



Crl.A(MD)No.539 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	06.12.2022
Pronounced on	15.12.2022

Coram

The Honourable Dr.Justice G.JAYACHANDRAN
and
The Honourable Mr.Justice SUNDER MOHAN

Crl.A.(MD).No.539 of 2019

Sathishkumar

....Appellant/ Sole Accused

vs.

State through the Inspector of the Police,
Abiramam Police Station,
Ramanathapuram District,
In Crime No.6 of 2012.

....Respondent

*(Cause title Amended as per order of the Court dated 16.02.2021 in
Crl.M.P.(MD).No.1276 of 2021 in Crl.A.(MD).No.539 of 2019)*

Prayer : Criminal Appeal filed under Sections 374 of Criminal Procedure Code to call for the records and set aside the order of Conviction and Sentence rendered by the learned Fast Track Court, Special Sessions Court for Mahila Cases, Ramanathapuram in S.C.No.93/2012 by the Judgment dated 06.09.2019.

1/17



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For Appellant : Mr.N.Ananthapadmanabhan for
M/s APN Law Associates

For Respondent : Mr.A.Thiruvadiukumar
Addl. Public Prosecutor

JUDGMENT

SUNDER MOHAN, J.

The sole accused who was tried and convicted for the offences under Section 302 IPC, has challenged the conviction and sentence passed by the learned Fast Track Court, Special Sessions Court for Mahila Cases, Ramanathapuram in S.C.No.93/2012 dated 06.09.2019.

2. The case of the prosecution is that the appellant on 24.01.2012 at about 06.00 p.m had caused the death of his wife Shanmugasundari provoked by her refusal to give money for the purpose of consuming liquor. The appellant is alleged to have poured kerosene on the victim Shanmugasundari and set fire on her.

3. On information from the Government Hospital, Kamuthi, P.W.20, Sub-Inspector of Police went to the hospital and examined the victim



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Shanmugasundari, recorded her statement and registered the case in Crime No.6 of 2012 for the offence under Section 307 IPC. Thereafter, the deceased was shifted to Rajaji Hospital at Madurai. The victim had given a statement before P.W.14, the learned Judicial Magistrate. Subsequently, the victim Shanmugasundari died on 25.01.2012 at about 10.30 a.m. After investigation, the respondent police filed final report as aforesaid.

4. Before the Sessions Court, the Prosecution had examined 24 witnesses and marked Ex.P.1 to Ex.P.14. The appellant/accused had not examined any witness or marked any document on his side.

5. P.W.1 is the father of the deceased Shanmugasundari. P.W.2 is the sister. P.W.3 is the mother and P.W.4 is the sister-in-law of the deceased. P.W.5 to P.W.9 are the neighbours of the deceased. P.W.10 is the witness to the confession and recovery from the accused. P.W.12 is said to have heard the sound from the house of the accused and doused the fire on the deceased. P.W.13 is the Village Administrative Officer, who is said to have witnessed the recovery made from the accused. P.W.14 is the Judicial Magistrate, who recorded the Dying Declaration which is marked



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as Ex.P.7. P.W.15 is the daughter of the appellant and the deceased.

P.W.16 is the brother of the deceased. P.W.17 is the Doctor, who examined the deceased on 24.01.2012 and has made entry in the Accident Register (Ex.P.8). P.W.19 is the Constable, who delivers the First Information Report to the Judicial Magistrate. P.W.20, Sub-Inspector of Police, who registered the First Information Report and recorded Ex.P.1 Statement from the deceased. P.W.21 is the Doctor, who conducted postmortem. P.W.22 is the Doctor, who examined the deceased at Rajaji Hospital at Madurai. P.W.23 is another Doctor who examined the deceased at the same hospital. P.W.24 is the Investigating Officer.

6. The Trial Court on the basis of the various Dying Declarations marked as Ex.P.1 and Ex.P.7 and another entry made in the Accident Register (Ex.P.8) and considering evidence of the relatives of the deceased, found the accused guilty of the offence under Section 302 IPC and sentenced him to life imprisonment.

7. The learned counsel appearing for the appellant/accused submitted that the dying declarations are not acceptable as there is evidence to show



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that the victim was capable of giving dying declarations. Further, there is possibility of tutoring by the relatives P.W1 to P.W.4. There is no other evidence to connect the appellant with the offence charged against him. P.Ws.1 to 4 are relatives and their evidence is hearsay in nature. They cannot corroborate the dying declarations which is not reliable and trustworthy. Further, the learned counsel would submit that in Ex.P.1 statement recorded by P.W.20 Sub-Inspector of Police, the finger print of the deceased was taken at 21.00 hours on 24.01.2012, whereas, in the dying declaration recorded by the learned Judicial Magistrate at about 11.45 p.m i.e., 2 hours after the earlier statement recorded by P.W.20, the finger print could not be obtained. However, the prints of the right toe only was obtained by Doctor. This aspect also throws serious doubts in the prosecution case with regard to the fitness of the deceased to give dying declaration. The learned counsel further submitted that in Ex.P.8, Accident Register, the Doctor had recorded as follows:-

“தனது கணவர் தனது வீட்டில் சாயங்காலம் 6.00 pm மணிக்கு (24/1/12) தன்மேல் மண்ணெண்ணெய் ஊற்றிக் கொளுத்திவிட்டார் என்று கூறப்படுகிறது. O/E pt Drowsy”



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(a) The above endorsement would show that the deceased was drowsy and somebody had informed the doctor that the husband of the deceased had set fire to her by pouring kerosene. The doctor also in his deposition had confirmed that somebody who accompanied with the deceased, had stated so. This also would show that the deceased could not have given dying declaration.

(b) Further, P.W.15, a child witness and daughter of the deceased and the appellant, who was present at the scene of occurrence, had clearly stated that the deceased set fire on herself and she informed her paternal uncle and thereafter, her father i.e., the appellant came to the house.

(c) The learned counsel would further state that the evidence of P.W.3, the mother of the deceased would say that the appellant and the deceased were living happily; and she did not speak to the deceased. Her evidence is natural and establishes that the deceased could not speak. Further, her husband spoke only to the neighbours. Hence prays that the conviction be set aside.

8. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent police submitted that it is well settled law that



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the dying declaration can be the sole basis for conviction, if it is found reliable and trustworthy. Even if there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the Magistrate can be relied upon. The evidence of P.W.1 to P.W.4 shows that the deceased had given oral dying declaration to them as well.

9. We have heard the learned counsel appearing on either side and perused the evidence oral and documentary adduced by the prosecution.

10. We find that the Prosecution sought to prove the case mainly based on the dying declarations recorded from the deceased by the Judicial Magistrate and the Police. Besides those dying declarations, the deceased is said to have given oral dying declarations to her parents and her siblings. That apart, the Prosecution examined P.W.15, the daughter of the deceased and the appellant, who was an eye witness to the occurrence. The entire case of the Prosecution rests upon the dying declaration marked as Ex.P1 recorded by the Sub Inspector of Police, P.W.20, Ex.P7 recorded by P.W. 14, the learned Judicial Magistrate and the dying declarations given to P.W. 1 to P.W.4. It is the case of the Prosecution that when the neighbours of the



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deceased heard a sound and saw fire in the house, they rushed to the house and doused the fire. It is also the case of the Prosecution as seen from the First Information Report that the students of Mohamed Sathak Engineering College helped dousing the fire on the deceased.

The neighbours were examined as P.Ws.5, 6, 7 and 12. They have all uniformly stated that they came to know that the deceased set fire to herself. They were treated as hostile by the Prosecution. It is further the case of the Prosecution that the neighbours took the deceased to the hospital and she was admitted alive at the Kamuthi Government Hospital, where P.W.17 is said to have given treatment. The entries made by P.W.17 in the Accident Register is marked as Ex.P8. In the said Accident Register, the presence of the father is recorded. It appears that the Doctor has initially stated that the victim had made a statement that her husband set fire on her. It appears that some interpolations and insertions were made in the said document suggesting that the occurrence took place in the evening 6.00 PM on 24.01.2012 and that the information was given by somebody else. The patient was also shown as drowsy at 8.25 PM. From the evidence of P.W. 17, it is clear that the patient was not in a position to speak at that point of



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time and the information given to the Doctor was by somebody else.

Thereafter, the Sub Inspector of Police, P.W.20, had recorded the statement of the deceased and had obtained her finger prints. In the said statement, the details of the alleged harassment caused by the appellant to the deceased is mentioned and it is also mentioned that the neighbours and students of Mohamed Sathak Engineering College had helped the victim to douse the fire and they called the ambulance. It had also mentioned the presence of the neighbours, one Saratha and one Ponnathal, who were present at the relevant point of time. It further states that the father of the deceased P.W.1 was also present when the statement was recorded. We find that P.W.20 stated in the cross-examination that she recorded the statement not only from what was said by the deceased but also the facts stated by P.W.1, the father of the deceased. In the light of such an admission, we cannot give any sanctity to the said statement recorded by P.W.20. The information given by P.W.1 has been recorded in the statement. We cannot separate the said statement to find out which part of the statement was given by the father and which part of the statement was given by the victim. Therefore, it is highly unsafe to rely upon the statement recorded by the Sub Inspector of Police, P.W.20 and treat it as dying declaration of the deceased. That



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apart, the statement reaches the Magistrate on the next day at 7.00 PM much after the victim had died. The reading of the statement would show that it is highly improbable for the deceased to have given such a detailed statement, when she was drowsy and could not inform the doctor, P.W.17 directly as to what happened at 8.25 PM.

11. The deceased is said to have told P.W.1/her father, P.W.2/her sister, P.W.3/her mother, P.W.4/her sister-in-law and P.W.16/her brother about the occurrence. In this, P.W.3/ the mother would say that she did not speak to her daughter. She would also state that her husband P.W.1 heard about the incident from two or three ladies, who were in the hospital. The next dying declaration is said to have been given to P.W.14, the Judicial Magistrate, which is marked as Ex.P7. P.W.22, the Doctor who was present when the deceased gave the dying declaration to the Judicial Magistrate, has certified that the patient was conscious and in a fit state of mind to give the dying declaration. The Judicial Magistrate has also put questions to the victim to ensure voluntariness. The deceased stated that on 24.01.2012 at 6.00 PM, her husband Sathiskumar poured kerosene on her and set fire and he was in the habit of harassing her for money. The question is whether the



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evidence of P.W.1 to P.W.4 and P.W.16, the dying declaration Ex.P7 recorded by P.W.14 can be relied upon. P.W.1 was present throughout with the deceased and his presence is recorded in Ex.P8, Accident Register and in Ex.P1 statement recorded by P.W.20, Sub Inspector of Police. P.W.3 would state that the appellant and the deceased were living happily and she would admit that she had not spoken to the deceased directly. She had not stated about what the deceased told her husband P.W.1. As stated earlier, Ex.P1 cannot be treated as a dying declaration since admittedly some information recorded in Ex.P1 was based on P.W.1's statement.

12. P.W.15 is the daughter of the appellant and the deceased and an eye witness to the occurrence. She had clearly deposed that her father, namely, the appellant herein came to the house from work and thereafter, left the house immediately. She and the deceased were at home. The deceased asked her to go out of the house. P.W.15 refused to go out of the house. Thereafter, the deceased picked up the kerosene can and poured it over herself and set fire. Thereafter, P.W.15 would state that she went out to call her paternal uncle, who came immediately and her father/the appellant herein came much later. The Prosecution has not treated P.W.15



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as hostile. Though P.W.15 was aged 11 years at the time of deposition and 7 years when the occurrence is said to have taken place, there is nothing to suggest that she had deposed falsely. The Prosecution has not even cross-examined her. In any event, her evidence raises a serious doubt in the Prosecution case.

13. That apart, it is seen from the records that the students of Mohamed Sathak Engineering College came to douse the fire on the deceased. For reasons best known to the Prosecution, the students have not been examined. When a specific question was put to the Investigating Officer, he had no explanation as to why those students were not examined by him. That apart, the neighbours, who immediately rushed to the house of the appellant and the deceased, namely, P.Ws.5, 6, 7 and 12 have all uniformly stated that they heard that the deceased committed self immolation. These witnesses though have been treated as hostile, their version is in conformity with P.W.15's evidence.

14. The presence of P.W.1 throughout would also indicate that one cannot rule out tutoring of the deceased before she was examined by the



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Judicial Magistrate, P.W.14 at Kamuthi Government Hospital. Even in Ex.P1, P.W.1 had given his version. Ex.P8, the Accident Register is the earliest version. In that, we find that there are certain interpolations and the word “கூறுகிறார்” has been changed to “கூறப்படுகிறது”. According to P.W. 17, the Doctor who has first treated the deceased, the deceased was drowsy and somebody else gave the information and not the deceased. He would also admit that the deceased was incapable of talking at that stage. P.W.1, an interested witness, obviously angered by the burn injuries suffered by his daughter, had gone to the extent of saying that the deceased held the legs of the appellant pleading with him to save her. However, we find that there is nothing in the Prosecution evidence to suggest that the appellant ever sustained any burn injuries in his leg. Further, we find that Ex.P1 complaint and Ex.P9 printed FIR reached the Court on 25.01.2012 at 7.00 PM.

15. It is contended by the learned Additional Public Prosecutor that even if there are multiple dying declarations which are inconsistent with each other, the dying declaration given to the higher officer, namely, the Judicial Magistrate can be taken into account and other dying declarations can be ignored, we find that there are not only inconsistencies between the



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dying declarations, but also we cannot rule out the possibility of tutoring by the father. As stated earlier, P.W.1 was present throughout and hence the probability of the deceased being prompted/tutored cannot be ruled out.

16. Above all, P.W.15 being a Prosecution witness has not been cross-examined as stated earlier. P.W.3, the mother of the victim's version appears more probable. She would have been the natural witness, who could have spoken to her daughter, the deceased. She had not spoken to her daughter. This also throws a doubt on the version of P.W.1, his daughter and son, who had deposed about the victim's alleged statement made to them.

17. Thus, on considering the overall circumstances of the case, we cannot conclude with moral certainty that the appellant is guilty of the offence alleged. This is an unfortunate incident. However, the evidence of P.W.15 (daughter of the deceased) raises a serious doubt in the Prosecution case. That apart, all the neighbours failed to support the prosecution case. The students of Mohamed Sathak Engineering College, who had helped the deceased immediately on coming to know of the immolation, have not been



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examined. P.W.3, the mother, has stated that she did not speak to the deceased, which appears to be improbable. The presence of P.W.1 throughout with the deceased in the facts and circumstances of the case cannot rule out the possibility of tutoring. Having regard to the above circumstances, we are inclined to hold that the Prosecution has not proved the case beyond reasonable doubt.

18. For the above reasons, we set aside the judgment of conviction and sentence passed by the Fast Track Court, Special Sessions Court for Mahila Cases, Ramanathapuram in S.C.No.93/2012. The accused is set at liberty. Bail bonds, if any shall stand cancelled. Accordingly, the Criminal Appeal is allowed. There shall be no order as to costs.

[G.J.,J.] [S.M.,J]
15.12.2022

Index : Yes / No
Internet : Yes / No
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To
WEB COPY

- 1.The Judge,
Fast Track Court,
Special Sessions Court for Mahila Cases,
Ramanathapuram.
- 2.The Inspector of the Police,
Abiramam Police Station,
Ramanathapuram District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Dr.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

skn/Lm

Pre-Delivery Judgment made in
Crl.A.(MD).No.539 of 2019

15.12.2022