

Crl.A(MD)No.16 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.06.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

Crl.A(MD)No.16 of 2017

Ramasamy

... Petitioner

Vs

The Inspector of Police,
Puliankudi Police Station,
Tirunelveli District.
(In Crime No.99 of 2015).

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for the entire records connected to the Judgment in SC No.633 of 2015 on the file of the learned Sessions Judge, Tirunelveli, dated 17.11.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.M.Alagumani

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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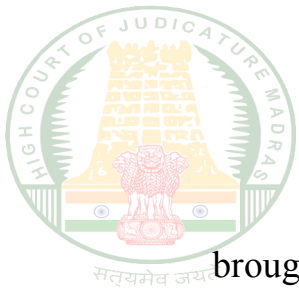
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JUDGMENT

The present appeal has been filed challenging the Judgment of the learned Principal Sessions Judge, Tirunelveli, dated 17.11.2016 made in S.C.No.633 of 2015.

2. The appellant is the sole accused in this case. He has been charged for the offence under Section 302 IPC. At the conclusion of the trial, he was found guilty for the lesser offence of 304 Part I IPC.

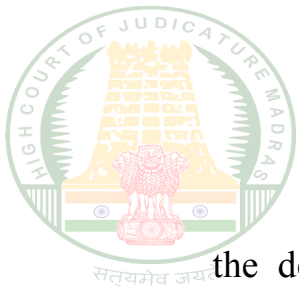
3. The case of the prosecution is that the accused, is the husband of deceased Nirmala and their marriage took place on 20.02.2003. The accused was in the habit of drinking liquor and used to beat his wife and he had no habit of going for regular work. On 01.03.2015, at about 09.00 a.m., the accused went to work at the Diwan Rice Mill near Subramaniasamy Kovil. At about 03.00 p.m., the deceased went to the Rice Mill and found that the accused was simply sitting without doing any work. So, the deceased shouted at him saying that he was simply sitting in the rice mill without doing any work and in the evening, he would borrow money from someone and go to the liquor shop and drink liquor. By stating so, she



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brought him back to home. As the accused was not happy to the above conduct of his wife, he abused her with filthy language and complained it to his neighbour and relative, PW2, Mariammal. She had also advised the accused. The accused having not pacified with the advice, went back to home and picked up the kerosene cane and poured them on the body of the deceased and lit fire on her body by lighting a matchstick. The deceased was taken to the Government Headquarters Hospital, Tenkasi and after 9 days, on 09.03.2025, at 10.00 a.m., she succumbed to the injuries.

4. When the deceased was in the treatment at the hospital, she gave a statement on 01.03.2025 at 22.00 hours to PW13, alleging the cause of her death. The father of the deceased had attested the same and it is marked as Ex.P.1. On the basis of the above statement, FIR has been registered at about 10.00 p.m., for the offences under Sections 307, 294(b) IPC and the case was taken up for investigation. During the course of investigation, the investigation officer has examined the witnesses, visited the scene of occurrence and collected materials from the place of occurrence. The Course of investigation also includes recording of statement of the deceased, who died subsequently on 09.03.2015. After the death of



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the deceased, alteration report has been filed to alter the charges from 294(b), 307 to 302 IPC.

5. After completing the investigation, charge sheet has been filed against the accused under Section 302 IPC. After taking cognizance of the charge sheet by the learned Judicial Magistrate, Sivagiri in PRC No.41 of 2015 and after observing the legal mandates, the case was committed to the learned Principal Sessions Judge, Tirunelveli.

6. After taking the case on file, the accused was summoned and the learned trial Judge framed charges against the accused under Section 302 IPC and questioned him. As the accused denied the involvement and claimed to be tried, trial was conducted.

7. During the course of trial, on the side of the prosecution, 14 witnesses were examined as PW1 to PW14 and 15 documents were marked as Ex.P.1 to Ex.P.15 and M.O.1 to M.O.4 were marked. During the examination under Section 313(1)(b) of Cr.P.C, the accused had stated that



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he had attempted to save the deceased, and the deceased alone had committed suicide. The hands of the accused were also burnt. However, no witness has been examined on the side of defence.

8. After concluding the trial and after hearing both sides arguments and appreciating the materials on record, the accused has been found guilty for the offence under Section 304 Part 1 IPC and he was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 5,000/-, in default, to undergo imprisonment for a period of 6 months.

9. Aggrieved over that, the accused has preferred this appeal.

10. The learned counsel for the Appellant submitted that the occurrence had happened on 01.03.2015 at about 04.00 p.m., but FIR was registered only at 22.00 hours and reached the Judicial Magistrate Court on 05.03.2015 at 03.45 p.m., and that the delay in submitting the FIR would cause doubt with regard to the genuineness of the complaint. No Doctor has been found to be present when the deceased said to have given the



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complaint, Ex.P1, was later considered as Dying Declaration and hence, there is a doubt over the fit state of mind of the accused.

11.The injuries found on the body of accused mainly on his hands would only show that he attempted to save the deceased and he did not have any intention to commit any offence as alleged by the prosecution. The learned trial judge has not dealt with the injuries on the hands of the accused in a proper manner and the accused is entitled to the benefit of doubt.

12. Per contra, the learned Additional Public Prosecutor appearing for the respondent police categorical in his contention that the trial Judge, after viewing the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.

13. I have given my anxious consideration to the submissions made on either side and carefully perused the records.



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14.The accused is the husband of deceased Nirmala. According to the statement of the deceased, the accused was in the habit of consuming alcohol and not taking care of the family. On the day of occurrence, ie., on 01.03.2015 also, the accused has gone out of the house and was sitting in the rice mill on the pretext that he was going to work. It was found later by the deceased that the accused did not do any job there, but he was just sitting idle. On seeing this, she shouted at him by saying that he would not go for any work and return in the evening and consume liquor with the money borrowed from someone. So she compelled and brought him back to home.

15.As per the statement given by the deceased in Ex.P.1, the accused was in a state of anger, and he was abusing her by finding fault for bringing him to the house from the rice mill. One of the neighbors, Mariammal was examined as PW2. Even PW2 appears to have advised him, but he was not in a mood to listen, and he intensified his anger and shouted that he can be at his own terms only if she died and hence, poured kerosene on her body and lit fire on her by lighting a matchstick.



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16. The learned counsel for the appellant submitted that the statement of the deceased was given, while she was taking treatment in the hospital, there was no witness to state that the deceased was in a fit state of mind to give the statement. PW1 is the father of deceased, who attested Ex.P1 and has not stated anything about the fit state of mind of the deceased.

17. Ex.P1 is not only a complaint, but it has been transformed into a dying declaration only after the death of the deceased on 09.03.2015. She was alive for 9 days and during that course, her statement is considered as a complaint and based on the same, FIR has been registered.

18. Even according to the accused, who had taken up the defence that the deceased had committed suicide and the deceased was conscious enough to develop conversation with him.

19. The complaint of the deceased transformed into dying declaration, subsequent to the death of deceased after 9 days. But the investigation started even before her death. According to the investigation



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WEB COPY officer, the statement of the deceased under Section 161 of Cr.P.C was also obtained during the course of investigation. When such was the circumstance, it cannot be stated that the deceased is not in a fit state of mind. As the deceased was alive for 9 days after the occurrence, there is no necessity for the prosecution to give any request for recording dying declaration.

20. In fact, in Ex.P1 complaint itself the deceased has stated how she got burn injuries on her body and who has caused the same. So that part of her statement, which subsequently proved the cause of death, can be considered as a dying declaration.

21. The learned counsel for the appellant further submitted that the neighbours, who have been enquired during the investigation and who were examined as PW2 to PW4, have turned hostile. He further submitted that the house owner, who was examined as PW5, also turned hostile and hence, the case of the prosecution does not have the evidence of eyewitnesses.



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22.His further submission is that Ex.P1 cannot be considered as a dying declaration, as no attestation was made by any Medical Officer to certify the fit state of mind of the deceased.

23. It is reiterated that what is given by the deceased was only a complaint. As she was very much alive to give a complaint and that could set the law in motion by way of registering an FIR and the investigation was also initiated, there is no question of assessing the mental fitness of the deceased at the time when she had given Ex.P1 complaint.

24. When the statement of the deceased turned to be a dying declaration, nothing has been shown before the Court to suspect its genuineness. As the dying declaration was given immediately after the occurrence, it has the element of voluntariness. The spontaneity of the statement would guarantee the truthfulness also unless there are any motive or tutoring is proved.

25.If the Court is satisfied that the dying declaration is true and voluntary and the conviction can be based on the same, even without any



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corroboration.

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26.In *Jai Prakash Vs State of Haryana*, reported in *AIR 1999 SC 3361*, it is held that when the statement is recorded as general by the Police and it becomes dying declaration, there is no need to get any endorsement from the Doctor as to the fit state of mind of the complainant.

27.The above position of law as held by the Hon'ble Supreme Court is squarely applicable to the facts of the present case and hence, there need not be any doubt about the statement, not only about the fit state of mind of deceased, but also about the veracity of statement given in Ex.P1.

28.Even the trial Court has dealt elaborately about its admissibility and reliability by citing of decision of Hon'ble Apex Court in *Surinder Kumar Vs State of Haryana* after relying various judgments already rendered in this regard. It is held in the above case that the dying declaration can be the sole basis for conviction even if it is not corroborated, because need for corroboration is a role of prudence not solely doubting the statement.



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29.In *State of UP v Veerpal*, reported in (2022) 4 SCC 741 the

Hon'ble Supreme Court has dealt with the principles under which dying declaration may be accepted. The relevant portion reads as follows:

“.....Kushal Rao V. State of Bombay, AIR 1958 SC 22:1958 SCR 552 is a watershed judgment on the law on the evidentiary value of dying declarations. This Court laid down the following principles as to the circumstances under which a dying declaration may be accepted, without corroboration:

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid,

(1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying



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declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed



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at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

30.In fact, the Hon'ble Supreme Court in ***Paniben Vs State of Gujarat***, has narrated how the dying declaration should be dealt with. Some of the guidelines given by the Apex Court to test the reliability of dying declaration as laid down in the aforesaid decision cited ***supra*** are as under.

“This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [Mannu Raja v. State of M.P.](#), [1976] 2 SCR 764.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without



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corroboration. State of M. P. v. Ram Sagar Yadav, AIR 1985 Sc 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164.

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. Ram Chandra Reddy v. Public Prosecutor, AIR 1976 S.C. 1994.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. Rasheed Beg v. State of Madhya Pradesh, [1974] 4 S.C.C. 264.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M. P., AIR 1982 S.C. 1021)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. 1981 SCC (Crl.)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505)



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(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram and another v. State)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. ([State U.P. v. Madan Mohan, AIR 1989 S.C. 1519](#))”

31. The only one aspect which the Court has to satisfy after a thorough scrutiny is as to whether the dying declaration has been given as a result of tutoring or prompting or imagination. But the police had observed that the deceased, was in a fit state of mind to make a declaration.

32.As far as the fit state of mind is concerned, it has been held that the deceased was very much in a fit state of mind and the accused has stated in his 313(1)(b) of Cr.P.C., examination that he had gone and spoken with the deceased, while she was taking treatment.



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33. PW1 is the father of the deceased and father-in-law of the accused. The accused did not allege about previous motive against PW1. Hence, there is no necessity for PW1 to induce or prompt his daughter to advise to give any adverse statement against the accused.

34. The whole incident had taken place at the rice mill at 03.00 p.m., and at the house of deceased at 03.15p.m. The deceased had stated the same to the investigation officer. It is clearly observed that her statement does not suffer from any unreliability risk. Though the other witnesses who are neighbours and cited as eyewitnesses, examined as PW2 to PW5 turned hostile, there is no reason to reject the evidence of PW1. The statement of the deceased has been marked as Ex.P.1 through PW1.

35. One of the arguments on which the learned counsel for the appellant gave much thrust is that the accused also had burn injuries and that would show his intention to save the deceased and to believe his defence that the deceased has committed suicide.



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36. The deceased had stated in her statement that the accused had poured kerosene on the body of deceased and lit fire. So, there is a possibility for the accused to get his hands burnt even if sprinkle of kerosene fell over his hands. Even if it is presumed that the accused had tried to quench the fire, thereby, injured his hands, that itself will not absolve the criminal act of pouring kerosene and lighting fire on the body of the deceased with an intention to cause her death. As stated already, PW1 did not have any intention to give any false complaint against the accused, and her statement was spontaneous and reliable.

37. Just because FIR, which was registered on 01.03.2015 at 10.00 p.m., reached the hands of Judicial Magistrate until 05.03.2015, that alone could not be taken as a reason to defeat the case of the prosecution. After registering FIR, it is possible for the investigation team to work in a fast phased manner to conduct an enquiry to check whether the statement given by the deceased is true.

38. Accident Registers which were marked as Ex.P5 and Ex.P6 have made reference about the injuries sustained by the deceased as well as



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the accused. No doubt, the accused had burnt injuries on his hands, and he did not run away from the spot. It could be, because he realized his act immediately after the commission of offence or he did not know what to do further.

39.Even though the eyewitnesses PW2 to PW5 have turned hostile, that will not weaken the case of PW1 and the complaint statement of the deceased Ex.P1.

40.Even to PW1, it was not suggested by the accused that he had prompted or induced the deceased to give a complaint statement against the accused. It has been suggested to him that the occurrence had taken place somewhere else and persons from women group or someone else can cause the occurrence. But in 313(1)(b) Cr.P.C statement, the accused has stated that his wife had poured kerosene upon herself and light fire on her. It is the accused, who had taken a contradictory defence while examining PW1 and given statement when questioning him under 313(1)(b) of Cr.P.C.



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41.Despite the accused had stated in 313(1)(b) Cr.P.C., statement that the deceased had set fire upon herself and at that time his child was inside the house, PW3 has stated in his evidence that at the time of occurrence, both the children of the deceased were in his house.

42.In view of the above stated reasons, I do not find any factual or illegal error on the part of the learned trial judge to rely on the statement of the deceased Ex.P1, which had later obtained the status of dying declaration as a strong evidence to fix the guilt on the accused.

43.Even according to the accused, the deceased did not have any ulterior motive to implead the accused in this case. There was no prior complaint given by her against the accused. As her statement was given immediately after the occurrence, there is no scope for anyone to prompt or induce her to give any tutored statement against the accused. The deceased was alive and was conscious for a few more days subsequent to her complaint, Ex.P.1. Hence, her fitness to give the complaint also cannot be doubted.



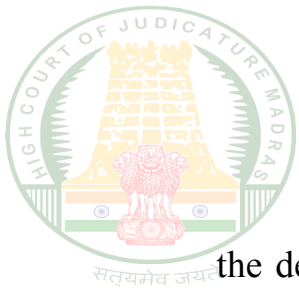
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44.The learned trial judge has held that the act of accused is not a premeditated one and it was caused due to sudden provocation. It is correct that the accused did not have any premeditation to do away the deceased. All that he done was out of anger, since the deceased has brought him back from the Rice Mill where he was sitting idle. So, it is right for the learned trial judge to arrive at a conclusion by fixing the guilt on the accused only under Section 304 Part 1 IPC instead of 302 IPC.

45.The learned counsel for the appellant would submit that the accused did not leave the place of occurrence and he tried to save the deceased by injuring his hands and that would show his good intention and further that he had no criminal antecedents.

46.The accused and the deceased have two female children, who are now said to be in the custody of their grandparents. It is submitted by the learned counsel for the appellant that if the sentence is reduced, the accused will be able to do something good to maintain his children. The records does not show that the accused did have any prior intention to kill



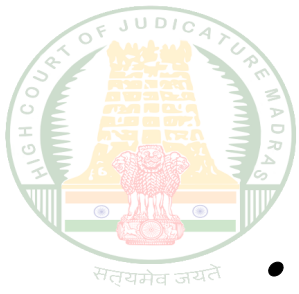
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the deceased. When the deceased was burning in the fire, the accused was not away, but tried to save her and burnt his hands.

47. In view of the above stated reasons and the fact that he have two children, I feel that some consideration can be shown in the matter of punishment. Since the children at their grandparent's house, the accused if released early, it may be possible for him to do his duties as a father, by realising the harmfulness of his alcoholic habit.

48. In view of the above discussions, this Criminal Appeal is partly allowed to the effect that

- *the sentence already imposed on the appellant by the learned Principal Sessions Judge, Tirunelveli, dated 17.11.2016 made in S.C.No.633 of 2015 is modified and the appellant is directed to undergo rigorous imprisonment for a period of five years;*
- *Except the above modification, all other conditions as ordered by the trial Court remains unchanged;*



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- *Since the appellant is on bail as of now, bail bond executed by the appellant shall stand terminated and the trial Court is directed to secure the appellant and make him to undergo the remaining period of sentence.*

16.06.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

1.The Principal Sessions Judge, Tirunelveli

2. The Inspector of Police,
Puliankudi Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.N.MANJULA,J.

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