



CrI.A(MD)No.750 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 18.03.2025
Delivered on: 02.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

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Udhayakumar

...Appellant/Accused/Accused

-Vs-

State through the
The Inspector of Police,
Virudhunagar West Police Station
Virudhunagar District.
Crime No.378/2016

...Respondent/Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records pertaining to the order dated 30.01.2023 in S.C.No.11 of 2017 on the file of the learned Fast Track Mahalir Court, Virudhunagar District at Srivilliputhur and to set aside the same by allowing this criminal appeal.

For Appellant :Mr.G.Karuppasamy Pandiyan,

for Mr.R.Vignesh

For Respondent: Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor

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JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

This Criminal Appeal is filed by the husband of the deceased Prema Sundari. The trial court convicted the appellant for offences under section 498 A IPC and 302 IPC. He is sentenced to undergo two years Rigorous Imprisonment and to undergo life imprisonment respectively of these offences.

2.The case of the prosecution is that, the appellant and the deceased viz., Prema Sundari got married about 18 years prior to the incident. They had two male children. The appellant became a drunkard and was dependant on his wife. The deceased was trying to meet the needs by engaging herself in the activities of women self help group. She used to borrow money from one Gnanasigamani, a money lender. She later became intimate to him. This caused fissure in the life of the appellant and the deceased. They got separated. The elder son was with the appellant. The younger son was with the deceased. Few days prior to the incident, the fight between them got worse. The deceased gave a written complaint against her husband that he is threatening her with weapon and also demanding Rs.2 lakhs to buy cow. The police enquired the complaint and later, on the undertaking given by the appellant that he will not disturb, the deceased and will work out his



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remedy by filing divorce petition, the complaint of the deceased was closed. Two days later, the appellant went to the house of the deceased at late hours and got into the house under the pretext of having talk with his wife regarding the divorce proceedings. After gaining entry, the appellant abused her for having intimacy with Gnansigamani, threatened her to kill and in the fit of anger poured the kerosene kept in the cool drinks bottle and lite her alive

3.This was witnessed by the second son. The deceased tried to put the fire by herself. Her younger son, after informing the incident to the maternal grand mother over phone, took her to the hospital. At the hospital, the police came and recorded the complaint from the Prema Sundari. Later, on the same night her statement was recorded by the Judicial Magistrate. However, on 14.06.2016, she died due to 60% homicidal burn.

4.Based on the complaint given by Pema Sundari, the victim of the crime, stating that she was set fire by her husband Udayakumar, the Respondent Police registered the FIR in Crime No:378 of 2016 on 01.06.2016 against Udayakumar the appellant under sections 498 A, 294B and 307 IPC. After, the complainant Prema Sundari died in the hospital on 14.06.2016 at about 17:15 hours, the case was altered to 294B, 498A and 302 IPC. Even before the alteration of the sections,

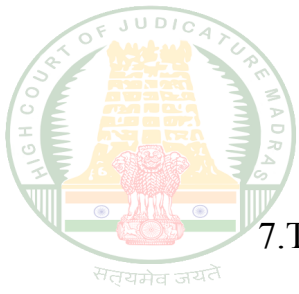


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the statement of the victim was recorded by the Judicial Magistrate. After her death, the statement of her younger son, Muthuraman @ Balu was recorded by the Judicial Magistrate No: II, Virudhunagar, as per Section 164(v) of Cr.P.C. On completion of the investigation, final report was filed against the appellant and the case was committed to the Court of Sessions.

5.The trial Court framed charges under sections 498A and 302 IPC. The prosecution has examined 22 witnesses marked 25 exhibits and four Material Objects. Three witnesses were examined on behalf of the accused.

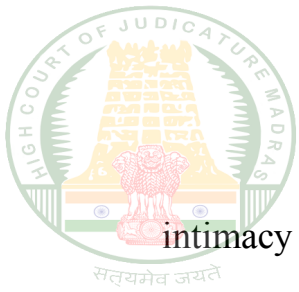
6.The trial Court, after appreciating the evidence, held that the case of the prosecution is proved beyond doubt. Further, held that, through the complaint-Ex.P-1 given by the diseased, Ex.P-17-the dying declaration recorded in the presence of the doctor by the Judicial Magistrate, Ex.P-9-the Accident register maintained in the hospital and the previous statement of PW-1 to the Judicial Magistrate marked as Ex.P-23 along with the deposition of PW.4-the mother of the victim corroborates each other and goes to prove the fact that the accused went to the house of the deceased and set her to fire after pouring kerosene on her. The death caused due to systemic inflammatory response syndrome due to 60% homicidal burns.



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7.The trial Court sentenced the appellant to undergo two years Rigorous Imprisonment with fine of Rs.2000/-, in default three months Rigorous Imprisonment for offence under section 498 A IPC. He was sentenced to undergo life imprisonment and pay a fine of Rs.5000/- in default to undergo six months Rigorous Imprisonment for offence under section 302 IPC.

8.Being aggrieved by the conviction and sentence, the criminal appeal is filed on the ground that the trial Court failed to consider the fact that PW1, who is the prime and sole eye witness for the prosecution turned hostile. He being the son of the deceased, he need not tell lie about the murderer of his mother, if he had really seen the crime. PW-1 in fact implicated PW.12 who had illegal intimacy with the deceased, the Section 164 (5) statement, recorded by the Judicial Magistrate has lost its significance in view of the hostility of P.W.1 before the Court. However, the trial Court has given undue weightage to the previous statement even though not been corroborated by the maker of the statement. The trial Court has not considered that PW.1 in his deposition had stated that when he left the house to fill petrol to his two wheeler, PW.12 and his mother alone were in the house. When he came back half an hour later, P.W.12 told he has to fetch an auto to return home. When PW1 enter the house, he saw his mother coming out with burn injury. He took her to the hospital. He had stated that the deceased had

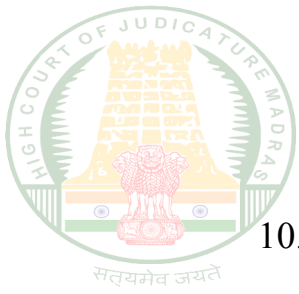


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intimacy with PW-12. The accused was not happy about it and got separated. On the day of occurrence, the accused was not present. P.W.1 had turned hostile in entirety and in the said background, except (PW-4) the mother of the victim, no other prosecution witness has implicated the appellant. While so, the conviction solely based on the dying declaration, without explicit certificate from the Doctor about fit state of mind of the maker is to be set aside. Whether the maker of the statement was in conscious state of mind or not, failed to be ascertained through the doctor.

9.The learned counsel appearing for the appellant further submitted that the occurrence alleged to have taken place on 31.05.2016 early morning inside the house where the victim was residing along with her son. The prosecution case is that there was dispute between the appellant and his wife as a consequence, the appellant was living separately along with the elder son in his parents house. It is also found from the prosecution witnesses that PW.12 used to visit the house of the deceased frequently. PW.12 also admits that he had acquaintance with the deceased and he used to lend money to her and go to her house for collecting the money. In the said circumstances, the evidence of PW.1, who is supposed to be present at the time of occurrence, having turned hostile, probablises the defence theory while contrary from the prosecution version.

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10.The Learned counsel for the appellant submitted that, the trial Court should not have given undue weightage to the dying declaration which bristles with tutoring. Court should have disbelieved the prosecution in view of the fact that, not only PW-1, other prosecution witnesses PW-2, PW-3, PW-6, PW-7 and PW-8 also turned hostile. The evidence of PW-5, the mother of the victim is not reliable, since she was not a witness to the occurrence. Hence, the trial Court ought to have acquitted him by extending the benefit of doubt.

11.The learned counsel submitted that, the appellant through the cross examination of witnesses had probablized that the deceased might have committed suicide due to the torture and mental cruelty caused to her by PW12. It is a circumstantial evidence which points the needle of suspicion towards the appellant as per the prosecution. Whereas the link in the circumstances is not proved beyond doubt that the appellant committed the crime. The Doctor, Who treated the victim was examined by the prosecution as PW.22. This witness in his cross-examination admits that he did not give you any stability certificate at the time of recording dying declaration.

12.Finally, the learned counsel submitted that in any event, the appellant not committed any act of crime with premeditation or with intention. Even according



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to the prosecution case the accused poured on the deceased kerosene kept in a plastic bottle at the deceased house. The kerosene was not brought by the appellant but it was in the house of the victim. He suddenly after quarrelling with his wife, before leaving her, in a fit of anger turned back, took the kerosene stored in the cool drinks bottle and poured on the victim and set her on fire. After remorse, he left the place. Hence, the appellant ought not to have been convicted for offence under section 302 IPC

13.Per contra, the Learned Additional Public Prosecutor submitted that the appellant was the estranged husband of the victim. He had every intention and knowledge to cause the death of the of his wife Prema Sundari for being deserted him and having affair with PW-12. On the midnight of 31.05.2016 – 01.06.2016, he called his wife over phone several times. Even though the deceased was initially not inclined to attend his call, he at last succeeding. He made his wife to open the door and gain entry under the protest of sorting out of the matrimonial dispute and to give consent for the divorce. These facts are proved through the dying declaration of the victim and corroborated by the statement of her son given to the magistrate and marked as Ex.P-17. Though the son turned hostile, statement under Section 164 CrPC can also be relied for corroboration not only his previous statement but also the statement of the deceased about her cause of death. Though



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the call details of the cell phone not marked along with certificate under section 65B of the Evidence Act, the material evidence having not controverted by the accused and DW-1 admits the phone numbers of the deceased and the accused found in the CDR which can be taken into consideration atleast as a prove about the presence of the accused in the vicinity of the deceased house at the time of the occurrence.

14.The Learned Public Prosecutor contented that the prosecution, through the evidence had proved that, few days prior to the murder, ie on 25.05.2016, the decease had given a complaint to the police regarding threat and cruelty of the accused. The police registered C.S.R.No: 83 of 2016(Ex P-13) and has enquired the accused/appellant and the deceased. To the police, the appellant had given a letter Ex P-16, stating that he will not trouble his wife any further and he will work out his remedy through Court. Therefore, the earlier complaint of the disceased against the appellant regarding cruelty, is a worthy piece of evidence to prove the offence under section 498 A IPC. Further, in CSR No:83 of 2016, dated 28.05.2016 registered based on the complaint of the deceased given to the Inspector of police, Virudhunagar West, on 25.05.2016 she had expressed danger to her life at the hands of a husband and in the subsequent letter given by her on 28.05.2016 to the police requesting not to proceed against her husband. Since he

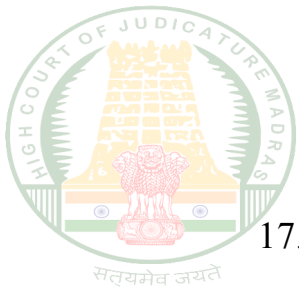


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agreed to give back her household articles, cell phone, ration card and Gas cylinder book.

15. Reading Ex.P-13, Ex.P-14, Ex.P-15 and Ex.P- 16 go to show that few days prior to the occurrence, the elder son was taken away by the appellant from the hostel. After complaint, the accused/appellant had given a consent letter to the police on 28.5.2016 that he will not quarrel with his wife and he will get divorce through the Court of law. The deceased had agreed to take her son as and when he come back to her. Thus, the documents clearly show that there was life threat to the deceased from her husband. The respondent Police had called him and enquired. He had given an undertaking that he will not trouble his wife. Since the deceased had tried to get redressal through police, infuriated the accused had killed his wife.

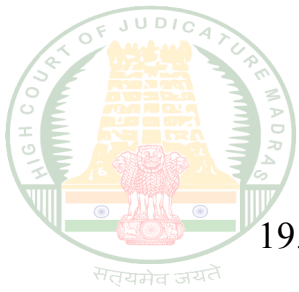
16. The learned counsel for the appellant in response to the Public Prosecutor, as a supplementary argument contended that the deceased has not mentioned the name of the accused specifically in her complaint. PW-1 the eye witness for the occurrence turned hostile. Therefore, without corroboration, the prosecution case does not stand.



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17.The Learned Public Prosecutor submitted that this contention has to be rejected outright because, in the complaint-Ex.P-14 and the letter given by the accused Ex.P-16 the content that they've agreed to get divorce will clearly show that it was the appellant, who had been causing life threat and cruelty. The deceased had given a complaint to the police about the life threat. This had been investigated by the police after registering the CSR. The accused/appellant had given in his letter a signed of undertaking dated 28.05.2016.

18.According to the Leaned Public Prosecutor when examined after two years of the incident, PW1 turned hostile. Disowning his earlier statement, (Ex.P-23) given to the Judicial Magistrate. This has to be tested in the light of the fact that PW-1 had already lost his mother in the violence committed by her father. After her death, he and his brother are taken care and under the custody of the accused. He is now was not ready to send his father to the prison for the rest of the life. Therefore, been influenced and tutored by the relatives, had deposed contrary to his earlier statement to the police as well as to the magistrate registered under section 164 (5) of the Cr.P.C. He submitted that the act of forcing PW1 to turn hostile is also a ground to hold the appellant for tampering the witness by emotional intimidation.

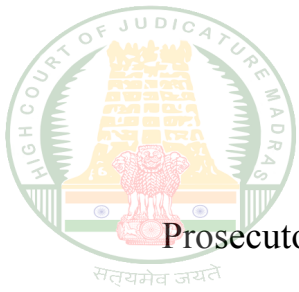


19.This Court, on careful analysis of the evidence and taking into consideration the arguments put forth by the Learned Counsel on behalf of the appellant and the Learned Additional Public Prosecutor for the State, records the findings as below:-

At the out set, we hold that de hors of the fact that PW1 had turned hostile, his evidence proves that he was present with his mother on the day of occurrence. He saw his mother burning and he immediately informed his grandmother (PW-4) about this incident. Then, he took his mother to hospital.

At the hospital, the deceased had informed the doctor that her husband poured kerosene on her and lighted her. This is recorded by the doctor in Accident Register- Ex. P.9. The statement of the victim Ex.P.1 recorded by the doctor in the presence of PW-4 had implicated the appellant. Later, on that day, her statement also been recorded by the Judicial Magistrate which is taken as the dying declaration. All these impeccable evidence clearly show that it was the appellant, who burned the deceased. The evidence sufficiently prove that it was homicide death and not a suicide.

20.The learned counsel for the appellant states that the death occurred after 15 days. There is no proximity between the occurrence and the death. Hence, the appellant cannot be held for offence under section 302 IPC. The learned Public



Prosecutor in response to this submission stated that, at the time of admission, the doctor had opined the burn injuries is about 30% all over the body. She was under treatment for 15 days as in patient. We find no evidence to suggest that there was any other intervening factor which has caused the death except the burn injuries, which was about 60% homicidal thermal burn as per the report Ex P- 25 given by the hospital. The Postmortem report-Ex.P.10 also does not reveal any other intervening factors which would have aggravated the injury.

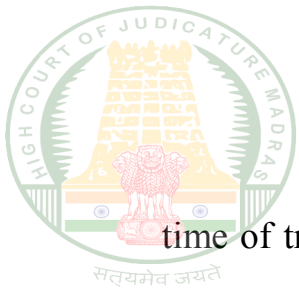
21.The post-mortem certificate and the evidence of the post-mortem doctor, proves that it is a case of homicide committed with knowledge and intention. From the dying declaration of the deceased, we find that the accused had lite the deceased saying 'die'. The kerosene in the bottle kept in the deceased house been used by the accused. The bottle M.O.1, burned clothes of the deceased M.O.2 and match stick were recovered in the presence of the witness(PW-5) under mahazar Ex.P-2. The chemical examination report on the bottle and the burned cloths of the deceased says kerosene detected. The final report attributes the cause of death as 60% homicidal thermal burn.

22.The content of Ex.P-1 complaint given to the police by the victim and the dying declaration Ex.P-17 given to the Judicial Magistrate, the evidence of



PW-4, the recovery of bottle detected with kerosene all clearly proves that the appellant had gone to the house of the deceased at the intervening night of 31.05.2016 – 01.06.2016 with a clear intention to harm her. He had already put her under life threat and been the subject matter of the CSR enquired by the police hardly three days prior to the occurrence. Ex.P-16 is the undertaking letter given by the accused three days prior to the occurrence that he will not trouble his wife. The mother of the victim examined as PW-4. She had deposed that she came to know about the incident from PW-1, who called her over phone and told that the accused came to the house picked quarrel with his mother and burned her. This is in corroboration of the previous statement of PW-1 given to the Judicial Magistrate. PW-4 had also deposed about the statement of her daughter while she was in the hospital regarding the act of the appellant causing the burn injury. Thus, the appellant been implicated by the victim for putting her on flame, whenever she was asked about it.

23.The complaint was registered in the hospital when the victim was getting treatment. The statement of the victim recorded at Virudhunagar Government Hospital on 01.06.2016 at 6:30 A.M., in the presence of Selvam(PW-4). She is the mother of the deceased Prema Sundari. At the time of incident, the elder son was with the father(accused) and the younger son was with a mother(victim). At the



time of trial, in the month of July 2019, both the children were taken custody by the appellant and living with the parents of the appellant. This is the reason for PW-1 turning hostile.

24.The appellant in his attempt to substantiate his defence and prove his innocence had examined 3 witnesses. They are Madanraj-D.W-1, the elder son of the appellant and deceased. He was examined as prosecution witness on 27.06.2019, but turned hostile. He was not cross examined by the defence on that day. However, the trial Court has permitted the accused to examine him again, this time as defence witness, on 03.10.2022. DW-1 in his evidence had improved his earlier version made on 27.06.2019 and had made a frail attempt to implicate PW-12-Gnanasiganmani in the crime and in alternate it was suicide. In the cross examination of DW-1, the prosecutor has confronted the witness with CSR receipt Ex.P-13 and the complaint of the deceased against the accused marked as Ex.P-14. This witness had admitted that those complaint were given by his mother. In the chief examination, he had deposed that he is presently taken care by his father and his paternal grant parents.

25.DW-2, the mother of the appellant also been examined to substantiate that it was not a homicide, but suicide. The cause for suicide was her relationship



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with Gnanasigamani (PW-12). In the cross examination, she admits that she was not aware of the frequent quarrel between the appellant and the deceased over the suspected relationship of the deceased with PW-12. On similar line, DW-3 a relative of the deceased been examined. All the witnesses for defence, been brought to create a opinion that the cause of death is not homicide and it was the illicit relationship of the deceased with PW-12 lead to her death. In other words, to justify the murder of Prema Sundari, these witnesses were examined to project her as a women of loose moral and was done to death because of her bad character.

26.The prosecution had examined Gnanasigamani as PW-12. He had subjected himself for cross examination. For the incriminating questions, he had denied and stated that he as a relative of the deceased used to lend money to the deceased, but the accused used to quarrel with his wife suspecting illegal intimacy with him. This is what the deceased had also stated in her complaint as well as in the dying declaration. Therefore, PW-12 is no way cause for the incident and his evidence is the corroboration to the statement of the deceased.

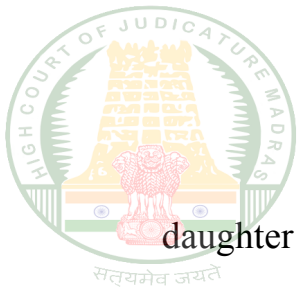
27.PW-4 had clearly deposed that her daughter was taking care of the children, since the appellant was not earning enough. He always used to pick



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quarrel with her daughter and to demand money from her. He suspecting her character and once attacks her daughter with Aruval. Her daughter showed her the mark of the injury to her. In such circumstances, during the Vayil Kaatha Amman Temple festival in the year 2016, the quarrel between them escalated. Her daughter and son-in-law got separated. The appellant brought back the elder son, Madhan Raj from hostel. He stopped him from pursuing the studies. In this connection, there was quarrel between the husband and wife. The appellant left the matrimonial home and went to his parents house. So her daughter along with the second son was living separately. She heard about the incident through PW1-Muthuraman @ Balu, the younger son of the deceased. Thereafter, she got her daughter admitted in the private hospital at Madurai. In the hospital, her daughter was treated for 15 days. She succumbed to the burn injuries and died.

28.PW-4, had spoken about the consciousness of the victim while giving the complaint to the police. The signatures of her daughter and her signatures in the complaint Ex P-1 identified by her. This witness has also spoken about the statement given by her daughter regarding the cause of burn on her body which lead to her death. This specific piece of incriminating evidence from the mouth of PW1 which the mother of the victim heard and deposed also falls within the definition of dying declaration as per Section 32 of the Evidence Act. Her



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daughter had told her that she was set fire by the accused after pouring kerosene on her. This statement by the victim on the day of injury and the victim request on the day of her death, to ensure that her sons studies should not be spoiled and must be continued reveals that the victim was in expectation of death and also she was interested in the studies of her children.

29.To recollect the facts, one of the reason for the quarrel on the day of occurrence is the act of th appellant, who had abruptly made her elder son Mandanraj to stop his studies and brought him back from the hostel. This has aggravated the difference of opinion between the husband and wife. The CSR receipt Ex.P.13-Complaint against the appellant by the deceased under her signature marked as Ex.P-14 and the consequential letters by the appellant and the deceased to the police after registration of the CSR reveals that the decease was facing life threat at the hands of the appellant. He had been demanding two lakh rupees for his expenses.

30.It is also seen from the evidence of other witnesses including P.W.1 and P.W.12 that the deceased was a member of women's self-help group and was struggling to make out her livelihood as a single parent. In the circumstances, she had been borrowing money from PW.12 to sustain herself and her children. It is



also to be seen that in Ex.P.15 the letter given by the deceased to the police to withdraw her complaint, expressing that she is not interested to pursue her complaint against her husband/the appellant, since he had assured that he will give back her household articles and documents and also ready to give back her elder son, who presently in the custody of the Appellant. It is also relevant to consider Ex.P.16 which is the letter given by the appellant /accused to the police three days prior to the occurrence, in which, he had given an undertaking that he will not disturb his wife in any manner and he will work out his remedy through the court by getting divorce. Therefore, the attempt by the defence to implicate PW-12 through his witnesses, gets failed in the light of the appellant's own letter Ex P-16.

31.The yet another point canvassed by the learned counsel appearing for the appellant is that, in the light of P.W.1 turning hostile, the dying declaration without certificate from the doctor about the state of mind of the maker of this statement to be viewed with suspicion and it should not be relied upon. In this context, the statement of the victim recorded by the judicial Magistrate on 01.06.2016 between 12.50 to 01.08 pm perused. It indicates that the Doctor was present at the time of recording the statement. He had certified before recording the statement in his own hand that the injured person suffers 40% burns all over



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the body and she has been put on intravenous fluid. She was asked to speak. After the Learned Magistrate recorded the statement of Premasundari, the Doctor had certified at the end of the statement that she had responded to the questions put by the Magistrate and answered in conscious state only. In the statement marked as Ex P-17, She had affixed her signature in English which is identical and tallies with her signatures found in Ex P-1, Ex P-13, Ex P-14 and Ex P-15.

32.The dying declaration of the deceased person, the previous entry in the accident register and the statement of PW-4, who is the mother of the deceased present in the hospital along with the deceased in the hospital all put together overweighs the hostility of PW-1 after giving statement to the Magistrate on the 22nd day of the occurrence implicating his father and turning hostile two years thereafter, to save his father with whom he now resides.

33.As the result, the judgment of conviction and sentence of the Learned Fast Track Mahila Court at Srivillipudur in S.C.No.11 of 2017 is confirmed. The Criminal Appeal stands dismissed.

[G.J., J.] & [R.P., J.]
02.04.2025

NCC : Yes / No
Index : Yes / No



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WEB COPY

- To
- 1.The Fast Track Mahalir Court,
Virudhunagar District
at Srivilliputhur.
 - 2.The Inspector of Police,
Virudhunagar West Police Station
Virudhunagar District.
 - 3.The Additional Public Prosecutor,
Madurai bench of Madras High Court,
Madurai.



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