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Crl.A.No.354 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2023

PRONOUNCED ON : 05.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.354 of 2018

Karthick

... Appellant/Accused

v.

State represented by
Inspector of Police
P6, Kodungaiyur Police Station,
Chennai – 600 118.
(Crime No.1218/2013)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.34 of 2015 dated 19.03.2018, on the file of the learned Mahila Sessions Judge, (Mahalir Neethimandram), Chennai and set aside the conviction and sentence imposed in judgment dated 19.03.2018 and acquit the appellant.



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For Appellant : Mr.B.Maheswaran
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 19.03.2018 in S.C.No.34 of 2015 on the file of the learned Sessions Judge (Mahalir Neethimandram), Chennai.

2(a). It is the case of the prosecution that the deceased was married to one Ginjith, 15 years before the occurrence and had two children out of the wedlock; that the marriage between the deceased and the Ginjith was dissolved; that the deceased was working in an Export company at Ambattur and she became friendly with the appellant and were living as husband and wife for more than a year; that on 09.07.2013, when the deceased was preparing dinner after returning from work, the accused came in an inebriated condition and told the deceased that he was planning to



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marry another girl; that there was a quarrel on account of the same between the appellant and the deceased; that the appellant thereafter poured kerosene on the deceased by stating “நீ ஒழிஞ்சா தான் எனக்கு வேற கல்யாணம் நீ ஒழிஞ்சு போ”; that when the deceased tried to escape, the appellant wrongfully restrained her; that on hearing the deceased scream, a neighbour by name Sukumar (P.W.3) took the deceased in an auto of one Baskar (P.W.5) to the house of P.W.1 (the mother of the deceased); that thereafter, P.W.1 took the deceased to the hospital; and that the deceased died on 12.07.2013 at 10:00 p.m.

(b). P.W.12, working as Sub Inspector of Police, received an intimation from the Burn Injuries Ward of KMC Hospital on 10.07.2013, went to the Hospital, recorded the statement of the deceased (Ex.P8), and obtained her signature. He thereafter registered the First Information Report (Ex.P9) for the offences under Sections 341, 324, and 506 (i) of the Indian Penal Code, 1860 against the appellant. He thereafter visited the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10). On the same day, he made a requisition to the learned XVI



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Metropolitan Magistrate, (P.W.13), to record the statement of the victim (deceased). P.W.13 recorded the statement at 1:55 p.m., on 10.07.2013 and obtained the right thumb impression of the deceased on the statement in the

presence of one Dr.Ramkumar. Dr. Ramkumar, was not examined by the prosecution and the signatures and writings of Dr.Ramkumar were proved through P.W.14, the Doctor, who was deputed as Medical Officer of Government Kilpauk Medical College Hospital.

(c). The Inspector, (P.W.15), took up the investigation after the death of the deceased on 12.07.2013. He recorded the statements of other witnesses, filed an Alteration Report (Ex.P17), conducted an inquest in the presence of Panchayatars and prepared an Inquest Report, (Ex.P18). He sent the body for a postmortem, which was conducted by P.W.11. P.W.11 issued a Postmortem certificate (Ex.P6), and opined that the deceased died due to the side effects of burn injuries. After examination of all other witnesses, P.W.15 filed the Final Report for the offences under Sections 341, 302, and 506 (ii) of the IPC against the appellant before the learned X



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Metropolitan Magistrate, Egmore, Chennai – 600 008.

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(d) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.34 of 2015 and was made over to the learned Sessions Judge, Mahila Court, (Mahalir Neethimandram), Chennai, for trial. The trial Court framed charges u/s.302 and 341 of the IPC as against the appellant and when questioned, the appellant pleaded 'not guilty.

(e) To prove the case, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 20 exhibits as Exs.P1 to P20, and marked two Material Objects as M.O.1 and M.O.2. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused examined D.W.1 and marked two exhibits as Exs.D1 and D2.

(f) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt



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and held the accused guilty of the offences under Sections 302 and 341 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo a further period of six months Simple imprisonment for the offence under Section 302 of the IPC and sentenced him to undergo one month of Simple imprisonment for the offence under Section 341 of the IPC. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr. B. Maheswaran, learned counsel appearing for the appellant/accused, and Mr. A. Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

4(a). The learned counsel for the appellant/accused submitted that the case has not been established by the prosecution beyond reasonable doubt, that the alleged Dying Declarations made by the deceased cannot be believed since there are inherent contradictions; that in the complaint, the motive for the occurrence has not been spelt out, whereas in other places, though the motive has been stated, the motive differs from one version to



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the other.

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(b). The learned counsel further submitted that the version of P.W.3 to P.W.5, who had been treated as hostile, supports the defence case, that it's a case of suicide. The learned counsel further submitted that D.W.1, the brother of the deceased, has himself stated that the version of the prosecution cannot be believed.

(c). The learned counsel also pointed out the other contradictions in the evidence, in support of his submission.

5. The learned Additional Public Prosecutor, *per contra*, submitted that the prosecution has established its case beyond reasonable doubt and the Dying Declaration of the deceased is reliable and the Trial Court had rightly convicted the accused on the said basis.

6. Heard. We perused the records. P.W.1 (Mrs.Surya), is the mother of the deceased, who speaks about the deceased coming to her house



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immediately after the occurrence in an auto-rickshaw; that the deceased went and sat in a tea shop after informing her about the occurrence; and that thereafter the Police who came on regular night rounds advised the deceased and P.W.1 to go to the hospital and sent them to the hospital by Ambulance.

7. P.W.2 (Mr.Albert), is the brother of the deceased who speaks about the deceased, taking treatment at the hospital. P.W.3 and P.W.4 are the landlords where the deceased and the appellant lived. They both turned hostile. It is the prosecution case that P.W.3 took the deceased in P.W.5's auto to the house of P.W.1. P.W.3 to P.W.5 turned hostile as they had deposed that the deceased told them that she did not want to live and nothing about the alleged act of the appellant.

8. P.W.6 is the Observation Mahazar witness, who turned hostile. P.W.7 is another Observation Mahazar witness. P.W.8 and P.W.9 witnesses to the confession statement of the accused turned hostile. P.W.10 is the Doctor, who first treated the deceased and issued an Accident Register



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marked as Ex.P5. P.W.11, as stated earlier, is the Postmortem Doctor. P.W.12, Sub-Inspector of Police, registered the FIR. P.W.13, the learned Magistrate, recorded the Dying Declaration. P.W.14, the Doctor had identified the signatures of Dr. Ramkumar who had stated that the deceased was in a fit state of mind. P.W.15 is the Investigating Officer.

9. The prosecution had marked Ex.P5, the entries in the Accident Register recorded by PW10, who first treated the deceased; Ex.P8, the complaint given by the deceased to P.W.12; and Ex.P12, the statement given to P.W.13 as Dying Declarations of the deceased. Besides, those written Dying Declarations, the deceased is said to have given an oral Dying Declaration to P.W.1. The occurrence had taken place in the house where the appellant and the deceased lived. Therefore, the prosecution case rests primarily on the Dying Declarations said to have been made by the deceased.

10. It is settled law that even when there are multiple Dying



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Declarations, each Dying Declaration has to be assessed and evaluated independently, and one cannot be rejected because of certain variations with the other. It is also fairly well settled that in order to believe the Dying Declaration, it should be voluntary, truthful, and reliable. The Hon'ble Supreme Court, after considering the various pronouncements relating to multiple Dying Declarations, in *Abhishek Sharma Vs. State (Govt. of NCT of Delhi)*, reported in **2023 SCC OnLine SC 1358**, held as follows:

“9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.



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9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”

11. (a) We may now analyse the various statements made by the deceased to verify whether they are voluntary, truthful, and reliable. In Ex.P5, it is recorded that the deceased informed PW10 that her husband threw kerosene and set fire. In Ex.P8, the deceased had stated that the accused came in an inebriated condition and picked up unnecessary quarrel; that the quarrel continued till 2.00am and suddenly the appellant poured kerosene; and that he set fire and further prevented the deceased from running away. In Ex.P12, the Dying Declaration recorded by PW13-learned Magistrate, the deceased stated that the appellant demanded money for paying the monthly dues for his loan and since the deceased refused, he poured kerosene and set fire by using a match box, which the appellant had



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for lighting his cigarette.

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(b) P.W.10, who made the entries in the Accident register [Ex.P5], stated in his evidence that there were burn injuries in the left thumb of the deceased. The impression of the left toe of the deceased was obtained in the Accident Register. However, we find strangely that in the Dying Declaration said to have been recorded by the learned Magistrate, (P.W.13), at 1:55 p.m., the right thumb impression of the deceased was obtained. We may also note that in the complaint, which is said to have been recorded in the morning of 10.07.2013, the deceased had affixed her signature. Thus, we find that in the Accident Register copy [Ex.P5], the left toe impression was obtained; in the complaint [Ex.P8], the signature of the deceased was obtained; and in the Dying Declaration [Ex.P12] recorded by P.W.13, the right thumb impression of the deceased was obtained. There is no explanation by the prosecution as to how the deceased could have signed the complaint, when even her left thumb impression could not be affixed at 4.35 a.m., when P.W.10 examined her. Further, there is no explanation as to why the learned Judicial Magistrate had not obtained the signature in the



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Dying Declaration recorded at 2.00 p.m., when the deceased was able to sign the complaint in the morning.

12. That apart in the complaint, Ex.P8, we find that there is no mention of the motive for the occurrence. The complaint states that the appellant came in an inebriated condition and quarrelled with the deceased, the whole night until 2:00 a.m. In the Dying Declaration, recorded by P.W.13 and marked as Ex.P12, the motive for the occurrence stated is that the appellant demanded money for paying the monthly dues for the loan obtained by him for the purchase of an Auto, and that since the deceased refused, the appellant poured kerosene and set fire. However, it is the prosecution case that when the appellant expressed his desire to marry another girl, the deceased objected, as a result of which, the appellant got enraged and poured kerosene. The motive for the occurrence as stated in the prosecution is different from the motive found in the Dying Declaration (Ex.P12).

13. In Ex.P5, there was no occasion for the deceased to refer to the



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motive. In Ex.P8-complaint, the motive stated is a mere quarrel without mentioning the reason. However, in Ex.P12, the statement recorded by the learned Magistrate, as stated earlier, the motive is that since the deceased refused to give money to the appellant, the appellant poured kerosene. The prosecution case is, however, totally different. The motive, according to the prosecution, is that the appellant refused to marry the deceased and when the deceased protested, the appellant poured kerosene and set fire. Besides the inconsistencies in Ex.P8 and Ex.P12 with regard to the material aspect of the motive for the occurrence, both versions are contrary to the prosecution case. This, in our view, is a material inconsistency that goes to the root of the issue. The credibility of the Dying Declarations is therefore highly doubtful.

14. That apart, we also find that the conduct of P.W.1 and the deceased do not suggest that the prosecution case is probable. Though P.W.3 to P.W.5 turned hostile, admittedly, they took the deceased to P.W.1's house immediately after the occurrence. P.W.1 admitted that when the deceased came to her house after the occurrence, she chased the



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deceased out of her house. This conduct of PW1 appears to be inconsistent with the prosecution version that the deceased informed PW1 that the appellant poured kerosene. PW1's natural reaction as a mother would be to take action immediately for giving treatment to the deceased and also for making a complaint, and not to chase her away, even assuming that they did not have a good relationship. We also find from the evidence that the deceased, after drinking water, left the house of P.W.1, on her own and went to a tea shop in front of the mosque near PW1's house. Till then, neither P.W.1 nor the deceased chose either to go to the hospital or make a complaint against the appellant. If the appellant had really set fire on the deceased, it is highly improbable that the deceased would go to the house of P.W.1 instead of going to the hospital, when P.W.3 to P.W.5 were available to take her to the hospital. It is also found in the evidence of P.W.1 that the Police who had spotted the deceased at the tea shop had called P.W.1 and sent both to the hospital for treatment in an ambulance. The relevant portion of PW1's evidence reads as follows:

“என் பேரன் என் அம்மாவை ஏன்
துரத்திவிட்டங்க என்று சொன்னான். அப்போது ரவுன்ஸ்



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வந்த போலீசார் என் மகளிடம் கேட்டிருக்கிறார்கள்
அப்போது என் மகள் எதிரி கார்த்திக் தன்னை
கொளுத்திவிட்டதாக சொன்னதன் பேரில் என்னையும்
வரவழைத்து என் மகளுடன் ஆம்புலன்சில்
ஆஸ்பத்திரிக்கு தீக்காயத்துடன் அனுப்பிவைத்தார்கள்.”.

15. From the above evidence, it is clear that the presence of police was admitted by PW1 even before the complaint was lodged. It is also clear from the above evidence that, only at the instance of the police, PW1 took the deceased to the hospital. Therefore, the version that the appellant poured kerosene appears to be an afterthought. The Police had arranged for an ambulance and sent both P.W.1 and the deceased to the Hospital. Because of the presence of Police, the possibility of tutoring the deceased cannot be ruled out. If the deceased was really aggrieved by the appellant's conduct as stated earlier, she would have either gone to Police Station or to the Hospital. In this context, when one reads the evidence of P.W.3 to P.W.5, who had been treated as hostile by the prosecution, their version probalilises the defence case that it was a case of suicide. The prosecution had not discredited the evidence of P.W.3 to P.W.5 in their cross-examination. Therefore, P.W.3 to P.W.5's evidence, to the extent it supports



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the appellant's case, cannot be ignored.

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16. We may also note here that the police, who had arranged for the ambulance, have not been examined by the prosecution. It is also surprising that the police who arranged for the ambulance had not given information about the occurrence to the jurisdictional police.

17. We may note another aspect in this case that is worth mentioning that though the FIR is said to have been registered on 10.07.2013, it was sent to the learned Magistrate, only on 12.07.2013 at 7:30 p.m. No reasons had been given by the prosecution for the delay. On 10.07.2013, when P.W.12, made a requisition to P.W.13, to record the Dying Declaration by Ex.P.11-letter, the offence is shown as Section 309 of the IPC. The learned Magistrate, also in the Dying Declaration, recorded the offence as Section 309 of the IPC. This throws a serious doubt on the prosecution case that the offences were initially registered under Sections 341, 324, and 506 (i) of the IPC. Though P.W.12 had stated that he made a mistake in the requisition letter, we are unable to accept his explanation since it is he who registered



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the FIR and that the mentioning of the offence in the requisition letter, Ex.P.11 in our view does not appear to be a typographical error. The requisition by him reads as follows:

“ஐயா P6 Cr.No.1218/13 u/s 309 IPC
வழக்கில் கண்ட உஜா பெ/வ 27 கார்திக்
No.140 மேற்கு இந்திரா காந்தி நகர்,
எருக்கஞ்சேரி சென்னை-118 என்பவர்
தீக்காயமுற்று கீழ்பாக்கம் மருத்துவமனை
தீக்காயவார்டில் சிகிச்சைபெறுபவரிடம்
மரணவாக்குமூலம் பெற்று தரும்படி
கோரப்படுகிறது.”

18. From the above discussion, we are of the view that the Dying Declarations cannot be said to be made voluntarily and, in any case, do not appear to be truthful. The motive in Ex.P8-complaint is different from motive stated in Ex.P.12-Dying Declaration. When a signature was obtained in Ex.P8-complaint, there is no reason why no signature was obtained in the Dying Declaration recorded two hours later by the learned Magistrate. Further, the possibility of tutoring cannot be ruled out, as P.W.1 and the deceased did not make any effort to file a complaint, and it was at the



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intervention of the Police that they were sent to the hospital.

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19. That apart, the recovery of the kerosene-can and match box, said to have been made by the investigation officer near a bridge on the confession given by the appellant, appears to be highly artificial and unbelievable. PW8 and PW9, who are witnesses to the alleged confession and the seizure mahazar, turned hostile. Further, it is not the case of the prosecution that the appellant ran out of the house with the kerosene-can and match box after setting fire to the deceased. There is no reason for the appellant to carry the match box and the kerosene-can and hide them near a bridge. This, in our view, demonstrates the over-enthusiasm displayed by the investigation to connect the accused with the occurrence.

20. Though the defence relied upon the evidence of DW1 to substantiate the appellant's case that it was a case of suicide, we are not inclined to accept the version of DW1 as it is in the nature of the opinion. We also find that DW1 is the brother of the appellant.



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21. From the above discussion, we are of the view that the prosecution has not let in any acceptable evidence to establish their case beyond reasonable doubt, and it is highly unsafe to sustain the conviction on the basis of the evidence adduced by the prosecution. Therefore, the conviction and sentence imposed on the appellant are liable to be set aside.

22. Accordingly, the Criminal Appeal is allowed and the appellant is acquitted of all charges. The conviction and sentence imposed upon the appellant in S.C. No.34 of 2015 dated 19.03.2018, on the file of the learned Mahila Sessions Judge, (Mahalir Neethimandram), Chennai, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(S.S.S.R.,J.) (S.M.,J.)
05.01.2024

Index : yes/no
Neutral citation : yes/no
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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Sessions Judge,
Mahila Court [Magalir Neethimandram],
Chennai.

2. The Inspector of Police,
P6 Kodungaiyur Police Station,
Chennai – 600 118.

3. The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
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