



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2026

PRONOUNCED ON : 11.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**Crl.A(MD)Nos.449 & 576 of 2022 &
Crl.R.C(MD)No.941 of 2022**

1.Crl.A(MD)No.449 of 2022:

Mohandass

... Appellant/Accused No.1

Vs.

State by,

The Inspector of Police,

C.3, S.S. Colony (L & O) Police Station,

Madurai.

(Crime No.518 of 2016). ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374 of Cr.P.C to call for the records and set aside the Judgment of the lower Court made in Sessions Case No.19 of 2017 on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai dated 12.04.2022 and acquit the appellant herein from the above said charges.

1/40



WEB COPY



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

For Appellant : Mr.R.Shanmugasundaram
Senior Counsel
for Mr.V.Purushothaman

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

2.Crl.A(MD)No.576 of 2022:

Shanmugam ... Appellant/Accused No.2

Vs.

State by,
The Inspector of Police,
C.3, S.S. Colony (L & O) Police Station,
Madurai.
(Crime No.518 of 2016). ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and set aside the Judgment of the lower Court made in Sessions Case No.19 of 2017 on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai dated 12.04.2022 and acquit the appellant herein from the above said charges.

For Appellant : Mr.N.Mohideen Basha

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

3.Crl.R.C(MD)No.941 of 2022:

WEB COPY

M.Jeganathan

... Petitioner/P.W.1

Vs.

1.Mohandass

2.Shanmugam

... Respondents 1 & 2/
Accused Nos.1 & 2

State represented by,
The Inspector of Police,
C.3, S.S. Colony (L & O) Police Station,
Madurai.

(Crime No.518 of 2016).

... 3rd Respondent/Complainant

PRAYER:- Criminal Revision is filed under Section 397 read with 401 of Cr.P.C to call for the records from the lower Court in Judgment in Sessions Case No.19 of 2017 dated 12.04.2022 on the file of the Sessions Judge, Mahalir Neethimandram, Madurai and set aside the same and consequently award death punishment to the respondents 1 and 2.

For Petitioner : Mr.K.Prabhu

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



WEB COPY



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

COMMON JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

Crl.A(MD)Nos.449 and 576 of 2022 are directed as against the Judgment passed in Sessions Case No.19 of 2017 dated 12.04.2022 on the file of the Sessions Judge, Mahalir Neethimandram, Madurai, thereby convicting the appellants for the offences punishable under Sections 120-B and 302 of I.P.C.

2.Crl.R.C(MD)No.941 of 2022 is filed by P.W.1 for enhancement of punishment in Sessions Case No.19 of 2017 dated 12.04.2022 on the file of the Sessions Judge, Mahalir Neethimandram, Madurai.

3.The case of the prosecution is that the deceased married the first accused and gave birth to three children. While so, the first accused became suspicious of the conduct of the deceased, and as a



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

result, misunderstanding arose between them. Hence, the deceased left the matrimonial home of the first accused and went to her parents' house along with the three children.

4. Thereafter, the deceased filed a petition for divorce in H.M.O.P. No. 406 of 2014 on the file of the Family Court, Madurai, in which she also filed a petition seeking interim maintenance for herself and the children.

5. Consequently, the first accused developed aversion and motive against the deceased on the grounds that she had failed to cooperate with him in their family life and had also obtained an order of interim maintenance against him. Hence, the first accused frequently threatened the deceased by stating that he would pour petrol on her and set her on fire in order to compel her to withdraw the divorce petition.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

6.However, the deceased did not withdraw the divorce case, and as such, the first accused conspired with the second and third accused to do away with the life of the deceased. The second accused is the driver of the first accused, and the third accused is a friend of the first accused.

7.While being so, on 03.05.2016 at about 9.30 a.m., the deceased came to the Family Court to attend the hearing and thereafter returned to her house. When she proceeded to her house at about 11.45 a.m. and attempted to open the door, the second and third accused arrived in a motorcycle.

8.At the instigation of the first accused, the second accused threw chilli powder on the face of the deceased and poured petrol on her from a silver bucket, and the third accused also threw a burning torch upon the deceased. As a result, the deceased caught fire and screamed.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

9.At that juncture, the first accused also shouted at the deceased to die. Thereafter, all the accused fled away from the scene of occurrence. Immediately, the deceased was taken to the Government Rajaji Hospital, Madurai, by her father. However, she succumbed to her injuries on 03.05.2016 at about 8.30 p.m.

10.Based on the complaint, the respondent registered the F.I.R in Crime No.518 of 2016 for the offences punishable under Sections 109, 120(B), 302 read with 34 of IPC and Section 4 of TNPHW Act. After completion of the investigation, a final report was filed and the same was taken cognizance by the Trial Court.

11.In order to bring the charges to home, the prosecution examined P.W.1 to P.W.30 and marked Exs.P1 to P31. The prosecution also produced Material Objects M.O.1 to M.O.17. On the side of the accused, marked Ex.D.1 to Ex.D.5 and no witnesses were examined before the Trial Court.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

12.On perusal of the oral and documentary evidence, the trial Court found the first accused guilty for the offences punishable under Sections 120-B and 302 of I.P.C and sentenced him to undergo life imprisonment for each offence and imposed a fine of Rs. 25,000/- for each offence in default, to undergo one year Simple Imprisonment for each offence. The Trial Court found the second accused guilty for the offences punishable under Sections 120-B and 302 of I.P.C and sentenced him to undergo life imprisonment for each offence and imposed a fine of Rs.10,000/- for each offence in default, to undergo one year Simple Imprisonment for each offence. Aggrieved by the same, the appellants/Accused Nos.1 and 2 have filed the Criminal Appeals.

13.P.W.1, who is the father of the deceased, filed Crl.R.C. (MD) No. 941 of 2022 seeking enhancement of the punishment imposed on Accused Nos. 1 and 2.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

14.The learned Senior Counsel appearing for the appellant/A.1 in Crl.A. (MD) No.449 of 2022 submitted that the dying declaration was marked as Ex.P17 and the complaint was marked as Ex.P1. Both the complaint and the dying declaration are doubtful, and these documents were fabricated at the instigation of P.W.1, who had hatred towards the first accused from the very beginning.

15.Further, there were material contradictions with regard to the left thumb impression found in the complaint marked as Ex.P1 and the left toe impression in Ex.P17. In order to falsely implicate the accused, both documents were fabricated by the prosecution and produced before the Trial Court.

16.The so-called material witness was examined as P.W.3 and P.W.3 did not even identify any of the accused. Exs. D1 and D2



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

clearly establish that there was a cordial relationship between the first accused and the children.

17.The learned senior counsel further submitted that, in fact, the first accused had filed a petition for restitution of conjugal rights against the deceased, and the same was pending at the time of the alleged occurrence. Therefore, when the first accused had no intention to do away with the life of the deceased, there was no motive on his part to cause her death.

18.Even assuming that the dying declaration is believable, there is no implication of the accused herein. No one had witnessed the occurrence, including the deceased. According to the deceased, two persons came on a motorcycle and threw chilli powder on her face. Therefore, she could not identify the accused persons.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

19. Due to the alleged occurrence, the deceased sustained 90% to 95% burn injuries. Even then, her statement was recorded by the Sub-Inspector of Police and an F.I.R. was registered. Further, her dying declaration was recorded, in which her left toe impression was obtained, whereas in the complaint, her left thumb impression was obtained by the Sub-Inspector of Police. These material contradictions are fatal to the case of the prosecution.

20. Therefore, there was absolutely no necessity for the first accused to cause the death of his own wife. In fact, the first accused had only filed a petition for restitution of conjugal rights, and thereafter the deceased filed a petition for divorce, which is nothing but a counter-blast.

21. Though the first accused raised a plea of alibi that, at the time of the alleged occurrence, he was in Hotel Aarthi at Madurai along with his advocate, and also made a statement under Section



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

313 of Cr.P.C., the names of the accused were not mentioned in the Accident Register, the complaint, or the dying declaration. Therefore, the prosecution did not produce any piece of evidence to implicate the accused in this case.

22.Further, the deceased was not in a fit state of mind to give a dying declaration. The doctor who certified the deceased as being in a fixed state of mind was not a Medical Officer of the Government Rajaji Hospital, Madurai, but a postgraduate student. In fact, he certified that the deceased was in a fixed state of mind. The same was clarified during cross-examination, wherein he categorically admitted that he had certified the deceased as being in a fixed state of mind.

23.According to the prosecution, the accused poured petrol from a silver bucket and a Bovonto plastic bottle, which were produced as M.O.6 and M.O.7. It is highly difficult to believe that



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

the accused poured petrol from a silver bucket. The entire case of the prosecution is a cooked-up one in order to falsely implicate the accused in this case. Therefore, the prosecution has failed to prove the charges beyond reasonable doubt.

24.The prosecution has also failed to prove the “last seen” theory by any piece of evidence. The accused were implicated in this case solely on presumption and assumption. Further, the Trial Court, based only on the dying declaration of the deceased, convicted the accused without any other corroborative evidence.

25.The learned counsel appearing for the appellant/A.2 in Crl.A. (MD) No. 576 of 2022 submitted that the second accused is in no way connected with the alleged occurrence and has been falsely implicated merely because he was the driver of the first accused. No witness has spoken about the role played by the second accused, and no one identified him.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

26.The complaint, the dying declaration, and the statement of the deceased are all doubtful, and these documents were fabricated at the instigation of P.W.1. Though the prosecution marked M.O.6 and M.O.7 as if the accused brought petrol in a silver bucket and a soft drink bottle, it failed to prove from where the petrol was purchased. Further, P.W.12 and P.W.13 turned hostile and did not support the case of the prosecution.

27.Even according to the case of the prosecution, none of the witnesses had witnessed the alleged occurrence of sprinkling chilli powder and pouring petrol on the deceased. Only on the information given by the driver, P.W.1 and P.W.2 came to the house of the deceased. Further, P.W.1 and P.W.2 did not know whether the deceased had affixed her left toe impression, and they did not even see the dying declaration. Therefore, the conviction and sentence imposed on the second accused cannot be sustained and are liable to be set aside.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

28.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution had categorically proved the motive behind the crime. Admittedly, the deceased was the wife of the first accused, and they had separated due to misunderstanding between them. Since the deceased filed a petition for divorce against the first accused, the first accused conspired with the other accused to do away with the life of the deceased.

29.After attending the Court hearing, when the deceased was stepping into her house, the accused threw chilli powder to screen their identity, and thereafter poured petrol on her and set her on fire.

30.P.W.1 and P.W.2 categorically deposed about the motive and the conspiracy to do away with the life of the deceased. Immediately upon receiving intimation from the hospital, the Sub-



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

Inspector of Police went to the hospital and recorded the statement of the deceased. The deceased was conscious and was able to give her statement. Thereafter, the Sub-Inspector of Police recorded her statement and registered the F.I.R., which was marked as Ex. P1.

31.The statement is clear and cogent, and there is absolutely no reason to disbelieve the statement recorded from the deceased. Thereafter, in the presence of the learned Magistrate, the dying declaration was recorded and marked as Ex. P17. The doctor who certified that the deceased was in a fit state of mind was also a duty doctor and was part of the emergency ward team. Therefore, he was competent to certify whether the deceased was in a fit state of mind or not.

32.The Trial Court convicted the accused not only based on the confession statement but also on other circumstantial evidence. The children of the deceased and the first accused categorically



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

deposed that the first accused very often used to quarrel with the deceased. The first accused also threatened the deceased to withdraw the divorce petition if not, he will pour petrol and set her on fire. Further they also deposed that after recording dying declaration they had spoken to the deceased. The deceased informed them that the first accused only poured petrol and set fire on her. Therefore the prosecution clearly proved the charges and the Trial Court rightly convicted the accused and it does not warrant any interference of this Court.

33.The learned counsel appearing for the petitioner in Crl.R.C. (MD) No. 941 of 2022 submitted that P.W.1 had filed this revision petition seeking enhancement of the sentence imposed on the first and second accused. However, during the pendency of this revision, the sole petitioner died, and no one came forward to step into the shoes of the revision petitioner. Therefore, this revision petition is liable to be dismissed for default.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

34.Heard the learned counsel appearing on either side and perused the materials available on record.

35.The first accused is none other than the husband of the deceased. They got married on 29.01.2001 and were blessed with three children. Due to misunderstanding between them, they got separated, and the deceased went to her parents' house along with the children. While so, the first accused filed a petition for restitution of conjugal rights in H.M.O.P.No.173 of 2015 on the file of the Family Court, Chennai. After receipt of notice in the said petition, the deceased filed a petition for divorce in H.M.O.P. No. 406 of 2014 on the file of the Family Court, Madurai.

36.While being so, on 03.05.2016, the deceased returned home from the Court hearing by car along with her driver at about 11.45 a.m., and as she was entering her house, two unknown persons

18/40



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

approached her. One of them threw chilli powder on her face, and the other poured petrol on her from a silver bucket and set her on fire. Thereafter, the deceased screamed and fell down with burn injuries.

37.Immediately, the driver of the deceased and others came to the scene of occurrence and called a 108 ambulance. The driver also informed the parents of the deceased, who were residing nearby. They immediately reached the house of the deceased and took her to the Government Rajaji Hospital, Madurai.

38.Her statement was recorded in the Accident Register to the effect that two unknown persons had poured petrol on her and set her on fire. She was admitted in Ward No. 301 at about 12.45 p.m., having sustained about 95% burn injuries.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

39.On intimation, the learned Judicial Magistrate No. VII, Madurai, recorded the dying declaration between 01.50 p.m. and 02.05 p.m. Prior to recording the dying declaration, one Rajnihedan certified that the deceased was conscious and in a fixed state of mind to give the dying declaration. Thereafter, the dying declaration was recorded by the learned Magistrate and marked as Ex. P17.

40.The dying declaration reveals that when the deceased was returning home after attending her divorce case, two persons threw chilli powder on her face, poured petrol on her, and set her on fire. She further stated that the first accused had earlier threatened that he would set her on fire by pouring petrol.

41.In the dying declaration, the learned Magistrate obtained the left big toe impression of the deceased. Simultaneously, the police were informed, and the Sub-Inspector of Police came to the hospital and recorded the statement of the deceased at about

20/40



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

01.15 p.m., which was marked as Ex. P18. In the said statement, the left thumb impression of the deceased was obtained by the Sub-Inspector of Police, who was examined as P.W.27. He registered the F.I.R. on the basis of Ex. P1 at about 02.30 p.m. in Crime No. 518 of 2016. Thereafter, at about 08.30 p.m., the deceased was declared dead by the Doctor.

42.The parents of the deceased were examined as P.W.1 and P.W.2. The driver of the deceased was examined as P.W.3; however, he turned hostile and did not support the case of the prosecution. The servant maid of the deceased was examined as P.W.4, and she also turned hostile and failed to support the case of the prosecution. The children of the first accused and the deceased were examined as P.W.6 and P.W.7.

43.P.W.1 and P.W.2 deposed that three persons came to the scene and that two of them threw chilli powder on the face of the



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

deceased, while one of them poured petrol on her and set her on fire.

In fact, the driver of the deceased, examined as P.W.3, chased them but could not apprehend them. The statement recorded from the deceased was marked as Ex. P1, and the dying declaration recorded from the deceased was marked as Ex. P17. Both documents reveal that only two persons came to the scene of occurrence.

44.Further, there are material contradictions in the complaint, which was marked as Ex.P1, the dying declaration was marked as Ex.P17, and the statements recorded by the Judicial Magistrate was marked as Ex.P21 and Ex.P22. Ex.P1 was recorded from the deceased in Ward No.301 on 03.05.2016 at about 01.15 hours. Thereafter, the F.I.R. was registered at about 14.30 hours in Crime No.518 of 2016 for the offences punishable under Sections 307 and 120(B) of the I.P.C., which was marked as Ex. P18.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

45.The learned Magistrate recorded the dying declaration from the deceased between 13.50 hours and 14.05 hours. In Ex. P1, the Sub-Inspector of Police obtained the left thumb impression of the deceased, but in the dying declaration, the learned Magistrate obtained the left toe impression. Before recording the dying declaration, Dr. Rajnihedan examined the deceased and certified that she was conscious, oriented, and in a fixed state of mind to give the dying declaration.

46.The learned senior counsel vehemently contended that the said doctor, who had deposed as P.W.29, was not the duty doctor at the time of recording the dying declaration from the deceased. He was only a postgraduate student and was merely a member of the team in the emergency ward who could assist the duty doctor. Therefore, his certification cannot be accepted, and he was not authorized to certify that the deceased was conscious and oriented at the time of giving the dying declaration.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

47.P.W.29 certified that the deceased was in a “fixed state of mind.” This appears to be a typographical error, and P.W.29 clarified that he consciously certified the deceased as being in a “fixed state of mind.” However, he did not even know the difference between “fixed state of mind” and “fit state of mind.” He certified the deceased as being in a “fixed state of mind.” Further, the dying declaration requires corroboration in every aspect from a credible source of evidence. Each and every sentence of the statement in Ex. P17 must be proved by the prosecution through credible and untainted evidence. However, the prosecution failed to corroborate the same with any piece of evidence, and therefore, it is not admissible under Section 32 of the Indian Evidence Act, 1872. The relevant portion of Ex. P17 is as follows:

“கோர்டில் டைலவோர்ஸ் கேஸ் நடக்கிறது.
நீதிமன்றத்தில் சென்றுவிட்டு வீட்டிற்கு
வரும்பொழுது இரண்டு பேர் என் முகத்தில்
மிளக்காய் பொடி போட்டார்கள். பெட்ரோல் உடம்பில்



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

உற்றி பத்த வைத்து விட்டார்கள். என் கணவர்
அடிக்கடி பெட்ரோல் ஊற்றி கொழுத்தி விடுவேன்
என்று கூறுவார். கணவரிடம் என் பிள்ளைகளை
கொடுக்க வேண்டாம்.”

48.Even assuming that Ex.P17 is an admissible evidence, the deceased did not mention the name of the first accused as the person who either instigated or directly set fire on her. After recording Ex. P17, P.W.1 and P.W.2, along with P.W.5 to P.W.7, spoke to the deceased. They deposed that the deceased told them that their father poured petrol on her and set her on fire. When the deceased mentioned specific overt act against the first accused to her relatives, no one prevented her from stating it in her statement recorded by P.W.27 and in Ex.P17 recorded by the learned Magistrate.

49.The prosecution mainly relied upon P.W.3's claim to be an eyewitness to the scene of the crime. However, P.W.3 turned



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

hostile and did not support the case of the prosecution. To identify the accused, a test identification parade was conducted. Both the first and second accused stated before the Judicial Magistrate, who conducted the parade, that they were photographed and that their photographs were shown to the witnesses. P.W.3 categorically admitted that he was shown the photographs of the accused during the test identification parade.

50. Thereafter, the Investigating Officer conducted an inquest, and the inquest report was marked as Ex. P28. Ex. P28 does not specifically state anything about the role played by the first accused.

51. On receipt of intimation from the hospital, the Sub-Inspector of Police, who deposed as P.W.27, went to the hospital at about 01.15 p.m. and recorded the statement of the deceased, which was also attested by P.W.1. However, in his deposition, he stated that



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

he had received information from the hospital at about 12:00 noon.

The emergency ward doctor, who deposed as P.W.21, stated that the deceased was brought to the hospital at about 12.30 p.m., which is also supported by the Accident Register marked as Ex.P10. Therefore, P.W.27 could not have received any intimation from the hospital at about 12.00 noon, as the deceased was brought to the hospital only at 12.30 p.m.

52.Further, P.W.27 recorded the statement of the deceased without any certification from the duty doctor in charge of the ward regarding whether the deceased was in a fit state of mind to give any statement. This raises grave suspicion regarding the recording of the complaint, marked as Ex. P1, from the deceased by the Sub-Inspector of Police. This fact was also categorically admitted by him during cross-examination.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

53. In this regard, the learned senior counsel appearing for the appellant/A.1 relied upon the Judgment of the Hon'ble Supreme Court of India in the case of **Tarun Sharma vs. State of Haryana [2025 SCC Online SC 2094]**, in which it was held as follows:

“55. A perusal of the statement/dying declaration (Exh. P-34), further reinforces these doubts. Before recording the said statement/dying declaration (Exh. P-34) the recording officer, i.e., Sub-Inspector Somnath (PW-17), neither noted nor recorded his own satisfaction that the injured Munish Kumar was in a fit condition to make a statement.

56. It has been consistently held by this Court in a catena of decisions that the satisfaction of the person recording the dying declaration is indispensable. A Constitution Bench of this Court in Laxman v. State of Maharashtra¹⁰, observed the following:

“3.Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

(Emphasis Supplied)

57. In the present case, the absence of satisfaction recorded by the Sub-Inspector, Somnath (PW-17), regarding the fitness of the injured Munish Kumar to make a statement, casts a serious doubt on the reliability of the statement/dying declaration (Exh. P-34).”

54. Thus, it is clear that the person who records a statement or dying declaration ought to satisfy themselves that the injured



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

person is in a fit condition to make a statement. In the present case, admittedly, P.W.27 failed to record his own satisfaction that the deceased was in a fit state of mind.

55.Though the deceased was certified by P.W.29 as being conscious, oriented, and in a fixed state of mind to give the dying declaration, the emergency ward doctor, who deposed as P.W.21, and the Associate Professor in charge of Ward No. 301, who deposed as P.W.24, stated that they did not know any doctor by the name of Rajnihedan. P.W.29 was working in the Government Rajaji Hospital, Madurai, and there is no such medical officer in the burns injury ward. Therefore, the credibility of P.W.29's certification in the dying declaration is seriously questionable, especially since it was made without any registration number or Government office seal. Though P.W.29 is qualified to certify, he was not authorized to certify the deceased before recording her dying declaration. P.W.21, the emergency ward doctor who admitted the deceased, and P.W.24, the

30/40



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

Associate Professor in charge of Ward No. 301, were the officers authorized to certify the deceased prior to recording her dying declaration.

56.On perusal of the final report, the prosecution did not even list P.W.29 as a witness. During the trial, in order to prove the certification, he was examined as P.W.29. Therefore, P.W.29 was subsequently included as a witness as an afterthought, which raises serious suspicion regarding the credibility of P.W.29 and the certification given by him in the dying declaration recorded by the learned Judicial Magistrate.

57.It is also evident from the certification that he provided, wherein he had stated that the deceased was in a “fixed state of mind.” In medical terminology, no such expression exists. It was certified as a “fixed state of mind” instead of a “fit state of mind.” This point was also duly brought out during cross-examination by



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

the defence. Except for the dying declaration, there is no other piece of evidence to prove the charges against the accused. Although a dying declaration which is not a deposition made in Court, is neither given under oath, nor recorded in the presence of the accused, it is admitted as evidence by way of an exception to the general rule excluding hearsay, based on the principle of necessity.

58.The main points of a dying declaration serve merely to put the Court on its guard while testing the credibility of the declaration in light of the relevant circumstances.

59.In this regard, the learned senior counsel relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Irfan alias Naka vs. State of Uttar Pradesh [2023 SCC Online SC 1060]***, wherein it was held as follows:

“61. In India too, a similar pattern is followed, where the Courts are first required to satisfy



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

- (i) Whether the person making the statement was in expectation of death?*
- (ii) Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”*



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

(iii) *Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*

(iv) *Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*

(v) *Whether the statement was not recorded properly?*

(vi) *Whether, the dying declarant had opportunity to clearly observe the incident?*

(vii) *Whether, the dying declaration has been consistent throughout?*

(viii) *Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*

(ix) *Whether, the dying declaration was itself voluntary?*

(x) *In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*

(xi) *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

64. *It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who*



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.”

60.Thus, it is clear that it is unsafe to record a conviction solely on the basis of a dying declaration. In cases where suspicion or doubt arises regarding the correctness of the dying declaration, it is necessary to look for other corroborative evidence, treating the dying declaration only as a piece of evidence.

61.In the present case, the prosecution failed to corroborate Ex. P17 with any corroborative material.

62.In view of the above, the prosecution has miserably failed to prove the charges against the appellants, and this Court has no hesitation in holding that the guilt of the appellants has not been proved beyond reasonable doubt. Accordingly, the appeals succeed, and the appellants are acquitted.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

63.In view of the above, the convictions and sentences imposed on the appellants in Sessions Case No.19 of 2017 on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai, cannot be sustained and are liable to be set aside.

64.In the result, Criminal Appeal Nos.449 and 576 of 2022 are allowed and the Judgment made in Sessions Case No.19 of 2017 on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai, is hereby set aside and the appellants are acquitted of all the charges. The bail bond, if any, executed by the appellants shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellants. The appellants shall be set at liberty forthwith, if they are no longer required in connection with any other case.



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

65.During the pendency of Crl.R.C(MD)No.941 of 2022,

the sole petitioner died, and no one came forward to step into the shoes of the revision petitioner. Hence, this revision petition is dismissed for default.

**[G.K.I.J.] & [R.P.J.,]
11.02.2026**

NCC :Yes/No
Index :Yes/No
ps



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

WEB COPY

To

1.The Sessions Judge,
Mahalir Neethimandram,
Madurai.

2.The Inspector of Police,
C.3, S.S. Colony (L & O) Police Station,
Madurai.

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



WEB COPY



Crl.A(MD)Nos.449 & 576 of 2022 & Crl.R.C(MD)No.941 of 2022

G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

ps

**Pre-Delivery Judgment made in
Crl.A(MD)Nos.449 & 576 of 2022
& Crl.R.C(MD)No.941 of 2022**

11.02.2026