

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2019

Delivered on : 14.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.140 of 2018
and CrI.M.P.No.3374 of 2018

Manivelraj, Male, aged 40 years,
son of Late Velan,
No.73, Indira Nagar,
Sowripalayam,
Coimbatore-641 028. Appellant/sole Accused

Vs.

The State, represented by
The Inspector of Police,
B-6, Peelamedu Police Station,
Crime No.1662 of 2013,
Coimbatore. Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal
Procedure Code, seeking to set aside the judgment dated
27.12.2017 rendered in S.C.No.13 of 2015 by the Additional
District and Sessions Judge, Mahila Court (Full Additional in-
charge), Coimbatore.

For Appellant : Mr.R.John Sathyan

For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, the sole accused in S.C.No.13 of 2015 on the
file of Additional District and Sessions Judge, Mahila Court
(Full Additional in-charge), Coimbatore, stood charged,
convicted and sentenced to undergo life imprisonment for the

offence punishable under Section 302 IPC along with fine amount of Rs.2000/-, in default to undergo rigorous imprisonment for three months. This criminal appeal is preferred seeking to overturn the judgment of the trial Court as aforesaid.

2. Facts in Brief:-

2.1.Both the appellant and the deceased-Parameshwari were married to third parties. For the reasons known, they started living together. For four years prior to the occurrence dated 21.12.2013 at about 9.00p.m., they used to quarrel frequently with each other, as the appellant developed intimacy with one Kala(not examined). On the fateful day, there was a prior quarrel, pursuant to which, the appellant poured Kerosene on the deceased and set her ablaze.

2.2 Upon hearing the alarm raised by the deceased, witnesses came and found the deceased on fire. The appellant was found missing having disappeared from the place. He was also suffering from injuries. The deceased was taken to the hospital by an Ambulance. P.W.19-Sub Inspector of Police (In-charge), on 22.12.2013 at 00.15 hours after receiving information from CMC Hospital, Coimbatore, went to the hospital and recorded the statement of the deceased under Ex.P16 and accordingly, registered a case as against the accused in Crime No.1662 of 2013 for the offence punishable under Section 307 IPC. Ex.P17 is the printed First Information Report. P.W.14-Dr.Shenbagavalli, who is the Doctor on duty on the fateful day, examined the deceased to whom it was stated that she poured Kerosene on herself in an attempt to self immolate. Ex.P11 is the copy of the Accident Register, wherein the following has been recorded.

"Suicidal attempt by lighting fire on herself with Kerosene at around 9.00p.m., on 21.12.13 at her residence (80% Burns)O/e pt. conscious, oriented, WS.S.S. +, PS NVR1 + P/A-soft."

2.3 P.W10-Doctor Enjalin Vincent, who was in-charge of the Operation Ward also examined her. The deceased also told the very same statement of self immolation by pouring Kerosene. Thereafter, P.W.10 informed the police, which was forwarded by an intimation under Ex.P6 to the learned Judicial Magistrate. At about 12.15 a.m., on the next day, i.e., on 22.12.2013, P.W.18-the learned Magistrate recorded the statement of the deceased. Ex.P14 is the statement of the deceased certified by P.W.10 that she was conscious and fit to do so. Exs.P7 and P8 are the certificates issued by the Doctor. It is only thereafter, P.W.19-Sub Inspector of Police, on receipt of the information, went to the Hospital and recorded the statement of the deceased under Ex.P.16. P.W.19 after undertaking the aforesaid exercise by recording the statement under Ex.P16,

registered the First Information Report under Ex.P17 and sent the same to the jurisdictional Magistrate, which was received at 9.00a.m.

2.4. P.W.21, the Inspector of Police, took up the investigation and prepared the observation mahazar and rough sketch under Exs.P1 and P19 respectively, in the presence of P.W.2-Chandrasekar and one other person (not examined). He recovered M.Os.1 to 9 in the place of occurrence in the presence of P.W.2 under Ex.P2-Seizure mahazar.

2.5. P.W.21, based upon the information obtained in the presence of P.W.8 and yet another (not examined) and seized M.Os.10-shirt and 11-pant under Ex.P4- Seizure mahazar. Under the police memo, the appellant was referred to the hospital. He was examined and found 18% burn injuries as per the Accident Register-Ex.P5. The recording of the accident register was to the effect that the appellant sustained injuries while doing self immolation.

2.6. Further investigation was continued by P.W.21 by sending the material objects seized and recording the statement of official witnesses. P.W.11 gave information to the police about the death of the deceased on 28.12.2013. On receipt of the said information, PW.21 altered the offence from the one punishable under Section 307 IPC to one under Section 302 IPC under Ex.P12-alteration report. He conducted inquest under Ex.P13 and Ex.P23 is the inquest report. P.W.17 is the Doctor, who conducted the post-mortem and issued the post mortem certificate, which was marked as Ex.P12. Ex.P13 is the final report filed by P.W.21.

2.7. The trial Court, after framing charges, questioned the appellant with the incriminating materials under Section 313 of the Criminal Procedure Code, who denied it by a mere refusal. Thereafter, the trial proceeded with 22 witnesses on behalf of the prosecution, who also marked Exs.P1 to P25 along with M.Os.1 to 11. The appellant did not choose to either examine the witness nor marked any document.

2.8. The trial Court, upon hearing the arguments and after considering the materials available on record, found that the charge levelled against the appellant is proved beyond reasonable doubt. Questioning the abovesaid verdict of the trial Court, this criminal appeal is before us.

3. Before proceeding to consider the submissions on behalf of the appellant as well as the State, let us consider the evidence available on record.

4. P.W.1 is the neighbour of the appellant. He has stated that on hearing the noise, he along with 10 to 15 persons knocked the door and saw the appellant leaving the house by opening the door and thereafter, they saw the deceased unconscious. Immediately, the deceased was taken to the hospital in an Ambulance. According to P.W.1, there were 10 to 15 persons gathered at the time of occurrence. He has further stated that though ambulance was arranged by him, he did not go to the hospital immediately. He did not know what has happened in the place. He went to the hospital half an hour thereafter. He has also stated that he is responsible for the admission of deceased. However, he enquired the deceased only in the hospital for the first time. By that time, the deceased was transferred from emergency ward to fire burnt ward. Though P.W.1 has stated that on the request of the Doctor, he enquired the deceased about the occurrence and he in turn told him that the appellant has put her on fire. The said statement is contrary to the evidence of P.W.10-Doctor. He has also not accompanied the deceased as stated earlier. Even according to P.W.1, he did not know anything about the occurrence but only told so by the deceased. From the above, we are not inclined to place substantial importance on the evidence of P.W.1 as the same is contrary to that of P.Ws.10 and 14 coupled with Ex.P11. We may note that the statement of P.W.1 under Section 161 Cr.P.C. was recorded on 22.12.2013 and received by the Court on 26.12.2013.

5. P.W.2 is the witness, who signed the observation mahazar. We may note that the statement of this witness given under Section 161 Cr.P.C., though recorded on 22.12.2013, but actually sent to the Court only on 30.12.2013.

6. P.W.3 is the another neighbour of the appellant and the deceased. He also speaks about the strained relationship and the occurrence starting with the condition of the deceased followed by the admission into the hospital through ambulance. Here also we find that the statement under Section 161 Cr.P.C., was recorded on 22.12.2013, but the same was received by the Court on 05.04.2014.

7. P.Ws.4, 5 and 6 are the mother and sisters of the deceased respectively. Though they have stated about the estranged relationship, it is their specific case that they have no relationship whatsoever for the past four years with the deceased. In fact, P.Ws.5 and 6 have clearly stated that it was

because of the reason the relationship got estranged between them as the deceased was living with the appellant. Therefore, we are not able to lay much importance to the evidence adduced by P.Ws.4 to 6.

8. P.W.7 is another neighbour of the appellant. Even here, the statement recorded on 22.12.2013 was received by the Court on 30.12.2013. P.W.8 gave the statement on 22.12.2013, but received by the Court only on 30.12.2013. This witness speaks about Ex.P4 recovery mahazar in respect of M.Os.10 and 11.

9. P.W.s 9,11, 12 and 13 turned hostile. P.W.10 is the Doctor, who treated the appellant and issued Ex.P5 Accident Register. He has stated that the appellant was suffering from 18% burn injuries and stated that he was trying to committed suicide. It is his further evidence that he examined the deceased and gave statement that she was conscious enough to give the same. Accordingly, he issued certificates under Exs.P7 and P8. It is important to note that P.W.10 also says that the deceased has stated before him that she lit herself with fire and attempted to commit suicide. Thus, from the abovesaid evidence, we could only say that the earlier statement of the deceased was one of self immolation.

10. P.W.14 is the Doctor, who was working in the emergency ward. She has stated in her chief examination that the first statement of the deceased was that she poured Kerosene on herself and lit fire. She is also an author of Ex.P11-accident register, which is in tune with her statement.

11. P.W.15 is the Doctor, who treated the appellant. He has stated in his evidence that the appellant has stated that he tried to self immolate himself.

12. P.W.16 is the son of the deceased. He spoke about the relationship between the appellant and the deceased and the appellant poured Kerosene on her as informed to him in the hospital by the deceased.

13. P.W.18 is the VII Metropolitan Magistrate, Coimbatore, who registered the dying declaration of the deceased. He deposed that the deceased has informed him that the appellant was having affair with another lady and he is the one who committed the offence. It was his evidence that the deceased has stated that she thought that the appellant would go out to bring the Doctor. It is the further evidence of P.W.18 that the deceased has told that the other lady by name Kala is only responsible for everything.

14. P.W.21, who is the Investigating Officer, deposed that he examined P.Ws.4 to 6 and 16 on 23.12.2013, but the date was wrongly mentioned as 28.12.2013. However, these statements have been received by the Court only on 30.12.2013. He further deposed that though he recorded the statement of said Kala, she was not examined notwithstanding the fact that she was mentioned as 16th witness. P.W.22 is the Officer, who continued the investigation.

15. The trial Court convicted the appellant on the premise that the deceased died of burn injuries as per the evidence of the Doctors P.Ws.11,14 and 17 read with Ex.P12-Post mortem certificate. Substantial reliance has been made on the dying declaration of the deceased supported by the evidence of P.Ws.1 and 2. Accordingly, the trial Court convicted the appellant for the offence punishable under Section 302 IPC.

16. Submissions of the appellant:

The learned counsel appearing for the appellant would submit that the declaration given by the deceased under Ex.P14 does not inspire confidence. It is contrary to the statement made earlier to P.W.14-Doctor. The statements obtained under Section 161 of the Criminal Procedure Code were received by the Court belatedly. Therefore, a serious doubt is caused on the prosecution version. The evidence of P.Ws.1 and 2 are not reliable as there are material discrepancies available therein. Both P.Ws.1 and 2 did not go to the hospital immediately while P.W.2 never went. The mere fact that some of the witnesses have been cross examined as there was boycott will not make the case of the prosecution stronger. P.W.10-Doctor has not signed Ex.P5-Accident Register. Motive has not been established. P.Ws.4 to 6 never had any contact with the deceased. The non-examination of Kala is fatal to the case of the prosecution. The dying declaration itself shows the anxiety on the part of the deceased. Here the entire grievance was against the said Kala. She had also deposed that the appellant embraced her after the occurrence. The fact that the appellant was thought to be leaving to get the Ambulance would be a sufficient factor to hold that it is only a case of suicide. The evidence of P.Ws.10 and 14 being independent witnesses read with Ex.P4 will have to be seen while deciding as to whether it is a case of suicide or culpable homicide. Thus, the trial Court has not considered the evidence in the right perspective. Therefore, the appellant is entitled to the benefit of doubt.

17. Submission on behalf of the State:

The learned Additional Public Prosecutor appearing for the State would submit that the confession statement given by the deceased under Ex.P14-dying declaration was rightly taken note

of by the trial Court while convicting the appellant. This has been seen in conjuncture with the evidence of P.Ws.1, 2 and 7. A mere delay in receiving the documents by itself cannot be a ground to disbelieve the case of the prosecution. Motive has been clearly established. The non examination of said Kala would not be fatal to the case of the prosecution.

18.Discussion:

18.1. We are dealing with the case where there is no eye witness admittedly. The evidence of P.Ws.4 to 6 as stated with respect to the motive cannot be accepted as they have also clearly deposed that they did not have touch with the deceased because of the decision to live with the appellant though both of them were married. Though P.Ws.1, 2 and 7 also speak about the motive, we are not inclined to give much importance to it. The evidence adduced by P.W.1 would show that after the occurrence, there were about 10 to 15 persons available at the relevant point of time and he did not go to the hospital immediately. His further evidence that the deceased gave the statement before him that it is the appellant, who committed the offence, cannot be accepted in the light of the evidence of P.W.14 read with Ex.P11. P.W.2 is only a witness, who speaks about the observation mahazar with respect of M.Os.1 to 9. His statement regarding the estranged relationship is only hearsay. As noted earlier, even the statement recorded under Section 161 Cr.P.C. on 22.12.2013 was received by the Court only on 30.12.2013. P.W.3 has also stated that he was informed about the fight between the appellant and the deceased. He saw the crowd and the Ambulance taking the deceased. Thus, nothing much can be said on this evidence also. Likewise, P.W.7 only speaks about the occurrence.

18.2. P.Ws.10 and 14 clearly deposed that the deceased has stated at the first instance that she was attempted to commit self immolation. These two witnesses are Doctors and independent witnesses. Their statements are strengthened by Ex.P11-Accident Register. Therefore, we are inclined to give more importance to the evidence of P.W.10 and 14.

18.3. The evidence of P.W.16 being the son of the deceased also will not help the case of the prosecution substantially. His evidence that he was informed accordingly by the deceased is obviously subsequent to the statement made under Ex.P14.

18.4. The more important question revolves around the testimony of the deceased before the P.W.18- the learned Magistrate under Ex.P14. Now, let us carefully consider Ex.P14-dying declaration. It is the same P.W.10, who had decided and issued certificates about the conscious, fit state of mind of the deceased though he has stated that the deceased has informed

him that she made an attempt to commit self immolation. This is a subsequent statement made, of course, in writing, first time by the deceased. From the evidence available, it is very clear that the substantial grievance of the deceased is with respect to the relationship of the appellant with the said Kala. She has stated that every day there is a problem as the appellant was giving all his earning to the aforesaid person. She has clearly deposed that the deceased actually embraced her and when he left after the occurrence, she thought that he was going to take the vehicle to reach the hospital. On more than one occasion and even by way of conclusion, the deceased had stated that Kala is solely responsible for everything.

18.5. From the above, we are not in a position to safely rely upon it to convict the appellant especially in the light of the earlier statement made by the deceased before P.Ws.10 and 14, who are Doctors and as recorded under Ex.P11-Accident Register. Though dying declaration can be the sole basis for conviction, the same will have to attract the confidence of the Court. The Court will have to be conscious of the fact that the accused will have no power of cross examination. When there are more than one dying declaration available, it would be appropriate to take the first one into consideration. In this connection, we would like to reproduce the legal position in appreciation of a dying declaration made in Kalawati Vs. State of Maharashtra ((2009) 4 Supreme Court Cases 37).

"13. The reason as to why PW1 did not tell PW3 has been explained by PW3 himself. The said witness stated PW1 did not disclose him as to how deceased caught fire because he himself had no time to ask about it and was busy in making arrangement for taking the injured to the hospital where she subsequently breathed her last.

14. "12. 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 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 Smt. Paniben v. State of Gujarat (AIR 1992 SC 1817):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)]

(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 Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)]

(iii) The Court has to scrutinize 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 and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264)]

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See Kaka Singh v State of M.P. (AIR 1982 SC 1021)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. v.

State of U.P. (1981 (2) SCC 654)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)]

(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 Oza and Ors. v. State of Bihar (AIR 1979 SC 1505)].

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)].

(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 and Ors. (AIR 1989 SC 1519)].

(xi) Where there is 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 declarations could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v. State of Maharashtra (AIR 1982 SC 839) and Mohan Lal and Ors. v. State of Haryana (2007 (9) SCC 151)."]

18.6. From the abovesaid principle as enunciated by the Apex Court and applying the same to the facts of the present case, we extend the benefit of doubt to the appellant. In this connection, we may point out that the statement made by the deceased under Ex.P14 with respect to the conduct of the appellant and also be seen from the injuries sustained by him. The appellant had sustained 18% burn injuries under Exp5. The deceased has also stated that the appellant embarrassed her and thereafter went away which made her to think that he is trying

to get the vehicle to take her to the hospital. We also find that there is no necessity for the appellant to set the deceased on fire as there was no legal bar to live separately with the deceased. As stated, both the appellant and the deceased were not married to each other but to third parties. From the evidence, we can infer and gather that while the appellant was attempting to move away from the deceased, she was desperate to hold on to him. Thus, in this light of the above discussion, we are unable to agree with the decision of the trial Court. The trial Court, in our considered view, failed to consider that the evidence of P.Ws.10 and 14 read with Ex.P11 in the right perspective while merely accepting Ex.P14 dying declaration. In such view of the matter, we are inclined to interfere with the conviction and sentence rendered by the trial Court.

19. Accordingly, the conviction and sentence imposed on the appellant-Manivelraj in S.C.No.13 of 2015 dated 27.12.2017 on the file of Additional District and Sessions Judge, Mahila Court (Full Additional in-charge), Coimbatore, are set aside and the Criminal Appeal stands allowed. The appellant is acquitted of the charge under Sections 302 I.P.C., and the fine amount if any paid, shall be refunded to him. The appellant is directed to be released forthwith, unless his custody is required in connection with any other case. Consequently. Connected criminal miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

raa

To

WEB COPY

1. The Additional District and Sessions Judge,
Mahila Court (Full Additional in-charge), Coimbatore.
- 2.-Do- Thro The Principal Sessions Judge,
Coimbatore.

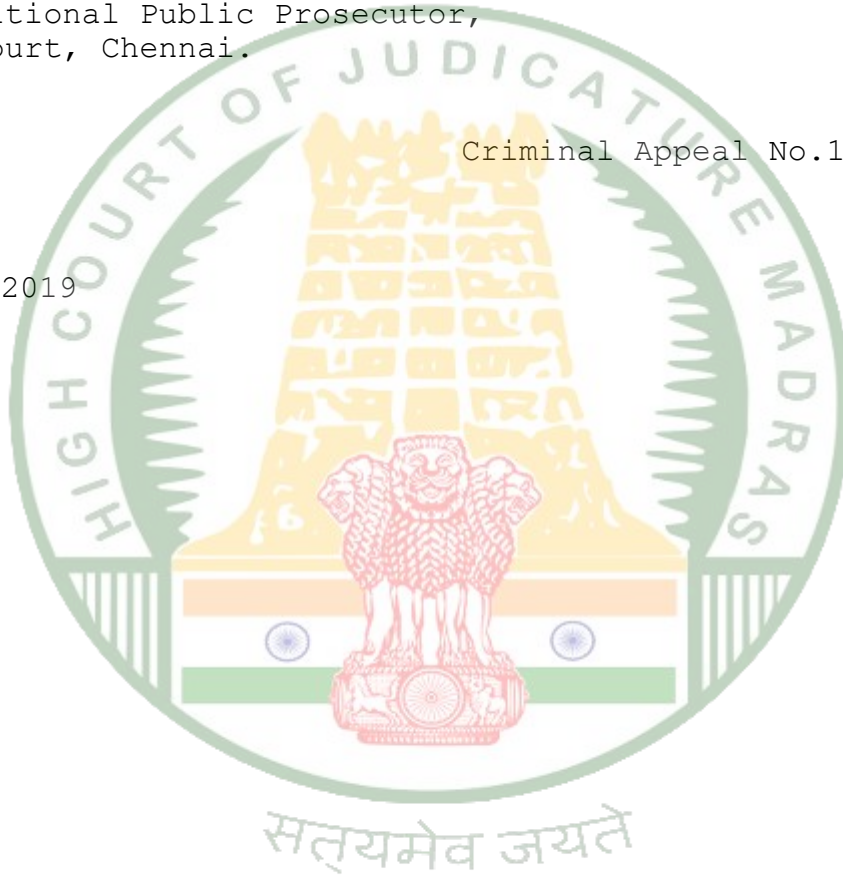
3.The Inspector of Police,
B-6, Peelamedu Police Station,
Coimbatore.

4.The Superintendent,
Central Prison, Coimbatore.

5.The Additional Public Prosecutor,
High Court, Chennai.

Criminal Appeal No.140 of 2018

vsn II[co]
srg 15/10/2019



WEB COPY