

Uthiravel Vs. the State

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Court : Chennai

Decided On : Jun-06-2014

Judge : V. Dhanapalan

Appellant : Uthiravel

Respondent : The State

Advocate for Pet/Ap. : Mr. G. Saravanan

Judgement :

In the High Court of Judicature at Madras Date ::

06. .06..2014 Coram :: The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice G. Chockalingam Criminal Appeal No:

351. of 2012 Uthiravel @ Ukkiravel S/o. Ariyaputhiran Konar Street Melaneduva Village Udayarpalayam Taluk Ariyalur District. ... Appellant -vs- The State rep. by The Inspector of Police Andimadam Police Station Ariyalur District. ... Respondent Criminal appeal under Section 374 of Cr. P.C. against the judgment of the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur, made in S.C. No:

59. of 2009 dated 27.12.2011 convicting the appellant under Section 302 I.P.C. and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default to undergo rigorous imprisonment for one year. For

appellant :: Mr. G. Saravanan For respondent :: Mr. M. Maharaja Additional Public Prosecutor J U D G E M E N T (Judgment of the Court was delivered by V. Dhanapalan, J.) The appellant was tried as sole accused by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur, in S.C. No:

59. of 2009 for offences under Section 302 I.P.C. By a judgment dated 27.12.2011 the learned trial Judge convicted and sentenced the appellant to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- and in default to undergo rigorous imprisonment for one year. Challenging the said judgment, the appellant is before this Court in this appeal.

2. The case of the prosecution is that the deceased Jayanthi is the wife of the accused. They were living in Mela Naduvai Konar Street as husband and wife for the past 10 years. The accused is in the habit of drinking and suspected the character of his wife and he used to pick up quarrel with the deceased and used to give all sorts of disturbance and intolerable troubles. On 02.03.2009, at about 7.00 p.m. the accused asked the deceased as to why she has not sent her mother out of his house as directed by him and can he pour kerosene and set her on fire. On this issue, the accused picked up a quarrel with the deceased. As the deceased does not like this kind of act by the accused, the deceased told the accused that she will die after pouring kerosene on her body and poured kerosene on herself to threaten the accused. The accused, with an intention to murder the deceased, set fire on the body of Jayanthi. Though Jayanthi was taken to hospital, she died of burn injuries on 03.03.2009, Thus, according to the prosecution, the accused had committed an offence punishable under Section 302 I.P.C.

3. In support of its case, Prosecution had examined P.Ws. 1 to 14 and marked exhibits P.1 to P.20 and produced M.Os. 1 to 3. Neither any witness was examined nor any document was marked on behalf of the accused.

4. P.W.9, Dr. Usha Sivaprakasam, was working as Asst. Surgeon at the Government Hospital at Jayamkondam on 02.03.2009. On that day, at 10.25 p.m., one Venkatachalam brought Mrs. Jayanthi to the hospital for treatment. Jayanthi had told the Doctor that on 02.3.2009 at about 7.00 p.m. she had poured kerosene on her body and a known person had lit the fire. On examination, the Doctor found

that Jayanthi had suffered 95% burn injuries. She was initially admitted as an in-patient and thereafter, the Doctor had recommended her to be sent to Kumbakonam Government Hospital for further treatment. The Doctor had also sent the requisition to the Judicial Magistrate at Jayamkondam for recording the Dying Declaration of Jayanthi. P.W.9 also issued the Accident Register, Ex.P.5. She has also signed in the Dying Declaration, as a witness, which is marked as Ex.P.6.

5. P.W.8 was the Head Constable on duty at Andimadam Police Station on 02.03.2009. At about 9.30 p.m., on receipt of an information from the Government Hospital at Jayamkondam, P.W.8 went to that hospital and obtained a statement from Jayanthi, who was admitted there as an in-patient. That statement is marked as Ex.P.3 in this case. P.W.8 came back to the Police Station the next day morning and based on the said statement, he registered a case in Crime No:

119. of 2009 on the file of Andimadam Police Station for an offence under Section 307 I.P.C. and prepared the First Information Report, Ex.P.4. He also informed his higher officials about the registration of the case. Thus, the statement given by the deceased Jayanthi to P.W.8 is the basis for registration of the case.

6. P.Ws. 1 to 3 had turned hostile in this case and hence, we are not inclined to go deep into their evidences. P.W.4, Vasuki, is the sister of the deceased Jayanthi. She is a resident of Idayakurichi. Her home town is Melaneduvai. She lost her father long time back. The accused is her sister's husband. She used to go to her sister Jayanthi's house very often. Because of poverty Jayanthi used to stay at Neduvai village itself. The deceased Jayanthi and her husband used to quarrel very often. P.W.4 used to listen to them. She also used to help them by paying some money at times. On the day of occurrence, the accused threatened both the deceased and P.W.4 over phone by stating that he would kill both of them. The accused used to quarrel with this witness also. One and a half years prior to the date of giving evidence, on a Sunday, P.W.4 came to Neduvai and returned. The next day i.e. on Monday, around 08.30 p.m. one Ramar called P.W.4 over phone and told her that her sister's house was engulfed in fire. Then, he also informed that her sister Jayanthi had died. P.W.4 went along with her husband in a two

wheeler. When she reached her sister's house, Jayanthi had been taken to Government Hospital, Jayamkondam. When P.W.4 asked Jayanthi, Jayanthi told her that out of an emotional anger she had poured kerosene on her body and the accused lit the fire and ran away. Jayanthi died at the Government Hospital, Kumbakonam.

7. P.W. 5 Suseela would depose that she is a resident of Melaneduvaayil. 1 years prior to the date of giving evidence, one day, the Inspector of Police came and observed Jayanthi's house. They have prepared the Observation Mahazar. She has signed as a witness in it and her signature is marked as Ex.P.1. She and Manikandan also witnessed the seizure of the material objects from the crime scene. The mahazar is marked as Ex.P.2 and the material objects seized by the Investigating Officer were, M.Os. 1 to 3. P.W.6 is the Police Constable who had produced the dead body of Jayanthi for Post Mortem at the Government Hospital at Kumbakonam. The Post Mortem was conducted by the Doctor on 04.03.2009 between 12.45 p.m and 1.45 p.m. After the post mortem, P.W.6 handed over the dead body to the relatives for funeral.

8. P.W. 7 was the Police Constable at Andimadam Police Station who handed over the printed First Information Report both to the Court of Judicial Magistrate, Jayamkondam, and to the higher officials, on 03.03.2009.

9. P.W.10 was the Doctor who conducted post mortem on the dead body of Jayanthi on 04.03.2009. She issued Ex.P.7, the Post Mortem Certificate. She has opined that the deceased would have appeared to have died 24 to 26 hours prior to autopsy and death is due to Hypothalamus and Neurogenic shock due to 90% burns.

10. P.W. 11 was the Judicial Magistrate functioning at Jayamkondam at the relevant point of time. On 02.03.2009, at 11.20 p.m. in the night, he received an information from the Government Hospital, Jayamkondam, and rushed to the Hospital. The written intimation is marked as Ex.P.12. He reached the ward around 11.25 p.m. There he saw, P.W.9 Doctor Usha Sivaprakasam who informed him that the patient's name is Jayanthi and that she was admitted with burn injuries. P.W.9 sent everybody around the bed to a distant place so that only the

Magistrate and the Doctor would be present by the bed side to record the statement of Jayanthi. P.W.11 obtained a certificate from P.W.9, the Doctor that Jayanthi is in a fit state of mind to give a Dying Declaration and then proceeded to record her Dying Declaration. That certificate is marked as Ex.P.8. After recording the Dying Declaration, P.W.11 obtained another certificate Ex.P.9 from the Doctor which is to the effect that the patient was fully conscious till the time she gave her Dying Declaration. The Judicial Magistrate also obtained Jayanthi's signature in the Dying Declaration, which is marked as Ex.P.11 in this case.

11. P.W.12 was the Inspector of Police Incharge of Andimadam Police Station at the relevant point of time. On 03.03.2009 morning 6.00 a.m., he started investigation in the case registered in Crime No:

119. of 2009 for an offence under Section 307 I.P.C. On receipt of information over phone, he proceeded to Konar Street at Neduvayal village around 7.15 a.m. In the presence of witnesses, P.W.12 prepared the Observation Mahazar Ex.P.13 and rough sketch Ex.P.14 at the scene of occurrence. He seized, 5 ltr. Plastic cane M.O.2; orange color saree M.O.1 and match box with matches M.O.3 from the scene of occurrence in the presence of witnesses. At 9.30 a.m. P.W.12 went to the Government Hospital, Kumbakonam, and examined the injured Jayanthi, her sister Vasuki P.W.4 and other witnesses present there and recorded their statements. He went back to the scene of occurrence and recorded the statement of witnesses. At 12.45 p.m. he received information from the Government Hospital, Kumbakonam, that Jayanthi had died and then P.W.12 altered the Section of offence from 307 I.P.C. into one under Section 302 I.P.C. and sent the altered First Information Report to the Court and higher officials. The altered F.I.R. is Ex.P.16. P.W.12 again went to the Government Hospital, Kumbakonam, and conducted inquest over the dead body of Jayanthi between 06.00 p.m. and 08.00 p.m. on 03.03.2009 in the presence of Panchayatdars and other witnesses. The inquest report is marked as Ex.P.17.

12. P.W.14 took up further investigation in this case and verified the investigation done by P.W.12. He also recorded the statement of some more witnesses. On receipt of information, P.W.14 proceeded to Karuveppilaikurichi Bus stand with

Dandapani and Chinnadurai, where he arrested the accused at 11.30 a.m. He returned to the Police Station and subjected the accused to judicial custody. On 05.03.2009, P.W.14 enquired P.Ws. 6, 7 and 8 and recorded their statements. On 06.03.2009, he enquired P.Ws. 9 and another Doctor Senthil and recorded their evidences. On 11.03.2009, P.W.14 sent the requisition to subject the seized material objects to scientific examination. On 25.04.2009, P.W.14 enquired the Forensic experts and obtained their opinion. The requisition is Ex.P.19 and the Chemical Analysis Report is Ex.P.18. Thereafter, P.W.14 filed the final charge sheet against the accused for an offence under Section 302 I.P.C. before the trial Court.

13. When the accused was questioned under Section 313 of Cr. P.C. on the incriminating materials made available against him by the prosecution, he denied each and every circumstance as false and contrary to facts. No oral and documentary evidence was produced on the side of the accused.

14. Mr. G. Saravanan, learned counsel appearing for the appellant submits that firstly, the presence of the accused in the place of occurrence had not been spoken to by P.Ws. 1 to 3, who are stated to be eye witnesses to the occurrence; the evidence of P.W.4 ought to have been ignored by the trial Court as she was an interested witness and she is inimical towards the accused; the trial Court should have disbelieved the evidence of Jayanthi as she was not in a fit state of mind to give a statement and such statement cannot be the basis to arrive at the conclusion that it is the accused who caused the death of Jayanthi. Lastly, learned counsel for the appellant would contend that in the heated quarrel, the deceased had poured kerosene on herself and therefore, this Court can visualise the circumstances where the accused did not pour kerosene on the deceased and this fact shows that there was no premeditation of mind on the part of the accused to kill the deceased.

15. We have heard Mr. M. Maharaja, learned Additional Public Prosecutor on the aforesaid submissions. According to the learned Additional Public Prosecutor, the evidence brought to surface is very clear and it unerringly points out the guilt of the accused in setting fire to his wife. He submits that though it is correct that the

accused had only lit the fire and it is the deceased who poured kerosene on herself, the intention of the appellant to do away with the deceased is evident from the evidence of P.W.4, who is his sister-in-law. She had stated that the accused used to threaten her sister and herself. As regards the dying declaration, the learned Additional Public Prosecutor submits that on proper information, the Judicial Magistrate had gone to the Government Hospital, Kumbakonam, and recorded the statement of Jayanthi after taking necessary precautionary steps like obtaining a certificate from the Doctor that she is in a fit state of mind to give a statement and such a statement cannot be discarded just like that. As regards the objection for placing reliance on the evidence of P.W.4 by the Trial Court, the learned Additional Public Prosecutor submits that just because the witness is closely related to the deceased, her evidence cannot be ignored. He further submits that there are series of judgments rendered by both this Court and the Hon'ble Apex Court stating that just because the witnesses are closely related to either the prosecution witnesses or the defence witnesses, their evidence cannot be rejected in toto only for that reason. Thus, according to the learned Additional Public Prosecutor, the judgment under appeal needs no interference in our hands.

16. In support of his case, learned counsel for the appellant has relied on a decision of the Supreme Court in the case of Ongole Ravikanth vs. State of Andhra Pradesh reported in (2009) 13 SCC647 wherein, it is held as follows:

29. It has been repeatedly held by this Court that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion. He has also relied on a decision of the Delhi High Court in the case of Attro Devi vs. State of Delhi and a decision of this Court in the case of Suresh @ Crime Suresh vs. State by the Inspector of Police, Koratoor Police Station, Thiruvallur District (2013) 3 MLJ (CrL.) 408, which have no binding effect to the case on hand.

17. We have given our thoughtful consideration to the submissions made by the learned counsel appearing on either side and perused the materials made available on record with utmost care and caution.

18. The sum and substance of the submission of the learned counsel for the appellant is that the dying declaration cannot be given any credential since the deceased would not have been in a fit state of mind to give any statement and that the evidence of P.W.4 ought not to have been believed by the trial Court as she is inimically disposed of towards the accused. Though both these submissions look very attractive on the face of it, yet, when we go through the materials placed before us, we find it very difficult to accept the said submissions. It is correct that P.Ws. 1 to 3, who are projected as eye witnesses by the prosecution at the first instance, turned hostile. But that is not the end of the story. Even according to the prosecution, none of these witnesses viz. P.Ws. 1 to 3, had preferred a complaint. The investigating agency came to the picture only on receipt of information from the Government Hospital, Jayamkondam. The statement given by Jayanthi, since deceased, is the very basis for registration of the First Information Report. That statement is marked as Ex.P.3 in this case. The contention of the learned counsel for the appellant is that the Dying Declaration recorded, ought not to have been believed by the trial Court to convict the accused. But, even in the statement lodged before P.W. 8, the Head Constable, Jayanthi had implicated the accused. The relevant portion of the statement reads as under : 02/03/2009 ,ut[7/00 kzpastpy; vd; tPl;;Oy; vd; fzth; Fonghija[l; te;J vd;dplk; cd; mk;khith ,e;j tPl;il tPl;L nghf brhy;Yo ,y;yhtpl;lhy; cd;id bgl;nuhy; Cw;wp bfhSj;jp tpLntd; vd;W Twp tPz; tk;g[rz;ilf;F ,Gj;J ifahy; moj;J bfhLik gLj;jpdhh;/ ehd; vd; fztuJ bfhLik jh';fhky; vd; fztu gaKWj;j ntz;Lk; vd;w vz;zj;jpy; tPl;oy; ,Ue;j kz;bzz;iz nfid vLj;J kz;bzz;izia vd; nky; Cw;wp bfhz;L rhfg; nghfnpwd; vd;W Twpndd;/ clnd vd; fzth; vd;dplk; eP vd;do rhfwJ.

ehnd cd;id bfhSj;jp bfhd;DLnwd;o vd;W Twp jPf;Fr;rpia gw;w itj;J ,j;njL xHpe;J ngho vd;W Twp vd; cly; k PJ jPia gw;witj;jhh;/ Even in the dying declaration, Ex.P.11, she has reiterated the same thing. The dying declaration reads as under : vdJ tPl;oy; vdJ tPl;Lf;fhuh; cf;fpunty; Mfpa vd; fzth; ,d;W ,ut[VG kzpff;F vdJ tPl;onyna kz;bzz;iz Cw;wp bfhSj;jp tPl;lhh;/ re;njff;jhy;jhd; moj;J tPl;L jhthuj;jpy;

kz;bzz;izia Cw;wp rz;il nghl;L vd;idg; ghj;j;J eP kz;bzz;izia Cw;wpf;nfh ehd; jPf;Fr;piag; gw;w itf;fpd;nwd; vd;W brhd;dhh;/ ehd; jpUe;Jthh; vd;W kz;bzz;izia Cw;wpf; bfhz;nld;/ mtanu jPf;Fr;piag; gw;w itj;jhh;/ ehd; btspna Xo te;J tpi;nld;/ mJ jP vd;idg; gpoj;J tpi;lJ/ Thus, when we read both these statements together, which were recorded at two different times by two different authorities, there is no corroboration. In a catena of decisions pertaining to dying declaration, the Supreme Court has time and again held that the courts have always to be on guard to see that the dying declaration is not the result of either tutoring or prompting or a product of imagination and it should also be taken note of that the deceased was in a fit state of mind while making the dying declaration and in order to satisfy itself, the Courts have to look for the medical opinion. It would be worthwhile to refer to the following decisions rendered by the Supreme Court of India:- 1.1992 (2) S.C.C. 474 Paniban vs. State of Gujarat 2.1983 (2) S.C.C. 411 Darshan Singh vs. State of Punjab 3.1995 Supp. (4) S.C.C. 118 Kanchy Komuramma vs. State of Andhra Pradesh 19. Thus, it is settled law that a dying declaration is entitled to great weight. Once the Court is satisfied that the declaration was true and voluntary, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. Dying declaration is a sacred statement given by a dying man and it is settled law that much value is to be attached to a dying declaration, especially when it is corroborated by other independent evidence. In fact the shadow of immediate death is the best guarantee of the truth of the statement made by a dying man/woman regarding the causes of circumstances leading to his/her death which are absolutely fresh in his/her mind and is unstinted or discoloured by any other consideration except speaking the truth. A dying declaration made by a person on the verge of his / her death has a special sanctity as, at that solemn moment, a person is most unlikely to make any untrue statement. Thus, a dying declaration, if found to be true and free from embellishment can be sufficient for recording conviction.

20. At this juncture, we would like to point out that the deceased, at no point of time, had stated that the accused poured kerosene on her and set fire. She admits that, on an emotional anger, she poured kerosene on herself, but, it is the accused

who lit the fire. The accused is man of knowhow. He would have definitely known that if he lites the fire when the wife is doused in kerosene, she will go up in flames. Therefore, the act of the accused in lightening the fire cannot be easily brushed aside by us, as a single act done in a fit of rage. On this issue, we entirely agree with the learned trial Judge when he states that the statement given by the deceased Jayanthi before P.W.8 and the Dying Declaration given before the Magistrate are all accepted as one.

21. Then, when we look at the evidence of P.W.4, we find no specific overt act which can come to the advantage of the appellant to disbelieve her evidence. She had stated that on receiving the information over phone, she rushed to her sister's house, which is about 10 to 15 kms. in a two wheeler; people told her that Jayanthi had been taken to the hospital and she reached the hospital. There, Jayanthi told her what happened. Her evidence shows that the accused used to threaten both Jayanthi and this witness often. This only shows the attitude of the accused. Moreover, when we go through the entire evidence of the prosecution witnesses, we find that nowhere the accused had made an attempt to bring up the fact about his presence elsewhere at the time when the occurrence is stated to have taken place. In other words, nowhere the accused had pleaded that neither he was not present at the scene of occurrence on that day nor had he had proved that he was present elsewhere at that time.

22. Thus looking from every angle, we find no reason to disbelieve the evidence projected by the prosecution. Accordingly, by holding that the judgment under appeal needs no interference, this criminal appeal stands dismissed. Before parting with the matter, we would like to place on record our appreciation to Mr. G. Saravanan learned counsel appearing for the appellant, who had been appointed by the Legal Aid, in his endeavour to guide the Court, he not only enlightened the legal position but also the various principles involved in the matter. Index : Yes (V.D.P.J.

)(G.C.J.

) Website : Yes 06..06..2014 gp To 1. The Addl. District & Sessions Judge Fast Tract Court, Ariyalur.

2. The Inspector of Police Andimadam Police Station Ariyalur District.
3. The Superintendent Central Prison Trichy.
4. The Public Prosecutor High Court Madras. V. Dhanapalan, J.

and G. Chockalingam, J.

Pre delivery judgement in Crl.Apl. 351 of 2012 06..06..2014

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