

BAIL SLIP

The Petitioner in CrI.A.No.470 of 2010 (Accused namely, Srinivasakumar, S/o.Siddiyyan, S.C.No.291 of 2006 on the file of the District Judge Mahila Court, Coimbatore was directed to be released on bail as per the Order of this Court dated 10.08.2010 in CrI.M.P.No.1/2010 in CrI.A.No.470 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.470 of 2010

Srinivasakumar ..Appellant /Accused

-Vs-

State by The Assistant Commissioner of Police (L&O)
All Women Police Station (Central),
Coimbatore. ...Respondent

Prayer:- This Criminal Appeal is filed, under Section 374 (2) Cr.PC, against the judgement of conviction and sentence, dated, 28.07.2010, made in SC.No.291 of 2006, by the District Judge (Mahila Court), Coimbatore.

For Appellant : M/s.V.Sairam

For Respondent : Mr.K.Prabakaran, APP

JUDGMENT

- 1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 28.07.2010, made in SC.No. 291 of 2006, by the Mahila Court, Coimbatore, acquitting the Appellant/ accused for the offence under Section 498A of IPC and finding the Appellant/Accused guilty for the offence under Section 306 of IPC and convicting and sentencing the Appellant/Accused for the offence under Section 306 of IPC to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo six months Rigorous Imprisonment.
- 2.The case of the Prosecution is that the marriage between the appellant/accused and the deceased, Santha took place on 03.06.2001 at Udayar Thimuana Hall, Paramakudi and that at the time of marriage, 40 sovereigns of gold jewels and household

articles were given by the parents of the deceased and that thereafter, when they were living at K.K.Pudur, Coimbatore, the appellant/accused, suspecting fidelity of the deceased, had questioned her as to whether she was having a boyfriend and abused her with harsh words and thereby, committed cruelty on her. On 20.02.2006, during night hours, the appellant/accused had abused the deceased in a filthy language and saying her "to go to her parental home immediately or else he will send her out from his house". On 21.02.2006 around 8.00 a.m., the appellant/accused had abused her, saying her to go and die, due to which, the deceased committed suicide by self immolation by pouring kerosene. Hence, the Appellant/Accused was charge sheeted for the offences under Sections 498A and 306 of IPC.

- 3.The final report was filed before the learned Judicial Magistrate No.3, Coimbatore in PRC No.13 of 2006. After furnishing copies under Section 207 Cr.PC to the Appellant/Accused, since the case was exclusively triable by a Court of Sessions, the case was committed to the Principal District and Sessions Judge, Coimbatore, who in turn, had made over the case to the Mahila Court, Coimbatore for trial.
- 4.The Trial Court, after perusing the documents and hearing both sides, had framed necessary charges against the appellant/accused for the offence under Sections 498A and 306 of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, on the side of the prosecution PWs.1 to 16 were examined and Exs.P1 to P23 and M.Os.1 to 7 were marked.
- 5.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 evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, D.W.1 was examined and Ex.D.1 was marked.
- 6.The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, while acquitting the Appellant/Accused for the offence under Section 498A of IPC, found the accused/appellant guilty for the offence under Section 306 of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo six months Rigorous Imprisonment, which is challenged in this Criminal Appeal.
- 7.This court heard the learned counsel on either side.

8. The learned counsel for the appellant/accused would submit that the Trial Court, having acquitted the appellant/accused for the offence under Section 498A of IPC on the same set of facts and evidence, erred in convicting the appellant/accused for the offence under Section 306 of IPC. He would submit that the Trial Court had failed to take into consideration that PW.1, father, PW.2, mother and PW.3, brother of the victim/deceased have not supported the case of the prosecution and they have been treated as hostile and that Trial Court erred in believing Ex.P20, dying declaration, despite the fact that the scribe of the complaint one Kaleeswari, the Sub Inspector of Police who had recorded the statement of the deceased and one Doctor Sekar, who had attested the same, have not been examined.
9. The learned counsel for the Appellant/Accused would further submit that the other independent witness, PW.4, has also not supported the case of the prosecution and that though Ex.P5, medical certificate was stated to have been recorded in the presence of the Judicial Magistrate and though the duty Doctor was stated to have attested in Ex.P.5, she has not certified that the victim was physically and mentally fit at the time of giving the dying declaration and that when no such certification has been made and the doctor having not been examined, the Trial Court erred in placing reliance on Ex.P5 to base conviction. He would further submit that even assuming that the contents of the dying declaration are taken to be true, the Prosecution did not make out a case for abetment of suicide and that before invoking and raising presumption under Section 113A of the Evidence Act, 1872, the prerequisites must be established by the Prosecution.
10. The learned counsel for the Appellant would further submit that admittedly, there are two dying declarations in this case, viz. (1) the dying declaration recorded by PW.13, Judicial Magistrate, which was marked as Ex.P10 and (2) another dying declaration recorded by one Kaleeswari, Sub Inspector of Police, which was marked as Ex.P20, which formed basis for registration of the complaint and that the glaring contradiction and inconsistencies between the contents of Ex.P10 and Ex.P20 belies the case of the Prosecution, creating a doubt in the case of the Prosecution and that due to the contradictions, recording of the dying declaration by PW.13, Judicial Magistrate becomes suspicious and further, the said Kaleeswari, Sub Inspector of Police, who was stated to have been recorded the subsequent statement, has also not been examined and thereby creating a doubt in the case of the Prosecution. He would further submit that one Dr. Balasubramanian, who was examined on the side of the

defence as DW.1, who is the colleague of Dr.Sangeetha, had stated that the said Dr.Sangeetha had signed Ex.P5, however, no seal has been affixed to corroborate the same and that DW.1 had also stated that the counter signature / initial found in the corrections made in the column, viz., 'whether the patient was mentally fit to give such a statement?' pertains to that of Dr.Sangeetha, thereby creating a doubt with regard to the fitness of the deceased at the time of recording of the dying declaration and that DW.1 had further deposed that the victim was administered with pethidine and thereby suggesting that the victim could not have been in a fit state to give such a dying declaration.

- 11.The learned counsel for the Appellant/ accused would further submit that though a presumption could be drawn under Section 113A of the Indian Evidence Act, against that Appellant/Accused, the initial burden of proving such an offence has been committed by the appellant/accused under Section 498A IPC is on the prosecution and only on such evidence, the Court may presume that the Appellant/ accused had abetted and further, the presumption under Section 113A of the Indian Evidence Act is not as strict as mandated in Section 113B of the Indian Evidence Act. He would further submit that on facts, the Prosecution has not discharged the initial burden that the husband had instigated, abetted or intentionally aided so as to drive the wife to commit suicide or that the acts of the appellant were of such a decree which was likely to drive the wife to commit suicide.
- 12.The learned counsel for the Appellant/Accused would submit that conviction for offence under Section 306 of IPC is not sustainable on the allegation of harassment without there being any positive action of instigation or intentional aid proximate to the time of occurrence on the part of accused, which led or compelled the person to commit suicide. He would rely on the decisions of the Honourable Supreme Court in 2019 SCC Online SC 44 (Rajesh V. State of Haryana) and (2019) 3 SCC 315 (M.Arjunan Vs. State), in support of his contentions.
- 13.Per Contra, the learned Additional Public Prosecutor would submit that though the parents of the deceased have not supported the case of the prosecution and have turned hostile, Ex.P10, dying declaration given by the deceased and recorded by PW.13, the Judicial Magistrate, in the presence of the duty Doctor, who had certified with regard to the fitness, is clinching and the Trial Court placing reliance on the dying declaration of the victim had rightly convicted the Appellant/ accused. He would further submit that the incident had occurred at 8.00 a.m., on 21.02.2006, and the dying

declaration was recorded at 9.50 a.m., on the same day within one hour and that the victim had specifically stated that her husband suspected her fidelity and that after consuming liquor, he used to beat her and that on the previous day, he had consumed liquor and had beaten her and even in the morning, prior to the occurrence the appellant/accused had created a problem with the victim/deceased and thereby, she being fed up with her life had gone into the bathroom and committed suicide by self immolating herself. He would further submit that Ex.P5 is the Certificate of Fitness issued by Dr.Sangeetha, certifying that the victim was conscious and was in a fit state of mind when the dying declaration was recorded by PW.13, Judicial Magistrate. Subsequently, a statement had been recorded by the Sub Inspector of Police, Kaleeswari, in the presence of Dr.Sangeetha. Even eschewing all other statements, Ex.P10, the dying declaration recorded by PW.13, Judicial Magistrate, is clinching and there is no reason to disbelieve it. There is no contradiction between the statements recorded from the deceased and there is no reason or circumstance giving rise to any suspicion about its truthfulness. He would further submit that the Trial Court, raising presumption against the appellant/accused under Section 113A of the Evidence Act and accepting the dying declaration as the statement made under Section 32 of the Evidence Act, has rightly convicted the appellant/accused and that though the parents of the deceased have turned hostile before the Court, the Trial Court, placing reliance on the dying declaration of the victim and other corroborative evidence through independent witness, had rightly convicted the appellant/accused.

14.The learned Additional Public Prosecutor would submit that the statements have been recorded during RDO Enquiry wherein the father, mother and brother of the victim/deceased have stated in detail with regard to the harassment, meted out to the victim deceased and that immediately after the occurrence, a statement has been recorded by Kalaimani, the Sub Inspector of Police in the presence of Dr.Sangeetha, who has certified about the consciousness of the patient while the statement was recorded, wherein the victim had vividly stated about the harassment inflicted on her by the appellant/accused.

15.At this juncture, the learned counsel for the appellant/accused would submit that the statements recorded, during the enquiry by the Revenue Divisional Officer can only be construed as statements recorded during the enquiry/investigation and that the close relatives have not supported the case of the prosecution in the witness box during the trial and thereby the statements made before the RDO cannot be taken into consideration and they have to be

brushed aside. He would further submit that the Trial Court ought to have taken into consideration the attended circumstances in the case and that the presumptions against the appellant/accused under Section 113A of the Evidence Act having not been proved, ought to have acquitted the Appellant. He would also submit that as per the Accident Register, Ex.P6, the deceased was stated to have sustained 100% burn injuries, which were II to III degree burns and it would not have been possible to give a dying declaration. Further, the conduct of the Appellant/Accused immediately after the occurrence would infer that it was not the intention of the appellant/accused to drive the victim to commit suicide and that it could be inferred from the facts that immediately after the occurrence he had attempted to save his wife, due to which he had sustained grievous injuries and was admitted as an inpatient and the treatment taken by him in the hospital has been spoken to by PW.15, Investigating Officer and these facts improbabilise the theory of the appellant having abetted suicide. In support of the above contentions, the learned counsel for the appellant/accused would rely on the judgement reported in (2001) 9 SCC 618 Ramesh Kumar V. State of Chhattisgarh.

16.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.

17.The Trial Court, in and by the impugned judgement, while acquitting the Appellant/Accused for the offence under Section 498A of IPC, had found the Appellant/Accused guilty and sentenced him for the offence under Section 306 of IPC, as stated above, holding that the Prosecution, by cogent evidence, had proved that the Appellants/ accused had committed acts of incitement to the commission of suicide by the deceased.

18.Now, the Points for consideration is as to whether the Trial Court is justified in convicting Appellant/Accused for the offence under Section Section 306 of IPC despite the fact that the relatives of the victim/deceased turning hostile and having not supported the case of the Prosecution and there being multiple statements recorded from the deceased.

19.In this context, while analysing the entire evidence, PW.1, Nithyanandham, a retired Government Servant, PW.2, Indirani and PW.3, Sivasankaran, PW.4, Mayadevi, are respectively the father, mother and brother and a neighbour, of the deceased and they have not supported the case of the Prosecution and they have been treated as hostile.

20.PW.5, Gopinath is a witness to the preparation of the observation mahazar and he had attested the observation mahazar. PW.6, Kanagaraj, is also a witness to the observation mahazar and also to the recovery mahazar under which MO.1, plastic bottle, MO.2, match stick, MO.3, piece of burn cloth, MO.4, iron hook of the door, Mos.5 and 6, photographs, MO.7, negatives, were seized. PW.7, Ravi, is the cousin of the deceased and he has also not supported the case of the prosecution and he has been treated as hostile. PW.8, Ramamani, is the maternal grandfather of the victim/deceased and he has also not supported the case of the prosecution and he has been treated as hostile.

21.PW.9 , Dr.Sekar, is the Chief Medical Officer, K.G.Hospital, Coimbatore, who had examined the victim/deceased and had spoken to about the treatment given on 21.02.2006, at 8.55 a.m. to the victim/deceased, who was admitted in the hospital for taking treatment for burn injuries. He had deposed that the victim/ deceased had sustained severe burn injuries all over the body and at that time Dr.Sangeetha, was on duty in the out patient ward and that an intimation under Ex.P4 was given to the Judicial Magistrate for recording the dying declaration of the victim/deceased and that based on the intimation, the learned Magistrate had visited the hospital and had recorded the dying declaration and that Dr.Sangeetha, Duty Doctor, had certified with regard to the fitness of the victim/deceased and the portion of the certificate of fitness was marked as Ex.P5 and that the victim/deceased had been taking treatment till 04.03.2006 and that she had died on 04.03.2006 at 12.40 p.m and the medical documents related to the medical history was marked as Ex.P6 and during cross examination, he had deposed that there are corrections with regard to the date and time in respect of Ex.P6 (Accident Register).

22.PW.10, Dr.Kulandaivelu, who had conducted autopsy on the body of the victim/deceased, had deposed that on 05.03.2006, on the request of the District Revenue Officer sent through Woman Police Constable, Jayalakshmi, he had conducted autopsy on the body of the deceased and he had given an opinion that the victim/deceased died of "extensive burns and its complications" and that viscera does not contain any poison and that the post-mortem report was marked as Ex.P7 and the chemical analysis report was marked as Ex.P8 and the finding of the doctor opinion was marked as Ex.P9.

23.PW.11, Sathishkumar, photographer, had deposed that on instructions of the Investigating Officer, he had visited the scene of occurrence and taken photographs and the said

photographs were marked as MO.5 series and thereafter, he had taken photographs of the victim/deceased marked as M.O.6 series; and the photo negatives were marked as M.O.7 series.

24.PW.12, Jayalakshmi, the Police constable had deposed that she had taken the body of the deceased for post-mortem and after completing post-mortem, she handed over the body of the deceased to the relatives of the victim/deceased.

25.PW.13, P.Saravanan, is the Judicial Magistrate, who had recorded the dying declaration and he had deposed that on 21.02.2006, while he was working as Judicial Magistrate, he had received a requisition at 9.40 a.m. from K.G.Hospital, Coimbatore and he had reached the hospital at 9.50 a.m and recorded the statement of the deceased after he had obtained the certificate with regard to the fitness of the victim/deceased from the Doctor and finding that the victim was fit, he had enquired the Doctor with regard to her fitness and informed her about him recording the dying declaration and after getting acceptance from the Doctor, recorded dying declaration. He had further deposed that the dying declaration from the deceased was recorded between 9.55 a.m. to 10.03 a.m., and after recording the dying declaration he had read about what he had recorded from the deceased and after getting her assertion as to the correctness of the statement recorded and having found that there were severe injuries in her hand, had obtained the impression of her left big toe in the statement. He had further deposed that he had obtained statement from Dr.Sangeetha with regard to her fitness from the beginning of recording statement till the end and that thereafter, he had sent the dying declaration report to the Court concerned, which was marked as Ex.P10.

26.PW.14, Ramadoss, Revenue Divisional Officer had deposed that on 04.03.2006, while he was on duty, he had received FIR in Cr.No.28 of 2006 and that since the death of the victim/deceased had happened within 7 years of marriage, he had conducted inquest on the body of the deceased in the Hospital and examined the parents of the victim/deceased and independent witnesses and recorded their statements. He had further deposed that the statements recorded from the father, mother and brother of the victim/deceased were marked as Exs.P11, 12 and 13 respectively and the statement of the Doctor was marked as Ex.P14 and the statement recorded from the independent witnesses have been marked as Exs.P15, 16 and 17 respectively and that thereafter, he had sent the inquest report marked as Ex.P18 and thereafter, he had sent a request to the Hospital for conducting post-mortem and he had opined that there was no demand of dowry. However, he had stated that he had opined that since the appellant/accused had suspected

fidelity and abused her in a filthy language, she had committed suicide. The final opinion was marked as Ex.P19. In his cross examination, he had stated that the victim had sustained burn injuries throughout her body and thereby, he was unable to note the identification marks and that there are burn injuries in both hands and throughout the legs and further deposed that the panchayatdars were examined and they have informed that they did not know the reason for the victim/deceased committing suicide.

27.PW.15, Vijayalakshmi, the Sub Inspector of Police, had deposed that on 21.2.006 at 11.00 p.m., she had registered the case for offences under Sections 498A and 309 of IPC based on the statement of the victim/ deceased recorded by the Sub Inspector of Police, Kaleeswari, which was marked as Ex.P20 and registered the case in Cr.No.28 of 2006, for the offence under Sections 498A and 309 of IPC and prepared the printed First Information Report, which was marked as Ex.P21 and thereafter, she had sent Exs.P20 and 21 to the Court and had taken up the case for investigation and that thereafter, she had gone to the hospital and recorded the statements from the father, mother and brother of the victim/deceased. On 22.02.2006, she had gone to the place of occurrence and prepared the observation mahazar under Ex.P3 and rough sketch under Ex.P22 in the presence of witnesses, PW.5, Gopinath and PW.6, Kanagaraj and that she had called the photographer, PW.11 and he had taken photographs at the scene of occurrence and that P.W.15, Investigating Officer recovered MOs.1 to 4 in the presence of witnesses viz., the Pepsi Plastic bottle with kerosene, match box, a piece of burned cloth with kerosene, hook iron latch of the bathroom and thereafter, she had recorded the statements of the witnesses and that on 25.02.2006, at 4.00 p.m., she arrested the appellant/accused at K.G.Hospital and sent him to judicial remand on 04.03.2006 at 15.00 hours and thereafter, on coming to know about death of the victim/deceased, she altered the case in Cr.No.28 of 2006 to for the offences under Sections 498A and 306 of IPC. She had further deposed that the alteration report was sent to the Revenue Divisional Officer and since the victim/deceased had died within 7 years of marriage, she had referred the case for RDO Enquiry and that PW.1 had informed her that after the marriage his daughter was living happily for ten days and thereafter, her son in law had suspected her fidelity and had caused cruelty on her and that on examination of the relatives of the victim/deceased, they have informed him that the appellant/accused used to harass her and committed cruelty on her suspecting her fidelity and that his daughter had informed him that the appellant/accused was committing cruelty on her and that the mother of the victim/deceased had informed about the appellant/accused

abusing her with filthy language on 20.02.2006 in the night hours and abused her under the influence of liquor and once again, on the next day he had abused her and had further deposed that after the victim had self immolated herself and the appellant/accused had taken her to the hospital. During her cross examination, the Investigating Officer had deposed that she has not examined Kaleeswari-Sub Inspector of Police, who had recorded the statements from the victim/deceased under Ex.P20 and she had not conducted any investigation with regard to her admission in the hospital. She had admitted to have made corrections in Ex.P21 with regard to the time and that she has not explained with regard to the delay in Ex.P21. She had further stated in cross examination that , she had obtained statement on the next day morning however, she had not taken any certificate with regard to the fitness and she had admitted that she was not aware of the alleged impressions of the left big toe taken in Exs.P10 to Ex.P20.

28.PW.16, Kumarasamy, is the Deputy Superintendent of Police and he had deposed that the case was registered and initially investigated by Vijayalakshmi, the Sub Inspector of Police, PW.15 and thereafter since, the victim/deceased had succumbed to the injuries on 04.03.2006, the case was altered to 498A and 306 of IPC and after receiving the Special Report, he had gone to the place of occurrence and recorded the statements of the relatives of the victim/deceased and other independent witness and thereafter, a request was made to Revenue Divisional Officer to send the body for post-mortem and after completing post-mortem, handed over the body to the relatives. He had further deposed that he had recorded the statements of PW.9, Sekar and PW.12, Jayalakshmi and on 30.03.2006, he had received the inquest report from the Revenue Divisional Officer and thereafter, he had examined the Revenue Divisional Officer and the photographer and on 19.05.2006, he had filed the Final Report against the appellant/accused for offences under Section 498A and 306 of IPC. He had further deposed that PW.1, during his investigation had told him that his son in law had harassed and committed cruelty on his daughter suspecting her fidelity and that on 20.01.2006, he had received a phone call from his wife stating that her daughter immolated herself and thereafter, he had come to the hospital and seen her with burn injuries.

29.On the side of the defence, one Dr.B.Balasubramaniam was examined as DW.1 and the case sheet was marked as Ex.D1. He had deposed that as per Ex.D1, the victim/deceased had been administered with pain killers namely pethidine, at 10.30 a.m. and it had been noted in the case sheet.

30.An overall scrutiny of the evidence on record and the

judgement of the Trial Court shows that the Trial Court had convicted the Appellant/Accused, relying on the statement of PW.9, Dr.Sekar, and placing reliance on Ex.P10, dying declaration recorded by PW.13, Judicial Magistrate. The learned counsel for the Appellant/Accused has raised a point, stating that the dying declaration recorded by PW.13, Judicial Magistrate is doubtful and that the victim, who had suffered 100% burn injuries, which was in the nature of II and III Degree burns, could not have given a dying declaration. Further, as per the evidence of DW.1 and Ex.D1, the deceased had been administered with pethidine and thereby she could not have given the dying declaration and thereby, the Trial Court erred in convicting the Appellant/ accused, based on Ex.P10 dying declaration and the evidence of PW.13, Judicial Magistrate. He has further argued that another statement was recorded by one Kaleeswari, Sub Inspector of Police (who was not examined) and there are inconsistencies in the statement recorded in the presence of Judicial Magistrate in Ex.P10 and the statement recorded by Kaleeswari, based on which the First Information Report was registered. He has further argued that even taking into consideration the contents of the dying declaration, the ingredients of the offence under Section 306 of IPC are not made out since there was no positive action of instigation or intentional aid proximate to the time of occurrence on the part of the Appellants/ accused. On this aspect, it is apposite to refer to the conditions precedent for convicting an accused based on dying declaration, laid down by the Honourable Supreme Court in its decision reported in 2010 8 SCC 514 (Lakhan Vs. State of MP), wherein in paragraph 9 to 21, it was held as under:-

"9. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction

can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide *Khushal Rao v. State of Bombay* [AIR 1958 SC 22 : 1958 Cri LJ 106] , *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264 : 1974 SCC (Cri) 426 : AIR 1974 SC 332] , *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] , *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455 : 1981 SCC (Cri) 364] , *Uka Ram v. State of Rajasthan* [(2001) 5 SCC 254 : 2001 SCC (Cri) 847] , *Babulal v. State of M.P.* [(2003) 12 SCC 490 : 2005 SCC (Cri) 620] , *Muthu Kutty v. State* [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] , *State of Rajasthan v. Wakteng* [(2007) 14 SCC 550 : (2009) 3 SCC (Cri) 217] and *Sharda v. State of Rajasthan* [(2010) 2 SCC 85 : (2010) 2 SCC (Cri) 980] .)

11. In *Munnawar v. State of U.P.* [(2010) 5 SCC 451 : (2010) 2 SCC (Cri) 1285] this Court held that a dying declaration can be relied upon if the deceased remained alive for a long period of time after the incident and died after recording of the dying declaration. That may be evidence to show that his condition was not overtly critical or precarious when the dying declaration was recorded.

12. A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim, however, circumstances showing anything to the contrary should not be there in the facts of the case.

(Vide Ravi Chander v. State of Punjab [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] , Harjit Kaur v. State of Punjab [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] , Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] and Vikas v. State of Maharashtra [(2008) 2 SCC 516 : (2008) 1 SCC (Cri) 486] .)

13. In Balak Ram v. State of U.P. [(1975) 3 SCC 219 : 1974 SCC (Cri) 837 : AIR 1974 SC 2165] the question arose as to whether a dying declaration recorded by a higher officer can be discarded in case of multiple dying declarations. The Court held as under: (SCC p. 235, para 54)

"54. ... The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The civil services (sic servants) have no platform to controvert allegations, howsoever grave and unfounded. It is, therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

14. In Sayarabano v. State of Maharashtra [(2007) 12 SCC 562 : (2008) 3 SCC (Cri) 303] , two dying declarations had been recorded. As per the first declaration, the deceased had met with an accident. She was hit by the kerosene lamp which fell on her body and caught fire. While recording the second declaration, the Judicial Magistrate asked her why she was changing her statement. The deceased replied that her mother-in-law had told her not to give any statement against the family members of her in-laws and that was the reason, why she had not involved any person in the earlier statement. But, in fact, it was her mother-in-law who threw the kerosene lamp on her and thus, she was burnt. She also stated that her mother-in-law was harassing her. In such a situation, this Court held that the second dying declaration was true and inspired confidence. Ill treatment of the deceased was clearly established and completely proved on the basis of the evidence of other witnesses.

15. In case, there are inconsistent dying declarations, the Court must rely upon any other evidence, if available, as it is not safe to act only on inconsistent dying declarations and convict the accused. (Vide Lella

Srinivasa Rao v. State of A.P. [(2004) 9 SCC 713 : 2004 SCC (Cri) 1479])

16. In Sher Singh v. State of Punjab [(2008) 4 SCC 265 : (2008) 2 SCC (Cri) 783 : AIR 2008 SC 1426] , a case of bride burning, three dying declarations had been recorded. In the first dying declaration, the deceased had denied the role of the accused persons. In the second dying declaration the deceased attributed a role to the accused but the said declaration did not contain the certificate of the doctor that the deceased was in a fit state of mind to make a declaration, however, the Magistrate, who recorded the declaration, certified that the deceased was in a conscious state of mind and was in a position to make the statement to him. The third dying declaration was recorded by a police officer after the doctor certified that she was in a fit state of mind to give the statement. This Court held that the conviction could be based on the third dying declaration as it was consistent with the second dying declaration and the oral dying declaration made to her uncle, though with some inconsistencies. First declaration was made immediately after she was admitted in the hospital and was under threat and duress by her mother-in-law that she would be admitted in hospital only if she would give a statement in favour of the accused persons.

17. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] this Court held that a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement.

18. In Amol Singh v. State of M.P. [(2008) 5 SCC 468 : (2008) 2 SCC (Cri) 637] this Court, placing reliance upon the earlier judgment in Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684 : 1993 SCC (Cri) 655] , held that it is not the plurality of dying declarations but the reality thereto that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. If there is more than one dying declaration, they should be consistent. In case of inconsistencies between two or more dying declarations made by the deceased, the Court has to examine the nature

of inconsistencies, namely, whether they are material or not and in such a situation, the Court has to examine the multiple dying declarations in the light of the various surrounding facts and circumstances.

19. In Heeralal v. State of M.P. [(2009) 12 SCC 671 : (2010) 1 SCC (Cri) 686] this Court considered the case having two dying declarations, the first recorded by a Magistrate, wherein it was clearly stated that the deceased had tried to set herself ablaze by pouring kerosene on herself. However, the subsequent declaration was recorded by another Magistrate and a contrary statement was made. This Court set aside the conviction after appreciating the evidence and reaching the conclusion that the courts below came to abrupt conclusions on the purported possibility that the relatives of the accused might have compelled the deceased to give a false dying declaration. No material had been brought on record to justify such a conclusion.

20. In State of A.P. v. P. Khaja Hussain [(2009) 15 SCC 120 : (2010) 2 SCC (Cri) 380] this Court set aside the conviction as there was a variation between the two dying declarations about the manner in which the deceased was set on fire and for the reason that there was no other evidence to connect the accused with the crime.

21. In view of the above, the law on the issue of dying declaration can be summarised to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

31. While analysing the case on hand in the light of the aforesaid settled legal proposition, in this case, as per the evidence of PW.9, Dr.Sekar, he had deposed about the admission

of the victim/ deceased in the Hospital on 21.2.2006 at 8.55 a.m. and that the intimation under Ex.P4 had been sent to the Judicial Magistrate, who had recorded the dying declaration from the victim/ deceased between 9.55 a.m. and 10.03 a.m. and that the Duty Doctor Sangeetha had certified to the fitness of the victim/ deceased in giving the statement and that after recording of dying declaration, the victim/ deceased had died on 4.3.2006 at 12.40 p.m. The case history was marked as Ex.P6 and he had deposed that the reason for not examining Dr.S.Sangeetha was that she was not presently working in the Hospital and that he had identified the signatures of Dr.S.Sangeetha. Admittedly, on admission of the victim, the intimation was sent to the Judicial Magistrate, PW.13, who had recorded the statement. Yet another ground raised by the learned counsel for the Appellant was that the victim/ deceased was administered with pethidine and she could not have given the dying declaration and he had relied on Ex.D1, the case sheet. A perusal of the records shows that pethidine had been administered to the victim/ deceased at 10.30 a.m., whereas the dying declaration had been recorded much prior to it at 10.03 a.m. itself. There is no reason to doubt about the recording of the dying declaration, Ex.P10.

32. Another point raised by the learned counsel for the Appellant/ accused is that yet another statement was recorded by one Kaleeswari, which had been marked as Ex.P20, based on which the First Information Report was registered. The learned counsel for the Appellant/Accused has argued that there were inconsistencies in the dying declaration. As stated above, when there are more than one dying declaration, the Law is that if the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it without any further corroboration and it is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration.

33. The Court has to scrutinise the dying declaration carefully and must ensure that the dying declaration is not result of tutoring, prompting or imagination. This Court has carefully gone through the dying declarations. The dying declaration under Ex.P10 has been recorded by a Judicial Magistrate, which would stand on much higher footing than the dying declaration recorded by an officer of lower rank. Subsequently, a statement had been recorded by the Sub Inspector of Police, Kaleeswari, which had been marked as Ex.P20. Even eschewing Ex.P20, the dying declaration recorded by the Judicial Magistrate, inspires confidence

34. However, strangely, in this case, all the relatives of the victim/deceased, PW.1 to PW.3, father, mother and brother of

the deceased, respectively and PW.7 and PW.8, cousin and maternal grand father of the deceased, have not supported the case of the prosecution and they have been treated as hostile by the prosecution.

35. In this case, there are two dying declarations, viz. Ex.P20 recorded by one Kaleeswari, Sub Inspector of Police, B1 Police Station in the presence of Dr.S.Sangeetha and Ex.P10 was recorded by PW.13, Judicial Magistrate. In Ex.P5, Dr. Sangeetha had certified with regard to the fitness of the victim at time of recording dying declaration. It was contended by the counsel for the appellant that reliance cannot be placed on the statement recorded by Kalaimani, sub Inspector of Police without the said Kalaimani being examined.

36. The fact remains that Ex.P10 was recorded by P.W.13, Judicial Magistrate in the presence of Dr.Sangeetha, who had certified in Ex.P5 as under:-

"என் கணவர் என் மீது சந்தேகப்பட்டு அடிக்கடி என்னை திட்டுவார். அதனால் எனக்கும் என் கணவருக்கும் அடிக்கடி பிரச்சினை ஏற்படும் என் கணவர் மது அருந்திவிட்டு எந்து என்னை அடிப்பார். நேற்று (20.02.2006) இரவு என் கணவர் தண்ணி அடித்து விட்டு வந்து என்னை அடித்தார். அது பற்றி என் கணவரின் அண்ணனிடம் சொன்னேன். இன்று காலை மீண்டும் என் கணவர் என்னிடம் பிரச்சினை செய்தார். அதனால் நான் மிகவும் வெறுத்து போய் என்விட்டு பாத்ரூம்க்குள் சென்று நானே என்மீது மண்ணெண்ணெய் ஊற்றி தீ வைத்துக் கொண்டேன். குடும்ப பிரச்சினை மற்றும் என் கணவர் என் மீது சந்தேகப்பட்டதாலும் நான் இப்படி செய்து கொண்டேன்."

37. In Ex.P10, it was recorded to the effect that the deceased was in a fit state of mind at the time recording dying declaration and that after understanding the contents of the same, she affixed her left big toe impression on the same and that duty Doctor was also there at that time. Even in Ex.P20, the deceased had stated that the Appellant, suspecting her fidelity, was abusing her in a filthy language frequently and that he shouted against the deceased, saying that she should go to her parents house and had beaten her.

38. In Ex.P18, RDO Report, though it has been stated that the death of the deceased was not due to dowry harassment, however, it was opined that the Appellant/ accused suspecting her fidelity, had abused her in a filthy language and harassed her and hence, unable to bear with such harassment, the deceased committed suicide.

39. As regards the dying declaration, the Honourable Supreme Court, in 2017 [1] SCC 529 [Ramesh and Others V. State of Haryana], has held in paragraph No.31 thus:-

"31. Law on the admissibility of the dying declarations is well settled. In Jai Karan v. State of N.C.T., Delhi

MANU/SC/0613/1999 : (1999) 8 SCC 161, this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no Rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard and fast Rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement (See Rambai v. State of Chhatisgarh MANU/SC/0856/2002 : (2002) 8 SCC 83)."

40. In 2019 SCC Online SC 44 (Rajesh V. State of Haryana) and (2019) 3 SCC 315 (M. Arjunan Vs. State), the Honourable Supreme Court has held that the essential ingredients of the offence under Section 306 of IPC are (i) the abetment and (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused however insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, an accused cannot be convicted under Section 306 of IPC.

41. In 2018 9 SCC 621 (Siddaling Vs. State through Kalagi Police

Station), the Honourable Supreme Court has held that abetment involves a mental process of instigating a person in any manner aiding that person in doing of a thing and that Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim had induced her to commit suicide.

42. In this case, on a close reading of the dying declarations and other evidence on record, it is seen that the victim had been continuously subjected to harassment by the appellant/accused, suspecting her fidelity. There had been a continuous mental process whereby the victim/ deceased had been instigated to commit suicide. Even just prior to the occurrence, the appellant/accused had subjected her to cruelty and thereby in the opinion of this Court, the Prosecution has proved the ingredients of Section 306 of IPC. Though the close relatives, viz., father, mother and brother of the victim/deceased have turned hostile and have not supported the case of the prosecution, the Prosecution had proved its case through the dying declaration, Ex.P.10, recorded by P.W.13-Judicial Magistrate and that the deceased was in a fit state of mind at the time of recording dying declaration. This Court finds no reason to disbelieve the dying declaration, Ex.P10.

43. Keeping in mind the above ratio laid down by the Honourable Supreme Court, this Court is of the considered view that the dying declaration as well as the statements given by the victim/deceased to the learned Magistrate as well as to the Doctors do not suffer any infirmity. Further, while analysing the contents of the dying declaration, this Court is of the opinion that it was the appellant/accused who, by his acts, abetted and had driven the victim to take an extreme step of putting an end to her life, by committing suicide and that the Trial Court, had rightly convicted him for the offence under Section 306 of IPC.

44. Now coming to the question of sentence, it is the contention of the learned counsel for the Appellant/Accused that admittedly, immediately after the occurrence, the appellant/accused had made an attempt to save his wife/victim and admitted her in the hospital and thereby, he had also sustained injuries and he was also hospitalised, thereby, suggesting that the intention of the appellant/accused was not to abet the victim to commit suicide. Further, the parents and the brother of the victim have also not supported the case of the prosecution and presently his child is with him and he is taking care of his child and the above mitigating circumstances may be taken into consideration for reduction of sentence.

45.The evidence of PW.7, Dr.Sekar and perusal of the Accident Register, Ex.P.6 discloses that the victim was brought to the hospital with burn injuries by her husband, the appellant/accused herein. The Appellant had sustained severe injuries while attempting to save the deceased. Considering the attended and mitigating circumstances that immediately after the occurrence, the appellant/accused had attempted to save the life of his wife and that he had also sustained burn injuries and further that the appellant/accused has got a child to take care of and that he has not committed any further criminal acts pursuant to his release on bail, this Court is of the considered view that reducing the sentence of imprisonment imposed on him to a period of one year rigorous imprisonment, would meet the ends of justice.

46.In the result, this Criminal Appeal is partly allowed. The impugned judgement of conviction and sentence for the offence under Section 306 of IPC is confirmed. However, considering the above said mitigating circumstances, while confirming the imposition of fine amount, with default sentence, the sentence of Rigorous Imprisonment is modified to the period of one year Rigorous Imprisonment. Since it is reported that the appellant/accused is on bail, the Respondent Police police is directed to secure the presence of the appellant/accused to undergo the period of sentence now imposed.

ssi/Srcm

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Police,
Law and Order,
All Women Police Station,
(Central), Coimbatore.

2.The District Judge
(Mahila Court), Coimbatore.

3. The Public Prosecutor, High Court, Madras.

4. The Judicial Magistrate No.III,
Coimbatore.

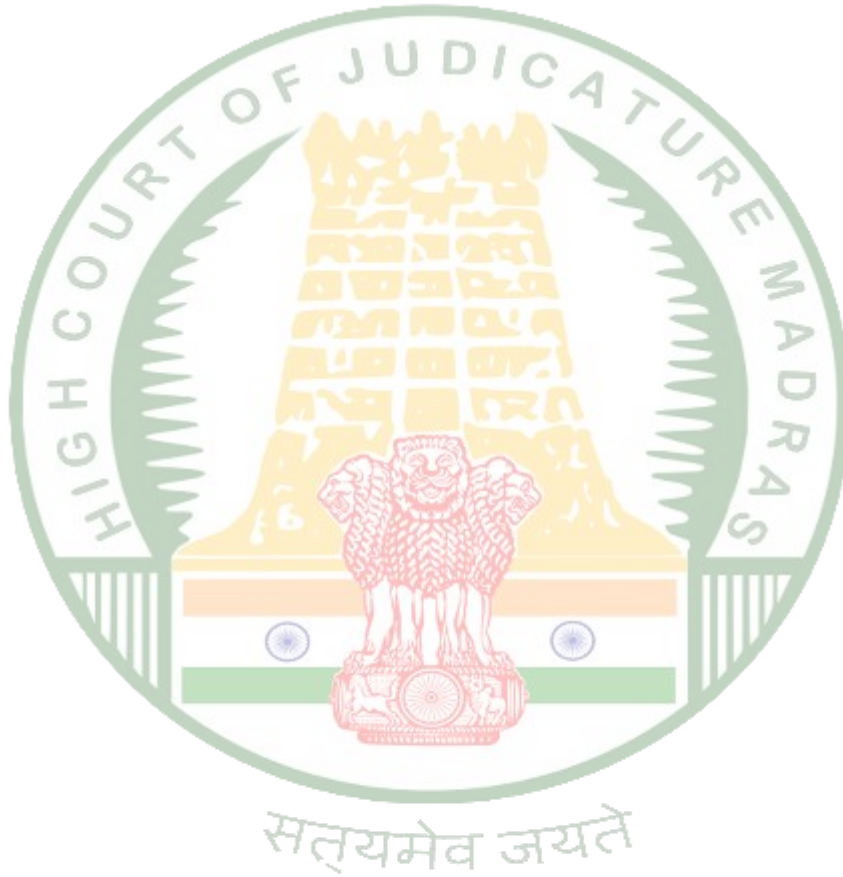
5. The Chief Judicial Magistrate,
Coimbatore

6. The Superintendent, Central Prison.
Coimbatore

+1cc to Mr.V.V.Sairam, Advocate, SR.No.61502

Crl.A.No.470 of 2010

Kak(05/11/2019)



WEB COPY