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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.07.2019
Pronounced on: 30.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.694 of 2017

M.Chinnathambi .. Appellant / Sole Accused

Vs.

State by
The Inspector of Police
Kundadam Police Station,
Coimbatore District.
Crime No.2698/2012.

.. Respondent/Complainant

Appeal filed under section 374[2] of Code of Criminal Procedure, to call for the records and set aside the conviction of the appellant in S.C.No.174/2013 on the file of the Sessions Judge, Mahila Court (Fast Track Court) Tiruppur by allowing this Criminal Appeal.

For Appellant	:	Mr.A.Jotheeswaran
For Respondent	:	Mr.R.PrathapKumar, Government Advocate [Crl.Side]

JUDGMENT

M.NIRMAL KUMAR, J.

The appellant is the sole accused in SC.No.174/2013 on the file of the learned II Additional District Sessions Judge, (Fast Track Mahila Court) Tiruppur, stood charged and tried for the commission of the offence under section 307 and 302 IPC. The Trial Court, vide impugned Judgment dated 12.04.2017, convicted him for the commission of the offence under section 302 IPC and sentenced him to undergo rigorous imprisonment for life and also imposed a fine of Rs.2,000/- and in default, to undergo one year rigorous imprisonment.

2. Aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 12.04.2017, the sole accused/appellant has preferred the present Criminal Appeal.



3. The facts leading to the filing of this Criminal Appeal briefly narrated, as follows:

3.1. The accused/appellant and the victim/deceased are husband and wife. They got married before 8 eight years and their marriage was a love marriage. Out of the marriage, they got two children. Three months prior to the occurrence, there was some quarrel between them and the accused had left his home and gone to his parents home. Two days prior to the occurrence, the parents of the deceased pacified him and brought him back to his home and they were living together.

3.2. On 23.11.2011, at about 09.30 a.m, P.W.1 / neighbour heard the cry of the deceased from her house and went inside the house. When P.W.1 entered inside the house, she found the victim on fire. By that time, the appellant was hastily coming out. Thereafter, she had doused the fire and enquired the deceased, who stated that it was appellant, who had poured kerosene over her and set her on fire. The deceased requested P.W.1 to intimate her parents namely P.Ws.3 and 4 about the incident. Thereafter, P.W.1 called the parents of the deceased and also called the ambulance service. P.W.3/father of the deceased who had come to the scene of occurrence along with P.W.4/mother of the deceased had taken the victim/deceased to the Government Hospital, Tarapuram at about 10.25 a.m.

3.3. P.W.6/casualty Doctor had given initial treatment and issued AR copy / Ex.P3 and also informed P.W.8/Judicial Magistrate, Tarapuram to record dying declaration, since the victim/deceased sustained 40% burn injuries. Thereafter, P.W.6 also informed the respondent Police about the incident. P.W.8 / Judicial magistrate, Tarapuram, reached the Hospital at about 10.45 a.m and satisfied that the patient/victim is conscious, oriented and in a fit state of mind to give statement and enquired her and recorded the dying declaration, which was marked as Ex.P5. Thereafter, P.W.10, the Sub Inspector of Police also reached the Government Hospital, Tarapuram and recorded complaint from the deceased / Ex.P7 and registered a case in Crime No.262 of 2012 for an offence under Section 307 IPC at about 1.00 p.m.

3.4. For further treatment, the victim/deceased was referred to Government Hospital, Coimbatore. The duty doctor viz., Meena, Coimbatore Medical College Hospital, informed P.W.9/Judicial Magistrate No.2, Coimbatore about the victim's condition and P.W.9 reached the Hospital at about 05.30 p.m and satisfied about the state of mind of patient to record dying declaration and in the presence of Doctor attached to that Hospital, he had recorded the dying declaration from the victim/deceased, which was marked as Ex.P6. Thereafter, P.W.13/Inspector of Police,



Kundadam had taken up the investigation and visited the scene of occurrence. He prepared the observation mahazaar, seizure mahazaar and seized kerozene cane/M.O.1, Match box/M.O.2 and portion of a burned cloth through Ex.P2 in the presence of P.W.5/resident of Kundadam. Thereafter he examined the witnesses to the scene of occurrence namely P.W.1 to P.W.5 and on the same day at about 05.00 pm they had arrested the accused.

3.5. Thirteen days after the incident i.e., on 05.12.2012 at about 04.45 p.m, the victim / deceased had died due to the burn injuries. Thereafter, the case was altered and the Alteration Report was marked as Ex.P14 and the inquest was conducted on 06.12.2012 between 10.00 am to 01.00 pm and the Inquest Report was marked Ex.P14. Thereafter, the body was sent for postmortem and the postmortem report was marked as Ex.P15.

3.6.The vital organs were also sent to the forensic Department to obtain viscera report and blood strained articles were sent for getting biological report and in the meanwhile, she was transferred to Government Hospital, Coimbatore. Thereafter, P.W.14 had taken up the investigation and examined the Forensic official, Postmortem Doctor and the Doctor who had certified the health condition of the deceased to give dying declaration and obtained the final reports. He had filed charge sheet against the appellant.

3.7. The Trial Court framed charge under Section 320 IPC and examined P.Ws.1 to 14, marked Exs.P.1 to 15 and also marked M.Os.1 to 3. On the side of defence, no witnesses were examined and Exs.1 to 3 were marked.

3.8. The Trial Court, taking into consideration the oral and documentary evidences and also the materials, found that the appellant / accused is guilty u/s.302 IPC and convicted and sentenced him as stated above and hence, this appeal.

4. The contention of the appellant is that P.W.1 was a Sanitary Worker and working time according to her is 07.00 a.m to 07.00 p.m, hence, she could not be present at the scene of occurrence at about 09.30 a.m and obviously, she is got-up witness. Further, P.W.4, the mother of the deceased has stated that at about 09.45 a.m on 23.11.2012, the accused had come to her home and handed over the mobile phone to her and thereafter, he had left for his work. Further it was contended that according to P.W.1, she informed the parents of the deceased and also called ambulance service. On the other hand, P.W.3 informed that he had received the phone call from P.W.1 and thereafter he had reached the scene of occurrence along with P.W.4 / his wife. P.W.2/neighbour had come to know about the occurrence only after 06.00 p.m and he stated about the frequent quarrel between the



deceased and the appellant.

5. The version of P.Ws.1, 3 and 4 that the deceased had informed that it was the appellant who had poured kerosene and set fire is highly artificial. Further P.Ws.1, 3 and 4 admit that the deceased was taken by Ambulance from the scene of occurrence in the presence of police at about 09.45 a.m. However, the complaint came to be registered only at about 01.00 p.m. According to P.W.6, Casualty Medical Officer attached to the Government Hospital, Tarapuram, she had informed the police and AR Copy / Ex.P3 has been recorded only at about 10.25 a.m. Hence the evidence of P.Ws.1, 3 and 4 are highly unbelievable. P.W.6 has stated that she had examined the deceased at about 10.25 a.m and recorded that she had 40% burn injuries in the front side of her body. Thereafter, the victim/deceased was referred to Government Hospital, Coimbatore for further treatment. These witnesses have spoken only with regard to the information given to the Police and to P.W.8/Judicial magistrate, Tarapuram for recording dying declaration. Other than this, they had not spoken anything with regard to, the nature of treatment given to her and what was the condition of her health which necessitated the deceased to be referred to Government Hospital, Coimbatore. Further it was submitted that one dying declaration has already been recorded. Again there was no necessity to record another dying declaration in Government Hospital, Coimbatore by Judicial Magistrate No.2, Coimbatore / P.W.9.

6. Further submitted that in this case, there are four dying declarations viz., Ex.P5/dying declaration recorded by P.W.8 at 10.50 a.m, Ex.P7/ complaint recorded by P.W.10 at 01.00 p.m and Ex.P6/dying declaration recorded by P.W.9 at 5.30 p.m and statement recorded by P.W.13. Further it is submitted that the accused was very much available and he was arrested on the same day at 05.30 p.m and no recovery has been made from him. From 23.11.2012, the petitioner was in confinement and he was not aware of, what was the development taken thereafter, though the deceased had died only on 05.12.2012. The Postmortem Doctor / P.W.12 admits the nature of injuries sustained by the deceased could be caused if the person commits suicide. Due to the strain relationship of the appellant and the deceased, the appellant has been falsely implicated in this case. Further P.W.s 3 and 4, parents who have accompanied the deceased throughout the day would make the deceased to give a false statement against the appellant.

7. The learned Additional Public Prosecutor submits that in this case, there are four dying declaration's namely Exs.P5, P6, P7 and statement recorded by P.W.13/Investigation Officer and all are corroborated with the evidence of P.Ws.1, 3 and 4 and



postmortem Doctor / P.W.12, P.W.7 and P.W.8.

8. P.W.11 / The forensic officer confirms about the presence of kerosene in M.O.1 and M.O.3 through Ex.P9, further from observation Mahazar / Ex.P1 recovered from the scene of occurrence. The kerosene being the flammable liquid, has been used by the appellant to do away the life of deceased for setting fire. she sustained burn injuries and was taken to the Hospital at Tarapore immediately. The Judicial magistrate / P.W.8 had recorded the dying declaration in the presence of P.W.6 / Doctor, who had certified about the fit state of mind of the deceased to record statement. Another complaint was received from deceased herself by the Sub Inspector of Police. Since her health condition got deteriorated she was referred to Government Hospital, Coimbatore, where again, in the presence of the Doctor, Judicial Magistrate No.2, Coimbatore/P.W.9 the dying declaration was recorded. The Inspector of Police / P.W.13 had also recorded the statement from the deceased. On going through all the four dying declarations, all are in consonance with each other and there is no inconsistency. In the judgment of this Court as well as the Apex Court, it is held that dying declaration can be the sole basis of conviction.

9. Further, P.W.s 2, 3 and 4 had spoken about the motive and P.W.1 had seen the accused coming out from the house after setting fire on the deceased. P.W.1 had immediately doused fire and informed the parents of the deceased. Hence by cogent evidence, the prosecution has proved the case beyond any reasonable doubt and the Trial Court, on a thorough consideration and appreciation of the oral and documentary evidences has rightly reached the conclusion to convict and sentence the appellant/accused and would plead that the conviction and sentence rendered by the Trial Court vide impugned Judgment may not warrant interference and prays for dismissal of this criminal appeal.

10. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

11. This Court on perusal of the materials found that P.W.1 / neighbour of the deceased on 23.11.2012 at about 09.30 a.m hearing the cry of the deceased entered into the house. By that time, the appellant had left hastily. P.W.1 saw the deceased in fire and immediately she had doused it by pouring water. Thereafter, she was informed by the deceased that it was appellant, who had poured kerosene and set her on fire and she requested P.W.1 to contact her parents namely P.W.s 3 and 4 and to inform about the incident. Therefore, P.W.1 called her parents and also called ambulance service. P.Ws.3 and 4 came to the scene of occurrence and P.W.3 took the deceased to the



Government Hospital, Tarapuram, where P.W.6 /Doctor informed Judicial Magistrate / P.W.8 for recording dying declaration and Sub Inspector of Police / P.W.10 and recorded AR copy/ Ex.P3 on 23.11.2012 at about 10.25 p.m wherein the manner in which the fire has taken place has been categorically mentioned. P.W.8/Judicial magistrate had recorded dying declaration in the presence of P.W.6 and the same was certified by PW.6. P.W.10/Sub Inspector of Police on 23.11.2012 had recorded complaint given by the deceased at about 01.00 p.m and also obtained the thumb impression of the deceased. Thereafter, the deceased was referred to Government Hospital, Coimbatore, where on the request of the Doctor, Judicial Magistrate No.2, Coimbatore/P.W.9 had recorded dying declaration at about 05.30 p.m in the presence of Doctor, which is marked as Ex.P6. P.W.13 / Investigation Officer had also recorded the statement of the deceased on the same day. On perusal of all the statements/dying declarations of the deceased, there is no inconsistency and further, the cause of death is in conformity with the manner in which the occurrence had taken place as could be seen from the evidence of P.Ws.11 and 12. As per Ex.P1 and P2, M.O.1 to M.O.3 has been found in the scene of occurrence and it has been seized and sent to the forensic study and P.W.11 has examined the articles and found the presence of kerosene in those articles and given Forensic Report / Ex.P9. In this case, for recording dying declaration Ex.P5 and Ex.P7, the doctors had certified that the patient/victim is conscious, oriented and in a fit state of mind to give statement.

12. The Apex Court held that even on the sole basis of dying declaration alone, the conviction could be rendered if it is inspiring against the evidence of the Court in its truth and voluntariness and the Apex Court has given guidelines about the dying declarations in the case of Kalawati Vs. State of Maharashtra reported in 2009 (4) SCC 37 and it is relevant to extract Paragraph no.14:

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 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,



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undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (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 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 : AIR 1983 SC 164] .)

(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 a 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])

(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 : AIR 1982 SC 1021])

(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 : 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 Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : 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 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 : 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 [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred of course, if the plurality of the 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 : AIR 1982 SC 839] .)" [Ed.: As observed in P.V. Radhakrishna v. State of Karnataka, (2003) 6 SCC 443 at pp. 449-50, para 12.]

13. In this case, the dying declaration is corroborated by the evidence of Doctors coupled with the attendant evidence, as deposed by the witnesses. In the case of multiple dying declarations, it is held that each dying declaration has to be considered independently on its own merits. In the present case, there are four dying declarations. All the same are consistent and there is no inconsistency.

14. Thus, we are of the view that the prosecution, through the cogent evidence, both oral and documentary, had proved the guilt of the accused beyond all reasonable doubt. Hence, we are of the considered view that the Trial Court has rightly reached the conclusion of convicting the accused and the impugned judgment of the Trial Court does not require any interference at the hands of this Court.



15. In the result, the criminal appeal is dismissed and the judgment and sentence dated 12.04.2017 passed by the learned II Additional District Sessions Judge, (Fast Track Mahila Court) Tirupur,, in SC.No.174 of 2013 is hereby confirmed.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

To

1. learned II Additional District Sessions Judge,
(Fast Track Mahila Court),
Tirupur,

2. The Inspector of Police
Pachal Police Station,
Thiruvannamalai District.

3. The Public Prosecutor
High Court, Madras.

4. The Superintendent
Central Prison, Coimbatore.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

+1 Cc to Mr.A. Jotheeswaran, Advocate sr 64774.

Criminal Appeal No.694 of 2017

VGI (CO)
SP(28/08/2019)