex.P5. P.W.5 turned hostile. P.W.6, Sub Inspector of Police has deposed that on receipt of the memo, went to the Government Hospital and obtained a statement from the deceased, Ex.P10 and registered a case in Crime No.330 of 2008 for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act,1998 and Section 307 of IPC and prepared FIR Ex.P9. P.W.7, Sub Inspector of Police, working in the Mayiladuthurai Police Station has deposed that on receipt of death intimation from the Government Hospital, Mayiladuthurai, he gave intimation to Manalmedu Police Station. P.W.8, Sub Inspector of Police has stated that he have death intimation to Mayiladuthurai Police Station. P.W.9, Head Constable, working in the Mayiladuthurai Police Station has stated that he submitted the alteration report to the Judicial Magistrate Court. P.W.10, Special Sub Inspector of Police, Mayiladuthurai Police Station has deposed that he identified the dead body of the deceased for postmortem. P.W.11, the Deputy Superintendent of Police, Mayiladuthurai, conducted investigation and altered the FIR into Section 4 of Tamil Nadu Prohibition of Harassment of Women Act,1998, and Sections 498(A) and 302 of IPC., and arrested the accused, recovered the material objects, examined the witnesses and recorded their statements and handed over the investigation to P.W.12. P.W.12, the Inspector of Police, Manalmedu Police Station has deposed that he conducted further investigation, examined the Doctor, who conducted postmortem and other witnesses and recorded their statements and after completion of investigation, filed charge sheet. P.W.13 is learned Judicial Magistrate No.I, Mayiladuthurai. He has deposed that he recorded the dying declaration Ex.P19 of the deceased in the Government Hospital.

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 a total denial. The accused has

examined one Sumathi as D.W.1 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 judgment. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.A.M.Rahmath Ali, 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 declaration of the deceased. In this case, there are three dying declarations. After the occurrence at about 5.30 p.m., the deceased was admitted in the Government Hospital, Mayiladuthurai, by P.W.1. P.W.3, the Doctor, who admitted and examined her in the hospital has stated in his evidence that at the time of admission, the deceased was conscious and in a fit state of mind and she stated that due to quarrel, her husband poured kerosene and set fire on her. Thereafter, at about 6.45 p.m., the deceased has given a judicial dying declaration before the learned Judicial Magistrate No.I, Mayiladuthurai. The evidence of the learned Judicial Magistrate states that before recording the dying declaration, the learned Judicial Magistrate was fully satisfied that the deceased was conscious and in a fit state of mind to give dying declaration and also he obtained certificate from the duty Doctor to the effect that the deceased was fully conscious and in a fit state of mind. Further, before recording the dying declaration, the learned Judicial Magistrate has also put necessary question to confirm whether the deceased was conscious and in a fit state of mind to give dying declaration. Thus, it is clear that the dying declaration has been recorded properly. In that judicial dying declaration also the deceased had stated that it is only the first accused who set fire on her. Thereafter, the deceased has given another statement before P.W.6, the Sub Inspector of Police, narrating the same fact that due to quarrel, the accused poured kerosene and set fire on her. In all the above three dying declarations, we do not find any infirmity or contradictions. Hence, we are fully satisfied that the dying declarations were genuine, voluntary, consistent and credible.

9. The accused has examined one Sumathi as D.W.1. She is neighbour of the deceased, who admitted the deceased in the Hospital. In her evidence, she says that at the time of admitting the deceased in the hospital, one Valli, sister of the deceased, insisted the deceased to say that only her husband poured kerosene and set fire on her. But, in the

cross examination, she has stated that after admitting the deceased, within 5 minutes she was sent out from the hospital and she is a close family friend of the accused. From her evidence, it is clear that after admitting the deceased at about 5.37 p.m., within 5 minutes, she had left the hospital. Further, the learned Judicial Magistrate has recorded the dying declaration at about 6.45 p.m., and at that time, nobody was present in the hospital and hence the question of tutoring the deceased is ruled out. The learned Judicial Magistrate has recorded the dying declaration after ensuring nobody was present at the time of recording dying declaration. Further, the learned Judicial Magistrate has recorded the dying declaration after following the proper procedure. Hence, we are of the considered opinion that it is truthful. Since we have already held that the dying declaration is genuine and voluntary, it can form the sole basis for conviction, without any corroboration. 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.

In RAMAKANT MISHRA Vs. STATE OF U.P. reported in [2015(8)SCC 299, has held as follows:-

"However, once a dying declaration is held to be authentic, inspiring full confidence beyond the pale of doubt, voluntary, consistence and credible, barren of tutoring, significant probative value is endowed to it; such is the

sanctitude that it can even be the exclusive and the solitary basis for conviction without seeking any corroboration. At the juncture, it is worthwhile nothing that the sanctity attached to a dying declaration springs up from the rationale that a person genuinely under the sense of imminent death would speak only the truth."

In the above said circumstances, we are of the considered opinion that the prosecution has clearly proved that it was this appellant/first accused who caused the death of the deceased, by pouring kerosene and setting fire on her.

10. Now, the next question is what was the offence that the appellant/first accused has committed by the said Act. In the dying declaration of the deceased, it is clearly stated that before the occurrence there was a quarrel and the mother and sister of the deceased have questioned the same and the accused has also tried to attack the sister of the deceased and thereafter, at about 5.00 p.m., again there was a quarrel, during which, the accused poured kerosene and set fire on the deceased. It is the consistent statement in all the dying declarations. Hence from the above, it is clearly proved that there was a quarrel between the accused and the deceased before the occurrence and during the quarrel, out of sudden provocation, the accused has poured kerosene and set fire on her. Hence, the offence squarely falls within the first exception to Section 300 IPC. Though he would not have any intention to cause the death of the deceased, he had the intention to cause the injury which was sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the accused squarely fall within the 3rd limb of Section 300 IPC and therefore he is liable to be punished under Section 304(i) IPC.

11. Turning to the quantum of punishment, taking into consideration the totality of circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.18 of 2009 dated 14.11.2011, on the file of the learned District and Sessions Judge, Nagapattinam, under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. The conviction and sentence imposed on the appellant under Section 498(A) IPC is confirmed. The sentences

are to run concurrently. It is directed that the period of imprisonment already undergone by the appellant/first accused shall be given set off, as required under Section 428 Cr.P.C.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The District and Sessions Judge,
Nagapattinam.

2.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.

3.The Public Prosecutor,
High Court,
Madras.

4. The Principal Sessions Judge,
Nagapattinam.

5. The Judicial Magistrate NO.1
Mayiladudhurai.

6. The Chief Judicial Magistrate,
Nagapattinam.

7. The District Collector,
Nagapattinam.

8. The Surpintendent, Central prison,
Cuddalore.

9. The Director General of Police,
Mylapore.

+ 1 cc to M/s.K.Govi Ganesan, Advocate Sr.No.32903

Cr1.A.No.452 of 2013

CO/UG

VS 26/12/2016