

Bail Slip

The Appellant/Accused namely Mani @ Manikandan, S/o.Pitchandi, was directed to be released on bail as per the order of this Court dated 30/09/2009 in CrI.M.P.No. 1 of 2009 in CrI.A.No.553 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2019

PRONOUNCED ON: 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.553 of 2009

Mani @ Manikandan

..Appellant /Accused

Vs

State by Inspector of Police
D4, Zam Bazaar Police Station
Chennai-14

..Respondent /Complainant

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 03.09.2009, made in SC.No.497 of 2007, by the learned VI Additional District and Sessions Judge, Chennai.

For Appellant : Mr.G.Prabhakaran

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 03.09.2009, made in SC.No.497 of 2007, by the learned VI Additional District and Sessions Judge, Chennai, convicting and sentencing the Appellant, for the offence under Section 417 of IPC, to undergo six months Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months Simple Imprisonment and for the offence under Section 306 of IPC, to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo one year Simple Imprisonment and ordering the sentences to run concurrently.

2. The case of the Prosecution is that a love affair

prevailed between the Appellant/accused and the deceased, Devi for six months, before the date of occurrence and that the Appellant/accused, on a false promise to marry the deceased, induced her and had sexual intercourse, due to which, the deceased became pregnant and that on 07.09.2007 and 08.09.2007, when the deceased demanded the Appellant/accused to marry her, the Appellant/accused refused to marry her and being dejected by such refusal, the deceased committed suicide on 08.09.2007 at about 11.00 a.m. at her residence, by self immolating herself and later, she succumbed to burn injuries on 12.09.2007 at 10.00 a.m. in the Hospital. Hence, the Appellant/ accused was charge sheeted for the offence under Section 306 of IPC.

3. The Committal Court, after complying with the procedure under Section 207 of Cr.PC and having found that the case was exclusively triable by a Court of Session, had committed it to the file of the Principal District and Sessions Judge, Chennai and the Court had taken the case in SC.No.497 of 2007 and made over the case to the Trial Court. The Trial Court, on perusal of the materials and after hearing the accused, had framed charges for the offences under Sections 417 and 306 of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.16 and also marked Exs.P1 to P15 and Mos.1 to 5.

4. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the oral and material evidence of the Prosecution witnesses and the accused has come with the version of total denial and stated that he had been falsely implicated in this case. On the side of the defence, a resident of the area, was examined as DW.1 and no document was marked.

5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, particularly relying on the dying declaration, Ex.P7, the evidence of PW.1 and PW.2 as to the cause of the suicide, the evidence of PW.3, 4 and 5 as to the love affair between the accused and the deceased and the medical evidence, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side.

7. The learned counsel for the Appellant, at the outset, would submit that a case of death due to accidental fire had been falsely projected as a case of suicide and that the Appellant/ accused was wrongly prosecuted for having abetted the suicide by cheating her. He would, by pointing out to the following infirmities, inconsistencies and discrepancies, found in the case of the Prosecution, assail the impugned judgement of conviction and sentence:-

a. There are material inconsistencies between Ex.P7,

dying declaration and the earlier statements of the deceased and her father, PW.1. On the statement of the father, Ex.P1, a First Information Report was registered in Cr.No.1171 of 2007 (Ex.P12) for accidental fire and the versions deposed by the deceased to PW.1 and PW.2, who are the parent of the deceased and PW.11 and PW.14, Doctors and in Ex.P8 and Ex.P11, accident registers, which would go to show that the death was due to burns suffered in an accidental fire. If there are multiple versions and dying declarations, which are contradictory and varying with each other, the test of common prudence should be to see for proper corroboration and a duty is cast on the Court to look into the attendant circumstances, the condition of the deceased at the relevant point of time, the medical evidence, the voluntariness and the genuineness of the statement made by the deceased and also most importantly, the probability of the deceased being tutored by some one else.

b. In a case of abetment to suicide, the Prosecution is initially bound to prove the death of the deceased as a suicidal one and that the Appellant/ accused abetted the suicide and in this case, as per the initial versions, it is a case of sustaining burn injuries due to accidental fire and the Appellant/ accused had by examining the witnesses proved that the deceased sustained injuries due to accidental fire while cooking and there is no acceptable material to rebut the initial version of the investigation that the deceased caught fire accidentally while cooking due to the sudden burst of the stove.

c. There are also discrepancies, with regard to the time of recording the dying declaration and Ex.P7, which is contrary to the evidence of PW.10, who recorded the dying declaration and thereby, it cannot be taken into account. There was also an irregularity in the process of recording Ex.P7.

d. When the Prosecution failed to positively prove that the deceased was capable of making any statement on 9.9.2007. There is also no evidence to show that on 9.9.2007, the condition of the deceased became worse and hence, the Doctors advised for recording of the dying declaration and thereby, Ex.P7 cannot be believed. There was every possibility of tutoring the deceased to give such a version to the Magistrate and thus, Ex.P7 can be termed to have been given by the deceased by tutoring and in such circumstances, the non examination of the Doctor, in whose presence, the dying declaration was stated to be recorded, is also fatal to the Prosecution.

e. There was a delay in sending the requisition to record the dying declaration, which is also fatal to the case of the Prosecution.

f. The Trial Court erred in holding that Ex.P7 alone as the sole dying declaration of the case and not considering the statements earlier made by the deceased to PW.1 and PW.2. The Trial Court also erred in not considering the evidence of PW.1 and PW.2 as to the alleged statements made by the deceased to

them in the Hospital. Like wise, the evidence of PW.3, PW.4 and PW.5 should not have been accepted by the Trial Court in proof of the alleged love affair and the sexual intercourse and that the deceased had conceived on promise of marriage and subsequent refusal when especially the Prosecution having failed to prove that the Appellant/ accused is responsible for the pregnancy of the deceased.

g. The case put forth by the Prosecution in the final report and in the evidence would not satisfy the ingredients of abetment as defined under Section 107 of IPC. To sustain a charge under Section 306 of IPC, the Prosecution is bound to prove that (i) the deceased had committed suicide and (ii) the accused abetted the suicide of the deceased and in this case, the Prosecution has miserably failed to prove both the above ingredients by leading satisfactory evidence. Further, no legal evidence has been brought forth to bring home the charge under Section 417 of IPC, by establishing the ingredients set forth under Section 415 of IPC.

h. The Trial Court erred in coming to the conclusion that it is a case of suicide by self-immolation, whereas the evidence of PW.14, the Post-Mortem Doctor would suggest that it could be due to accidental death coupled with the fact there was absolutely no evidence with regard to smell or trace of kerosene on the clothes and body of the deceased and also at the place of occurrence.

i. The Trial Court erred in disbelieving the evidence of DW.1, who was the neighbour of PW.1 having a vegetable shop right in front of the house of the deceased. Further, as per Ex.P1, PW.1 had stated that he was informed by PW.5 that the victim sustained burn injuries due to stove burst. PW.5 in his evidence before the Court had deposed that he was informed about the incident by the younger sister of the victim that her sister self-immolated herself, whereas the younger sister of the victim was not examined by the Prosecution, thereby creating a doubt in the case of the Prosecution.

j. The procedure in recording the dying declaration has not been properly done and that as per the Rule, the signature of the declarant has to be obtained in the statement and when it cannot be done, the thumb impressions have to be affixed and when thumb impressions could not be obtained, the print of the toes either the left or right has to be taken and when no explanation has been given with regard to the same, it creates a doubt regarding the recording of the same.

8. In support of his contentions, the learned counsel for the Appellant has relied on the following decisions:-

- i.AIR 1989 SC 378 (Wazir Chand and another Vs. State of Haryana)
- ii.1997 1 Crimes 122 (Changala Jaya Sankara Rao)
- iii.1997 CrLJ 935:1996 4 ALL MR 92 (Satish Vs. State of Maharashtra)

- iv.2007 3 SCC (Cri) 91 (Sanjay Vs. State of Maharashtra)
- v.2008 2 SCC (Cri) 637 (Amol Singh Vs. State of MP)
- vi.2009 4 SCC 18 (Arun Singh Vs. State of HP)
- vii.2009 13 SCC 80 (Bhairon Singh Vs. State of MP)
- viii.Manu/SC/0001/2010 (Gangula Mohan Reddy Vs. State of AP)
- ix.2011 2 SCC (Cri) 465:2010 12 SCC 190 (S.S.Chheena Vs. Vijay Kumar Mahajan and Another)
- x.2016 AIR SC 406:2016 2 SCC(Cri) 247 (Tilak Raj Vs. State of HP)
- xi.Manu/TN/1251/2016 (Ayyappan Vs. State)
- xii.2016 3 Crimes 143:2016 4 MLJ Cri 240 (Manikandan Vs. State)
- xiii.2017 1 SCC 433 (Gurcharan Singh Vs. State of Punjab)
- xiv. Judgement, dated 14.08.2018, in CrI.A.No.565 of 2014 of the High Court of Chhattisgarh at Bilaspur.2017 4 SCC 393 (Sunil Vs. State of MP).

9. On the other hand, the learned Additional Public Prosecutor for the Respondent would submit that it is settled law that if the case of the Prosecution is otherwise proved by good and clinching evidence, lapses by the Investigating Officer or minor discrepancies cannot be allowed to become an escape route by an accused and that minor points of discrepancies should not be taken into account to doubt the case of the Prosecution and that the Prosecution has proved its case, by adducing clear and cogent evidence and that there are no infirmities or discrepancies or inconsistencies in the evidence adduced by the Prosecution. He would further submit that the case of the Prosecution is also based on the dying declaration, Ex.P7, corroborated by other evidence and that considering the evidence, both oral and documentary, in a proper perspective, the Trial Court had, relying on the various decisions of the Honourable Supreme Court, rightly convicted and sentenced the Appellant/accused, by the impugned judgement, which warrants no interference by this Court.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

11. The Trial Court has based its impugned conviction on the Appellant/accused mainly on the basis of Ex.P7, dying declaration.

12. The first and foremost question to be decided is as to whether the Prosecution has proved the charges under Sections 306 and 417 of IPC, by establishing the ingredients. Secondly, whether the conviction of the Appellant for the offences and charges is justified, by satisfying the necessary ingredients of

the offences/charges for. For deciding the above questions, a detailed scrutiny of both the oral and documentary evidence is necessarily to be done and it is done as under.

13. In the case on hand, in order to bring home the guilt of the Appellant/ accused beyond all reasonable doubts, the Prosecution should have proved that the death of the victim is due to suicide and that the Appellant/ accused abetted the suicide of the victim, by inducing her on a false promise of marriage and cheated her.

14. Admittedly, it is a case where the victim suffered burn injuries on 8.9.2007 at about 11.00 a.m. and later succumbed to the injuries, after four days on 12.9.2007 at 10.00 a.m. in the Hospital. As per Ex.P1, the complaint given by PW.1, the father of the victim on 8.9.2007, based on which a case in Cr.No.1171 of 2007 (Ex.P12) was registered, wherein the deceased was stated to have sustained burn injuries due to stove burst, supported by Ex.P8, the accident register issued by PW.11 at the Royapettah Hospital, wherein it had been stated that the victim sustained burn injuries, due to stove burst. Thereafter, the victim was referred to Kilpauk Medical College and Hospital for further treatment and as per Ex.P11, the accident register issued by PW.14, it had been stated that the victim sustained burn injuries due to stove burst. Whereas on the next day, on intimation on 9.9.2007 a dying declaration was obtained from the victim wherein she had stated, as follows:-

"என் வீட்டுக்க பக்கத்திலுள்ள மணி என்ற மூட்டை தூக்கும் கூலி வேல் என்பவரை 6 மாதமாக காதலித்தேன். இப்போது 5 மாதமாக Date வரவில்லை. கர்ப்பமாக இருக்கிறேன். என்னை கல்யாணம் செய்துக்க மாட்டேன் என்று சொன்னதால் நேற்று காலை 11.00 மணிக்கு நானே மண்ணெண்ணெய் ஊற்றிக் கொண்டேன்."

15. The case of the Prosecution mainly rests on the dying declaration, Ex.P7. The Trial Court has placed much reliance on Ex.P7 for convicting the Appellant/ accused. Admittedly, in this case, apart from Ex.P7, there are other materials and statements in the form of dying declaration. When there are multiple dying declarations, judicial prudence requires that each dying declaration has to be separately assessed and evaluated and assessed independently on its own merits as to its evidentiary value, before placing reliance on Ex.P7. In this regard, in order to find out the veracity or otherwise of Ex.P7, further analysis of the evidence in respect of the other declarations admissible under Section 32 of the Indian Evidence Act have to be looked into.

16. About the evidentiary value of the dying declaration of the deceased, it is relevant to refer to Section 32(1) of the Evidence Act, 1872, which reads as under:-

"32.Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is

relevant.—Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

(1)When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.”

17. The principles of law relating to the dying declaration have been laid down by the Honourable Supreme Court in 2014 10 SCC 336 (Prempal Vs. State of Haryana), wherein in paragraphs 12 and 13, it was summarised as under:-

“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 State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] , this Court held that if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. In this context, the observations made in para 13 of the judgment are relevant to be noted: (SCC pp. 556-57, para 13).

“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 [AIR 1958 SC 22 : 1958 Cri LJ 106 : 1958 SCR 552] , Harbans Singh v. State of Punjab [AIR 1962 SC 439 : (1962) 1 Cri LJ 479 : 1962 Supp (1) SCR 104] , Gopalsingh v. State of M.P. [(1972) 3 SCC 268 : 1972 SCC (Cri) 513]) 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 to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the court may, for its assurance, look for corroboration to the dying declaration.”

13. In *Bapu v. State of Maharashtra* [(2006) 12 SCC 73 : (2007) 2 SCC (Cri) 545] , this Court in paras 14 and 15 observed as under: (SCC pp. 77-79)

"14. In *Ravi v. State of T.N.* [(2004) 10 SCC 776 : 2005 SCC (Cri) 576] the Supreme Court observed that: (SCC p. 777, para 3)

'[I]f the truthfulness ... of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever, in law.'

15. In *Muthu Kutty v. State* [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] vide para 15 the Supreme Court observed as under: (SCC p. 120-121)

'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 : (1992) 2 SCR 197] (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. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base

conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169] .)

(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. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426 : AIR 1974 SC 332])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364] .)

(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. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519] .)

(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. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585] .)

(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. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334] .)" (emphasis in original).

18. In 2013 14 SCC 145 (Bhadragiri Venkata Ravi Vs. Public Prosecutor, High Court of AP, Hyderabad), in paragraphs 22, 23 and 24, it was held as under:-

"22. It is a settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused. In such a fact situation, the accused gets the benefit of doubt. (Vide Sanjay v. State of Maharashtra [(2007) 9 SCC 148 : (2007) 3 SCC (Cri) 91] and Heeralal v. State of M.P. [(2009) 12 SCC 671 : (2010) 1 SCC (Cri) 686])

23. In case of plural/multiple dying declarations, the court has to scrutinise the evidence cautiously and must find out whether there is consistency particularly in material particulars therein. In case there are inter se discrepancies in the depositions of the witnesses given in support of one of the dying declarations, it would not be safe to rely upon the same. In fact it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If the dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. But the statements should be consistent throughout.

24. In case of inconsistencies, the court has to examine the nature of the same i.e. whether they are material or not and while scrutinising the contents of various dying declarations, the court has to examine the same in the light of the various surrounding facts and circumstances. In case of dying declaration, as the accused does not have the right to cross-examine the maker and is not able to elicit the truth as happens in the case of other

witnesses, it would not be safe to rely if the dying declaration does not inspire full confidence of the court about its correctness, as it may be the result of tutoring, prompting or product of imagination. The court has to be satisfied that the maker was in a fit state of mind and had a clear opportunity to observe and identify the assailant(s). (Vide Kamla v. State of Punjab [(1993) 1 SCC 1 : 1993 SCC (Cri) 1 : AIR 1993 SC 374] , Kishan Lal v. State of Rajasthan [(2000) 1 SCC 310 : 2000 SCC (Cri) 182 : AIR 1999 SC 3062] , Lella Srinivasa Rao v. State of A.P. [(2004) 9 SCC 713 : 2004 SCC (Cri) 1479 : AIR 2004 SC 1720] , Amol Singhv. State of M.P. [(2008) 5 SCC 468 : (2008) 2 SCC (Cri) 637] , State of A.P. v. P. Khaja Hussain [(2009) 15 SCC 120 : (2010) 2 SCC (Cri) 380] and Sharda v. State of Rajasthan [(2010) 2 SCC 85 : (2010) 2 SCC (Cri) 980 : AIR 2010 SC 408] .) “

19. On a perusal of Ex.P1, complaint, Ex.P8 and Ex.P11 accidents registers and the evidence of PW.1 and PW.2 and the Doctors, PW.11 and PW.14, they contain the declarations of the deceased as to the cause of her sustaining burn injuries due to accidental fire on account of stove burst resulting in her death and those declarations are also admissible under Section 32 of the Indian Evidence Act. In Ex.P1, PW.1, who is the father of the deceased has stated that immediately after the occurrence, the deceased had informed him that the deceased accidentally caught fire, while cooking in a air stove, due to sudden burst of the stove. Further, PW.1 has also deposed that in Ex.P1, he had stated that no person was responsible for the said incident and it was an accidental fire.

20. PW.2, the mother of the deceased, who had taken the deceased to the Hospitals, in her cross examination, has admitted that at the time of admitting the deceased in the Hospitals, the deceased was conscious and she had spoken about the incident to the Doctors to the effect that she accidentally caught fire, while cooking, due to sudden burst of the air stove and the same was also recorded. Further, in Ex.P8 and Ex.P11, accident registers and as per the evidence of the Doctors, PW.11 and PW.14, the deceased herself had stated to the Doctors that she had accidentally caught fire, while cooking, due to the sudden burst of the kerosene stove.

21. PW.2 has also admitted in the cross examination that during the transit from the scene of occurrence to the Hospital, the deceased had also spoken to her mother as to how she caught fire. PW.15 the Investigating Officer has also admitted in his cross examination that he had enquired the deceased on 08.09.2007 and that she was conscious. However, no statement of the deceased was placed on record, thereby suggesting that the same was either suppressed or burked as it

would have revealed the actual cause of the death as an accidental fire. PW.15 has also admitted that the other witnesses, namely, Udhayabanu and Senguttavan, were examined on 08.09.2007, and in their statements, they have stated that the deceased caught fire while cooking and they have attempted to douse off the fire. No further statements had been obtained from them denying the earlier statements. As per their statements recorded on 8.9.2007, the deceased has claimed that she accidentally caught fire while cooking and such a version of the deceased, for the reasons stated above, cannot be simply brushed aside. Strangely, the above persons were neither acted as witnesses in the final report nor examined in Court.

22. None of the Doctors, PW.11, PW.12, PW.13 and PW.14 have opined that the death of the deceased could be suicidal one by self immolation. As per the version of PW.13 and PW.14, the deceased sustained burn injuries in the frontal parts of the body and in cases of accidental fire, at the time cooking, major burn injuries would be there in the frontal parts of the body. One significant factor, which creates a grave suspicion over the case of the Prosecution, is that there was no injury on the scalp or other portions of the head of the deceased, in which parts normally the burn injuries will occur in cases of self-immolation.

23. Thus, there are material inconsistencies between Ex.P7, dying declaration and the earlier statements of the deceased. Ex.P7 is directly contrary to the versions deposed by the deceased to PW.11 and PW.14, Doctors and in Ex.P8 and Ex.P11, accident registers and the oral evidence of PW.1 and PW.2 and the complaint, Ex.P1, thereby suggesting that only after coming to know that the victim was pregnant, the Prosecution wanted to fix some body in the case was projected as a case of abetment to commit suicide and thereby the deceased was tutored to give such a statement. The Trial Court erred in not taking into consideration the earlier versions and the attendant circumstances and not acting upon the same.

24. There is also delay in sending the requisition to record the dying declaration, which is also fatal to the case of the Prosecution, inasmuch as though the incident took place on 8.8.2007 at 11.00 a.m., as per the evidence of PW.10, the requisition to record the dying declaration was given only on the next day at 2.30 p.m. after a lapse of more than 24 hours and such a delay was also not explained by PW.15, Investigating Officer. There is also no evidence to show that on 09.09.2007, the condition of the deceased became worse and hence, the Doctors advised for recording of the dying declaration.

25. Further, the Trial Court erred in rendering a finding that Ex.P7 is the voluntary version of the deceased free from tutoring, since as per the evidence of PW.2, the deceased was kept in ICU Ward and in the absence of their parents, the deceased deposed voluntary version to the Magistrate. Without considering the evidence of PW.1 to PW.3, and the long time gap

in between, the Trial Court erroneously held as if none had accompanied the deceased and there was no possibility of tutoring. Whereas it is the admitted case that PW.1 and PW.2 were all along with the victim at the Royapettah Hospital and they had taken the victim to Kilpauk Medical College Hospital and there was a gap of one whole day, suggesting tutoring by them.

26. In a case of abetment to suicide, the Prosecution is bound to prove the death of the deceased as a suicidal one and in this case, there is no acceptable material to rebut the initial version of the investigation that the deceased caught fire accidentally while cooking. In this regard, the medical evidence is also not in conformity with the version of the Prosecution. Further, PW.14, the Doctor who had first admitted the victim in the Hospital had not stated anything about the smell of kerosene found on the body or the clothes of the victim. PW.13, the Doctor who had conducted the autopsy had deposed that the victim had suffered burn injuries on the frontal portions and that the pelvis, skull, brain and spinal column were normal and intact and had also opined that the victim could have suffered the burn injuries due to accidental fire while cooking. As per the evidence of PW.15, the Investigating Officer, admittedly, no kerosene smell or spillage was found in the scene of occurrence and nothing was noted in the mahazar. Further, as per the evidence of PW.11, he had not noted smell of kerosene on the body of the deceased at the time of admission and he has also not stated so in his statement recorded under Section 161 of Cr.PC and further admittedly, as per the mahazar, no mention of articles in the SOC were made and no kerosene can was found in the SOC. As per Ex.P13, observation mahazar, there was no kerosene odour in the SOC nor there was no mention of traces of spillage of kerosene on the floor of the SOC. There is also no scientific proof to support the case of the Prosecution in this regard. Further, no inquest was conducted to ascertain the nature of the death.

27. Further, PW.15, who is the Sub Inspector of Police, who registered the First Information Report and prepared the observation mahazar and obtained statement from the neighbours, had deposed that PW.5 who is the person who had informed about the incident to PW.1 had told him that the younger sister of the victim, namely, Nagalakshmi had informed him (PW.5) that her sister sustained burn injuries while cooking and she is the actual eye witness to the occurrence, whereas for reasons best known she was not examined in the Court on the side of the Prosecution. Further, he had deposed that he had immediately after the incident, enquired the neighbours, Senguttuvan and Udhayabanu, who have informed him that the victim sustained burn injuries due to accidental fire while cooking. As stated earlier, they have neither been cited as witnesses nor examined during the trial. Further, he had not stated anything about the spillage of kerosene or the smell of kerosene in the place of

occurrence. The clothes worn by the victim at the time of the incident have not been recovered, no evidence had been let in by the Prosecution with regard to the smell of kerosene either on the body of the victim or on the clothes worn by the victim. Taking note of the earlier versions of the victim, the statement of the persons who have witnessed the occurrence and the evidence let in the Trial Court by way of examination and cross examination, the defence theory seems credible that it could be a case of sustaining injuries due to accidental fire and the later versions of the victim could have been due to tutoring in order to fix some body having found that the victim girl was pregnant.

28. Further, the defence has examined DW.1, a neighbour, a flower vendor, who was having a shop right in front of the house of the victim, to speak about the incident to prove that the victim sustained injuries due to accidental fire and the Prosecution had not rebutted her evidence. Thus, by the other evidence and the preponderance of probabilities, the Appellant/accused had created a dent in the case of the Prosecution, suggesting that the victim sustained burn injuries due to accidental fire while cooking.

29. It would be relevant to refer to the judgement of Honourable Supreme Court reported in 2014 15 SCC 485 (Bansari Dass and others Vs. State of Orissa), wherein their Lordships have analysed and appreciated the evidence regarding accidental fire and the attended injuries and lend credence to the defence theory and acquitted the accused.

30. Thus, The Trial Court erred in holding that Ex.P7 alone is the sole dying declaration of the case and in not considering the statements made by the deceased PW.1 to PW.2 and to the Doctors. The Trial Court also erred in not considering the evidence of PW.1 and PW.2 with regard to the statement made by the deceased to them in the Hospital. Like wise, the evidence of PW.3, PW.4 and PW.5 should not have been accepted by the Trial Court in proof of the alleged love affair causing pregnancy on promise of marriage and subsequent refusal. The Trial Court mis-appreciated the evidence as to the direct and first account of the occurrence, which was only an accidental fire. The above narrated circumstances and discrepancies would go to show that the Prosecution miserably failed to establish the death of the deceased as a suicidal one and the initial version of the Prosecution that the deceased accidentally caught fire while cooking cannot be ruled out.

31. In AIR 1989 SCC 378 (Wazir Chand and another Vs. State of Haryana), while considering the circumstances sought to be relied on by the Prosecution to establish the case of suicide, in the absence of valid evidence to prove the said circumstances, the Honourable Supreme Court has held that a conclusion could not be reached without any reasonable certainty that the deceased committed suicide. In 1997 1 Crimes 122 (Changala Jaya Sankara Rao Vs. State of AP) it was held that

since the circumstances in that case are more in favour of the accidental death rather than suicidal or homicidal death, the accused therein cannot be held responsible for the death of the deceased.

32. In the case on hand, the Prosecution has relied on Ex.P7, dying declaration and the evidence of PW.1 and PW.2 to base conviction under Section 306 of IPC, namely, 'abetment'.

33. As analysed above, this Court is of the considered view that Ex.P7 cannot be believed and should be brushed aside. In case of multiple dying declarations, they should be consistent with each other and if there is any inconsistency between the multiple declarations, the declaration, pointing the guilt alone, cannot be taken into consideration and all the declarations have to be scrutinised with great care along with other materials and attendant circumstances. The Trial Court grossly erred in construing the earlier statements as the dying declarations of the deceased and acting upon the same. In fact, those declarations were made prior in point of time and Ex.P7, which has been recorded much later could have been due to tutoring. The attendant circumstances of the case as enumerated above would render support and corroboration to the version made in the other declarations of the deceased rather than the version set out in Ex.P7.

34. The Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. In 2008 2 SCC Cri. 637 (Amol Singh Vs. State of MP), it was held as under:-

"13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See:Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684]. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

14. It is to be noted that the High Court had itself observed that the dying declaration (Exh.P11) scribed

by the Executive Officer, (PW9) at about 0435 hours in the same night was not in conformity with the FIR and the earlier dying declaration (Exh.P3) scribed by ASI Balram (PW 8) in so far as different motives have been described. That is not the only variation. Several other discrepancies, even as regards the manner in which she is supposed to have been sprinkled with kerosene and thereafter set on fire.

15. Therefore, the discrepancies, make the last declaration doubtful. The nature of the inconsistencies is such that there are certainly material. That being so, it would be unsafe to convict the appellant. The conviction is set aside and appellant is acquitted of the charges. He be set at liberty forthwith unless required to be in custody in connection with any other case."

35. At this juncture, it is apposite to refer to Section 306 of IPC as under:-

"306. Abetment of suicide:- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Thus, the essential ingredients of offence under Section 306 of IPC are that (i) any person committed suicide, (ii) such commission of suicide was by the consequence of an abetment, (iii) the abetment was made by the accused. Further, to have the charge under Section 306 of IPC, the Prosecution has to prove that (a) the victim of the offence committed suicide, (b) the accused abetted the commission of suicide and such abetment being one under Section 107 of IPC. In this case, the Prosecution has failed to prove the basic ingredient that the death of the victim was due to suicide.

36. Now coming to the offence under Section 417 is concerned, the allegation against the Appellant/accused is that with a deceptive intention, the deceased had a love affair with the deceased and induced the deceased to have sexual intercourses on a false promise to marry her, which resulted in her pregnancy. It was also alleged that the deceased was five months pregnant at the time of occurrence. In this regard, an analysis of the evidence of PW.3 to PW.5 is relevant.

37. PW.3 to 5 are the close relatives of the deceased. In their examination in chief, they had suppressed their relationship, whereas their relationships got exposed during their cross examination and the evidence of the Investigating Officer and by the evidence of DW.1. Since being close relatives, suppression of their relationships at the initial stage during examination in chief makes them interested witness

in the Prosecution and creates a doubt regarding the veracity and truthfulness of their version.

38. Further, PW.3 in her evidence, has deposed that she knew the deceased and the Appellant from her childhood itself and that the deceased had told her that both of them were planning to marry and that on 8.9.2007 when the deceased asked the Appellant to marry her, he refused. Whereas, PW.4 has deposed that PW.4 saw both the Appellant and the deceased talking together in the house of the deceased and the deceased told that she was going to marry the Appellant. PW.5 has deposed that she saw the Appellant and the deceased together taking several times and even before the time of occurrence, she saw both together talking and when she questioned them, they told that they were going to marry.

39. The evidence of PW.3 with regard to the place where she met the deceased on 08.09.2007 is false, inasmuch as PW.3 admitted in the cross examination that on 08.09.2007 right from the early morning up to 2.00 p.m., she was at her grocery shop and she has not stated so in her chief and also during the investigation and later she introduced a new story for the first time in the cross examination as if she visited the house of the deceased to drink water and at that time, she met the deceased, which is contrary to her statement recorded under Section 161 of Cr.PC.

40. There is also a discrepancy in the evidence of PW.4, who deposed that he had accidentally seen the deceased and the Appellant talking together at the house of the deceased when he went to collect donation for Aadi Festival, but he did not whisper anything as to the date, timing or day particulars as to his visit to the house of the deceased.

41. The evidence of PW.5 also stands against the case of the Prosecution, inasmuch as the case of the Prosecution is that on 07.09.2007, when the deceased demanded the Appellant to marry her, the Appellant refused, but PW.5 had in her examination in chief stated that she had seen the deceased and the Appellant together on the previous night at 8.30 p.m. and when she had enquired them they have told her that they were going to get married, suggesting that there was no denial on the part of the Appellant/ accused to marry the accused. Thus, it is seen that the evidence of PW.3, PW.4 and PW.5 are contradictory in nature and improved against their previous statements.

42. In Ex.P7, dying declaration, there is no demonstration at all as to the ingredients necessary for the proof of the offence of cheating. The deceased had not stated as if the Appellant/accused made a false promise to marry her and induced by the same, the deceased consented for or had sexual intercourse.

43. From the evidence of PW.3 to PW.5, nothing has transpired with regard to the alleged inducement by way of false promise and sexual intercourse between the Appellant/accused and the deceased.

44. Another issue, which was left out to be proved by the Prosecution is that the Appellant/ accused was responsible for the pregnancy of the victim. A positive result of the DNA Test would have constituted clinching evidence against the Appellant/accused. As per the medical evidence, the foetus was five months old and the sex of the foetus was determined as male. There was ample opportunity for conducting DNA Test of the foetus and subjecting the Appellant/ accused for DNA analysis to prove the paternity of the child. In the case on hand, DNA Test was not done, which is fatal to the case of the Prosecution. If a DNA Test would have been done, there would have been some clinching evidence, favouring the Prosecution.

45. Section 417 of IPC prescribes punishment for the offence of cheating as defined under Section 415 of IPC. Section 415 IPC reads thus:-

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section."

46. The ingredients required to constitute the offence of cheating have been discussed by the Honourable Supreme Court in its decision reported in 1970 2 SCC 740 (Ram Jas Vs. State of U.P) as under:-

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property ; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived ; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

In the said decision, it was held that in the absence of evidence to show any fraudulent or dishonest inducement of the

prosecutrix by the appellant therein to constitute an offence under Section 415 IPC, the Appellant therein cannot be convicted for the offence under Section 417 of IPC. Following the said decision reported in 1970 2 SCC 740 (Ram Jas Vs. State of U.P), a similar view was also taken by the Honourable Supreme Court in its decision reported in 2016 4 SCC 140 (Tilak Raj Vs. State of HP).

47. In the case on hand, a careful reading of the evidence on record clearly shows that there is no evidence against the appellant, from which it can be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 IPC. For conviction of the appellant for the above said offence, it is important that all the necessary ingredients constituting an offence under the said section must be proved beyond reasonable doubt. In the instant case, the appellant cannot be convicted for the offence of cheating punishable under Section 417 IPC, as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt.

48. Golden rules of criminal jurisprudence are that suspicion however grave cannot take the place of proof and more graver the offence the Prosecution has to prove the guilt of the accused beyond all reasonable doubts and the Courts cannot convict the accused on mere surmises and presumptions.

49. In the light of the decisions referred to above and in view of the above discussions and reasons and on an overall analysis of the evidence placed on record, having regard to the probabilities of the case, this Court is of the considered view that the Prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubts and that the Trial Court committed a grave error in convicting the Appellant/accused in this case, based on such contradictory and discrepant evidence. Therefore, the impugned judgement of conviction and sentence is liable to be set aside and consequently, the Appellant is entitled for acquittal.

50. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount, if any paid by the Appellant, shall be refunded to him.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Public Prosecutor,
High Court, Madras.
- 2.The Inspector of Police,
D4, Zam Bazaar Police Station,
Chennai-14.
- 3.The VI Additional District and Sessions Judge,
Chennai.
- 4.The Metropolitan Magistrate XIII,
Egmore, Chennai.
- 5.The Chief Metropolitan Magistrate,
Egmore, Chennai
- 6.The Superintendent,
Central Prison, Puzhal, Chennai.
- 7.The Section Officer,
Criminal Section Record, High Court,
Madras. (+2 Copies)

Crl.A.No.553 of 2009

BR(CO)

RRS (08/05/2019)