



Crl. A(MD)No.419 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CRL.A.(MD)No.419 of 2019

Kamaraj @ Samsa Kamaraj

.. Appellant / Sole Accused

Vs.

State rep. by

The Inspector of Police,

Thillainagar Police Station,

Trichy District.

(In Crime No.272 of 2016) *

.. Respondent / Complainant

* (Amended as per order of this Court, dated

06.07.2021 in Crl.M.P(MD) No.4551 of 2021)

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, praying to call for the judgment, dated 11.07.2019



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made in S.C.No.146 of 2017, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli and set aside the same and allow this Criminal Appeal.

For Appellant	: Mr.N.Anandakumar
For Respondent	: Mr.A.Thiruvadi Kumar
	Additional Public Prosecutor

JUDGMENT

J. NISHA BANU, J.

AND

N. ANAND VENKATESH, J.

The appellant, who was convicted for an offence under Section 302 of IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo one year rigorous imprisonment, has filed this Criminal Appeal against the judgment of the learned Sessions Judge, Mahila Court, Tiruchirappalli, made in S.C.No.146 of 2017, dated 11.07.2019.



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2. The case of the prosecution is that the appellant and the deceased are husband and wife. The appellant is said to have indulged in illegal activities and the wife took a decision to leave the matrimonial home and accordingly, on 05.07.2016 at about 7.10 p.m., when she was about to leave the house, she was restrained by the appellant and he proceeded to pour kerosene on the deceased and she was set on fire. The deceased was admitted in the Government Hospital, Tiruchirappalli and she succumbed to her injuries on 13.07.2016 at about 10.20 a.m.

3. When the deceased was taking treatment in the Government Hospital, information was sent to the Police and P.W.14, who was the Sub-Inspector of Police, went to the Government Hospital and recorded the statement of the deceased, which was reduced into a complaint (Ex.P.9). Based on the same, an FIR came to be registered (Ex.P.10) in Crime No.272 of 2016, for an offence under Section 307 of IPC. On the demise of the deceased, an alteration report (Ex.P.14) was submitted before the concerned Magistrate Court and the offence was altered to Section 302 of IPC.



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4. On completion of investigation, a final report was filed before the Judicial Magistrate No.IV, Tiruchirappalli. After the copies were served on the appellant, the case was committed to the Principal District and Sessions Court, Tiruchirappalli and it was made over to the Mahila Court, Tiruchirappalli.

5. The prosecution examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.15 and M.O.1 to M.O.10 were identified and marked. The incriminating material that was collected in the course of trial, was put to the appellant /accused, who was questioned under Section 313(1)(b) Cr.P.C., and the appellant denied his involvement in the crime.

6. The Trial Court on considering the facts and circumstances of the case and on appreciation of the evidence available on record, came to a conclusion that the prosecution has proved the case beyond reasonable doubts. Accordingly, the appellant was convicted and sentenced in the manner mentioned supra.



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7. Heard Mr.N.Anandakumar, learned Counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

8. We have carefully gone through the materials available on record and considered the submissions made on either side.

9. The prosecution examined P.W.1 to P.W.4, P.W.7 to P.W.10 in order to establish the case. However, none of these witnesses have supported the case of the prosecution. Apart from these witnesses, the other witnesses whose evidence will be relevant in the present case will be the evidence of P.W.13, who was the Doctor, who was present at the time of recording the dying declaration and who spoke about the mental condition of the deceased at the time of giving dying declaration. That apart, the evidence of P.W.11 will also be relevant and this witness is the Judicial Magistrate, who recorded the dying declaration of the deceased. P.W.12 is the post-mortem Doctor, who speaks about the cause of death.



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10. The vital documents that has to be taken into consideration by this Court will be Ex.P.7 - dying declaration, Ex.P.9 - complaint based on the statement given by the deceased and Ex.P.8, which is the post-mortem certificate.

11. The learned counsel for the appellant by relying upon the evidence of the witnesses submitted that none of the eye-witnesses to the occurrence or the neighbours or the relatives supported the case of the prosecution and there is absolutely no ground to rope in the appellant as accused in this case. The learned counsel has also doubted the genuineness of the dying declaration on the ground that the deceased was tutored and she was made to give such a dying declaration. It was further submitted that there was absolutely no explanation with regard to the injuries sustained by the appellant and which was also spoken to by P.W.15, who arrested the appellant only in the Government Hospital, Tiruchirappalli on 06.07.2016 when the appellant was taking treatment in the burns ward.



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12. As mentioned supra, the entire case of the prosecution revolves around the dying declaration, statement recorded by P.W.14 when the deceased was in the hospital and the law was set in motion and the postmortem certificate issued by P.W.12.

13. The postmortem certificate which was marked as Ex.P.8, records the following injuries:-

1) Surgical, cut down wound on inner aspect of lower part of left leg;

2) infected, superficial, surface burn injuries 24 x 13 cm on front and middle of chest and adjoining both the breasts; 56 x 22 cm on lower part of chest and adjoining upper and middle part of abdomen; 38 x 20 cm on inner aspect of front and back of right arm, forearm and hand; 26 x 24 cm on inner aspect and front of left arm, forearm and hand; 40 x 19 cm on front of right thigh; 30 x 15 cm on entire left hip and left thigh; 13 x 8 cm on right buttock; 9 x 8 cm on-left side of middle part of back; 12 x 12 cm on right side of middle part of



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back; The floor of all the above injuries were covered by yellowish and reddish hyperemic and purulent material; The margins of the injuries shows scab and signs of healing;"

14. It is also clear from the final opinion given by the Doctor that the deceased had died due to complications of burn injuries sustained.

15. In view of the above, this Court has to ascertain the cause of the injuries sustained by the deceased. For this purpose, the most important material that is available before this Court is the dying declaration which was marked as Ex.P.7. This dying declaration was recorded by P.W.11 in the presence of Doctor P.W.13, who speaks about the mental condition of the deceased when the dying declaration was recorded. The Doctor has specifically stated that the patient is conscious, oriented and she was in a sound state of mind to give the dying declaration. This opinion rendered by the Doctor is clearly supported by the answers given by the deceased for each question that was put to her by the learned Judicial



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Magistrate. The deceased has categorically stated that the appellant is addicted to drugs and was involved in the commission of crimes and he was released only 10 days prior to the date of incident. Immediately after coming out from the jail, he once again started using drugs and was picking up fights with the deceased.

16. In view of the same, the deceased wanted to leave the matrimonial home along with her son and on seeing the same, the appellant had poured kerosene on the deceased and set her on fire. The deceased came out of the house running and the neighbours attempted to dose off the fire by pouring water on the deceased and thereafter, she was taken to the Government Hospital. The deceased has also categorically stated that if she dies, it is the appellant who is responsible for the same. The dying declaration given by the deceased was also properly certified by the Judicial Magistrate.

17. The statement recorded by P.W.14 when the deceased was in the hospital also cogently reiterates the above facts and this statement



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must also be given the same probative value, as that of the dying declaration.

18. In the considered view of this Court, the dying declaration of the deceased has not been discredited in this case and there is absolutely no reason to disbelieve the same. It is now a well settled law that where the dying declaration is found to be reliable, there is no need for corroboration by any witness and a conviction can be sustained on its basis alone. Useful reference can be made to the judgment of the Apex Court in **Bapu Vs. State of Maharashtra** reported in **2007 (2) L.W (Crl.) 643**. The very same position was further confirmed by the Apex Court in **Subhash Soni and another Vs. State of Madhya Pradesh** reported in **2009 (3) SCC (Crl.) 291**.

19. In view of the above discussion, this Court finds that the conviction of the appellant can be sustained on the basis of the dying declaration alone and there is absolutely no ground to interfere with the judgment of the trial Court.



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20. In the result, this Criminal Appeal is dismissed and there shall be a direction to the appellant to surrender before the trial Court within a period of two weeks from today, failing which the trial Court shall take steps to secure the appellant and confine him to jail, in order to undergo the life imprisonment.

[J.N.B., J.] & [N.A.V., J.]

20.09.2022

Index : Yes/No

Internet : Yes

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- 1.The Sessions Judge,
Mahila Court,
Tiruchirappalli
- 2.The Inspector of Police,
Thillainagar Police Station,
Trichy District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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