



Crl.A.No.813 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2025

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CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

Crl.A.No.813 of 2019

Suresh

... Appellant

Vs.

State represented by
The Inspector of Police,
Thirupathur Taluk Police Station,
Crime No.55 of 2014

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of learned Sessions Judge, Fast Track Mahila Court (Sessions Court), Vellore, Vellore District in S.C.No.148 of 2015 dated 19.03.2019.

For Appellant : Mr.M.G.Udaya Shankar

Ms.Gopika Nambiyar &
Mr.P.Senthilvel (Legal Aid Counsel)

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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JUDGMENT

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

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Aggrieved over the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court (Sessions Court), Vellore, Vellore District in S.C.No.148 of 2015 dated 19.03.2019, the instant appeal has been filed by the appellant. The accused/appellant was convicted and sentenced by the trial Court as follows :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Sole Accused	Section 302 of IPC	Life imprisonment and fine of Rs.1,000/- in default, to undergo one month rigorous imprisonment
Sole Accused	Section 498A of IPC	1 year rigorous imprisonment and fine of Rs.1,000/- in default, to undergo one month rigorous imprisonment

2.When the appeal was posted for final hearing on 24.11.2025, the counsel for the appellant was absent, therefore, we appointed Ms.Gopika Nambiyar & Mr.P.Senthilvel as Legal Aid Counsel to defend the appellant/accused and posted the matter today. Today, the counsel on record who filed the appeal is also present and submitted that he will argue the appeal.



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3. The case of the prosecution is as follows :

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3.1. The deceased and the accused were husband and wife, they married 8 months prior to the death of the deceased. PW1 is the mother of the deceased, after marriage, the deceased and the accused were residing in the PW1 house. The accused was working at Bangalore and the accused used to visit the house of PW1 house once in 15 days, where, the deceased was residing. On the date of occurrence, i.e., on 09.02.2014, PW1 and other family members went to Krishnagiri for function in her brother's house and PW1 on hearing that her daughter was set ablaze rushed to the place of occurrence and the deceased was taken to hospital, wherein, police enquired and obtained the statement under Ex.P1. PW3 is the cousin of the deceased, while she returned from school, she found the deceased walking with burn injury, she took the deceased to the bus stand and told her to sit. PW4 is the deceased father's brother, while he was returning, he found the deceased coming to the bus stand with the burn injuries and fell down. PW5/Medical Officer attached to the Government Hospital, Tirupattur admitted the deceased in the hospital. The deceased was brought in ambulance and noted 100% burn injuries on the body and issued Ex.P4/Accident Register copy



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and he also requested the learned Judicial Magistrate to record the dying declaration under Ex.P5 and he has also issued a certificate with regard to the mental condition of the deceased which is marked as Ex.P6. PW9/Judicial Magistrate, Tirupattur on receipt of the intimation under Ex.P5 from the hospital rushed to the hospital and ascertained that the deceased was in fit state of mind recorded the dying declaration under Ex.P9. According to the dying declaration, there was quarrel between the husband and wife, the deceased was alone in her house, at that time, the accused came and questioned with whom she was moving. In quarrel, he poured kerosene from the bottle and set her ablaze. PW11/Inspector of Police after receipt of information went to the hospital on the same day at 8 pm, however, on finding that the deceased was not in fit stage to give dying declaration, she recorded the statement of PW1 and registered the FIR for the offences under Section 307 of IPC under Ex.P11. PW12 took up the investigation and went to the place of occurrence and prepared observation mahazaar under Ex.P10 and rough sketch under Ex.P12 and thereafter, arrested the accused in the presence of PW12 and recorded his admissible portion of confession under Ex.P15 and in pursuant to the same, he seized



M.O.1 and M.O.2 under Ex.P3 and sent the accused to the Court and also the material objects to the Court. PW7/Medical Officer conducted autopsy over the dead body and found the following external injuries

“ Diffuse irregular dermo epidermal seen over the following regions:

- 1) Right and left side of face*
- 2) Entire both upper limbs, except few area of finger*
- 3) Entire both lower limbs, except sole and few areas of foot*
- 4) Front of chest*
- 5) Back of chest and abdomen”*

and issued Ex.P8/Postmortem Certificate and opined that the deceased would appear to have died due to effects of burn.

3.2. PW12 in continuation of the investigation recorded the further evidences and thereafter, after receipt of the death intimation from the hospital, on 14.02.2014 altered the crime and filed alteration report under Ex.P13 for the offences under Sections 323, 302 of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. Thereafter, PW12 continued the investigation, visited the place of occurrence, enquired the witnesses and after completing the investigation, laid the charge sheet against the accused under Section 302 and 498A of IPC in P.R.C.No.2 of 2015 before the learned Judicial Magistrate No.II, Tirupattur.



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3.3. On appearance of the accused, the provisions of Section 207

Cr.P.C. were complied with and the case was committed to the Court of Sessions in S.C.No.148 of 2015 and was made over to the Sessions Judge, Fast Track Mahila Court (Sessions Court), Vellore, Vellore District, for trial.

3.4. The trial Court framed the charges for the offences under Sections 302 and 498A of IPC as against the accused. When questioned, the accused pleaded “not guilty”.

3.5. To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.14, marked Exs.P1 to P15 and produced M.Os.1 & 2. On the side of the defence, neither witness was examined nor any document marked.

3.6. The trial Court, on appreciation of oral and documentary evidence on record, by judgment dated 19.03.2019, convicted and sentenced the accused as stated supra.

4. Challenging the conviction and sentence *qua* Sections 302 and 498A of IPC, the accused has preferred the present appeal.



5. The learned counsel for the appellant submitted that entire dying declaration is doubtful and is highly tutored version, the manner in which the deceased suffered injury is also doubtful. The evidences of PW3 and PW4 who has seen the deceased never saw the accused at any point of time. Though PW1 would say that she rushed to the hospital only after the deceased was admitted in the hospital, in the cross examination, she has clearly stated that she had gone with the deceased to the hospital. She has only given statement before the Medical Officer/PW5. The medical officer recorded as if the history was told by her mother, however, later, it has scored off and this has been admitted by PW5. Though the dying declaration is been recorded by PW9, the possibility of tutoring cannot be ruled out. The nature of burn injuries found by the medical officer clearly shows it is self-immolation. Therefore, seeks for allowing this criminal appeal.

6. The learned legal aid counsel pointed out before this Court that the FIR is totally contradictory with the dying declaration and PW11/Sub Inspector when she went to the hospital to record the evidence had clearly observed that the deceased was not in a position to give any statement,



however, in the dying declaration recorded by the Judicial Magistrate, it is stated as if bottle has been used, therefore, the possibility of tutoring cannot be ruled out. The accused was visiting the place only once in 15 days, the deceased had tendency to commit suicide which has been clearly admitted by PW1 herself in her examination.

7. Whereas, the learned Additional Public Prosecutor would submit that the deceased had given dying declaration not only before the Medical Officer but also before the Judicial Magistrate and there was no motive for the deceased to implicate her husband, whereas, they have married only recently. Hence, seeks for dismissal of the appeal.

8. Heard both sides and perused the materials placed on record.

9. The conviction as against the accused is solely based on the dying declaration. Of-course dying declaration, if it does not suffer from infirmity or does not create any doubt, that itself can be a sole basis for conviction, since the dying declaration will attain the character of substantive piece of evidence.



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10. It is the case of the prosecution that the accused subjecting the deceased to cruelty and thereafter, he caused the death by setting her ablaze.

The charge under Section 498A has not been established and no evidence is placed on record, however, the Trial Court has found that the charge under Section 302 and 498A of IPC has been established. The Trial Court has mainly relied upon the dying declaration under Ex.P9 recorded by PW9. It is to be noted that the deceased was taken to the hospital at 7 pm. The evidence of PW1 when carefully seen would indicate that at the time of incident, PW1 and other family members went to Krishnagiri for function in her brother's house and later, on hearing that her daughter suffered burn injuries and was admitted to the hospital, she went to the Tirupattur Government Hospital. The evidence of PW5 when carefully seen would indicate that he has admitted the deceased in the Government Hospital at around 7 pm and he has issued Ex.P4/Accident Register copy. Ex.P4 recorded as if the deceased has given the history that while she was in PW1's house due to the quarrel between her husband, he poured kerosene and set her ablaze. The incident had occurred at 5 pm, though her statement qualifies as a dying declaration, the correction made by the medical officer



in the Accident Register copy about the name of the person who gave the history creates doubt. The medical officer originally recorded as if the history was told by her mother, thereafter, he put the full stop, later the word “her mother” has been scored off and then the word “patient” was recorded. This correction has been admitted by the PW5 in the cross examination. The correction found in Ex.P4 when seen coupled with the evidences of PW1, it will create some doubt about the nature of the incident. PW1 in her evidence would say that after the deceased was admitted in the hospital she came to the hospital, that itself is falsified by the entry made by the medical officer/PW5 under Ex.P4. That doubt is further fortified by the evidence of the Judicial Magistrate/PW9 that when he visited the hospital to record the dying declaration, the deceased was surrounded by her relatives. Therefore, this Court is of the view that PW1 was very much present along with the deceased while she was taken to the hospital. This aspect has been suppressed by the PW1 for some or other reasons.

11. It is further to be noted that PW3 and PW4 who are none other than that of the close relatives of the deceased. PW3 is the first cousin and



PW4 is the deceased father's brother. PW3 while returning from the school saw the deceased walking with the burn injuries and she took her to the bus stand. Similarly, PW4 has clearly stated that the deceased came with a burn injuries and fell down in the bus stop. Neither PW3 nor PW4 has spoken about the presence of the accused either in the house or in the place where the deceased fell down.

12. Further, it is the specific case of the prosecution that kerosene can has been used by the accused, whereas, in the dying declaration, it is stated as if the bottle has been used. This also creates some doubt. No doubt, the deceased unfortunately suffered 100% burn injuries, it is to be noted that when a person receives 100% burn injury, the survival is very less and there will be huge pain and to arrest the pain, normally, sedative drugs will be administered. The deceased was given sedative drugs containing *Pentozocaine*, *Cefotaxime*, *Amikacin* as per the admission of PW5/Doctor. Therefore, person who has suffered 100% burn injuries and giving minute details, exact details are also very remote and such person is very amenable for tutoring. During such pain and sufferings, they will become like a child



and they will repeat what others speak or tutor. In this regard, it is relevant

to note that the Hon'ble Supreme Court in the case of *Sampat Babso Kale*

and anr vs. State of Maharashtra reported in 2019 (4) SCC 739 has held as

follows:-

“ 15. In the present case, as we have already held above, there was some doubt as to whether the victim was in a fit state of mind to make the statement. No doubt, the doctor had stated that she was in a fit state of mind but he himself had, in his evidence, admitted that in the case of a victim with 98% burns, the shock may lead to delusion. Furthermore, in our view, the combined effect of the trauma with the administration of painkillers could lead to a case of possible delusion, and therefore, there is a need to look for corroborative evidence in the present case.”

13. The Hon'ble Supreme Court in the above judgment refused to uphold the conviction. The dying declaration in that case was made by a victim who had suffered 98 per cent injuries, and the statement was recorded after the victim was injected with painkillers. The Hon'ble Supreme Court opined that there was serious doubts as to whether the victim was in a fit state of mind to make the statement. *Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out.*



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14. The mother presence who accompanied the deceased at the first instance has been recorded under Ex.P4. Whereas, PW1 evidence would indicate that she has not come out with truth. PW3 and PW4 never stated anything about the presence of the accused, in fact, they have seen the deceased with the burn injuries in the bus stand. But the prosecution has projected as if the entire occurrence has taken place inside the house, when all these admissions and nature of injuries and 100% burn injuries and sedative drugs administered which has been admitted by PW5, the possibility of tutoring the deceased cannot be ruled out. As long as there is no other motive and the quarrel is established, the possibility of tutoring cannot be ruled out in this case.

15. On further scrutiny of cross examination of PW1 makes it very clear that only the police came to her house and took the deceased to the hospital. This admission coupled with the entry made by the Medical Officer that the deceased was brought to the hospital in 108 ambulance clearly proves the presence of police in the house of PW1. Therefore, we are of the view that once the police has already visited and took the deceased to



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the hospital and any statement obtaining later as a dying declaration loses its originality for the simple reason that possibility of tutoring is more. We are saying this for the reason that possibility of suicide also cannot be ruled out. PW1 herself stated that the deceased has attempted to commit suicide twice earlier, however, she has been saved. Therefore, the tendency to end her life is very much present and the possibility of self-immolation also cannot be ruled out, particularly, when the Medical Officer had noted that burn injuries had also caused on the back also. Normally, when any person pours kerosene from the opposite direction, burn injury will be on the front side, whereas, the Medical Officer has found the burn injuries on the back side also, therefore, the possibility of self immolation also cannot also be ruled out. When there are two views, one is self immolation and another is homicidal violence, the view in favour of the accused has to be accepted.

16. Further, we have also found that the tutoring is also possible and therefore, mere dying declaration itself is not sufficient to hold conviction against the accused/appellant. Thus, this Court is inclined to extend the benefit of doubt to the accused. The foregoing reasons assigned by this



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Court are sufficient to cast clouds on the genuineness of the prosecution case. We find it difficult to hold conviction only on the basis of dying declaration by the deceased.

17. In such view of the matter, this Criminal Appeal stands allowed and the judgment of the trial Court dated 19.03.2019 in S.C.No.148 of 2015 is set aside, and the accused is acquitted of all the charges framed against him. Fine amount, if any, paid by the appellant/accused, shall be refunded to them. Bail bond executed by the appellant shall stand discharged.

18. We also place our appreciation to the legal aid counsels Ms.Gopika Nambiar and Mr.P.Senthilvel appointed by this Court for placing correct facts.

(N.S.K., J.) (M.J.R., J.)
27.11.2025

dhk

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N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

dhk

To

1. The Sessions Judge,
Fast Track Mahila Court (Sessions Court), Vellore, Vellore District
2. The Inspector of Police,
Thirupatthur Taluk Police Station,
3. The Public Prosecutor,
High Court, Madras.

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