

Murugaboopathy Vs. The State Rep. by The

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Court : Chennai

Decided On : Aug-05-2015

Judge : S.Nagamuthu

Appellant : Murugaboopathy

Respondent : The State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

05. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.36 of 2015 Murugaboopathy .. Appellant/ Sole Accused Vs. The State rep. by the Inspector of Police, Nagudi Police Station, Pudukkottai District. (Crime No.78 of 2013) .. Respondent/Complainant PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the conviction and sentence, dated 22.12.2014, made in S.C.No.146 of 2013, by the District and Sessions cum Mahila Court, Pudukkottai. For appellant : Mr.M.Karunanithi For respondent : Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.146 of 2013 on the file of the District and Sessions cum Mahila Court, Pudukkottai. He stood charged for the offences under Sections

498(A), 294(B) and 302 IPC. By judgment dated 22.12.2014, the trial Court convicted him under Sections 498-A and 302 IPC and acquitted him from the charge under Section 294(B) IPC. The trial Court imposed a sentence of rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 498-A IPC and to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal. 2.The case of the prosecution in brief is as follows; (a) The deceased in this case was one Maheswari. The accused is her husband. They have a daughter by name Nisha (PW1). All the three were residing at Mangala Nadu Village, Pudukkottai District. It is alleged that the accused used to take liquors and develop quarrel with the deceased. On 30.06.2013, at about 10.30 a.m., according to the case of the prosecution, the accused demanded money from the deceased and since the deceased did not pay the same, the accused harassed her. In the same transaction, it is alleged that the accused scolded the deceased in filthy language and poured kerosene on the deceased and set fire to her. (b) PW2 is the neighbour of the deceased. She took the deceased to the Government Hospital at Aranthangi. PW14 - Dr.Rajarajeswari admitted the deceased in the said hospital as inpatient on 30.06.2013 at 11.40 a.m. She enquired about the injuries. The deceased, who was conscious, told her that she sustained injuries while attempting to commit suicide by pouring kerosene and setting fire on 30.06.2013 at 10.30 a.m. at her house. According to PW14, at the time when she made the statement, she was oriented and she was fully conscious. On 09.07.2013 she was taken to Sheeba Medical Centre. Dr.Ibrahim Sha (PW12) admitted the deceased at Sheeba Medical Centre, Aranathangi. The deceased underwent treatment till 01.08.2013. Thereafter, on 03.08.2013 she was shifted to the Grace Kennet Foundation Hospital at Madurai. Dr.Shalini (PW17) admitted her as inpatient at 7.45 p.m. on 03.08.2013 in the said Hospital. At that time, she was told that the deceased sustained 58.5% accidental thermal burns at her residence at 8.00 a.m. (c) On 30.06.2013, on intimation from the hospital authority, the Sub Inspector of Police, Nagudi Police Station (PW19) went to the Government Hospital at Aranthangi and recorded the statement of the deceased

at 1.00 p.m. On returning to the Police Station, he registered a case in Crime No.78 of 2013 under Section 307 IPC. Ex.P13 is the statement of the deceased and Ex.P12 is the FIR. PW19 forwarded these two documents to the Court and proceeded to investigate the matter. In the meanwhile, on intimation from the hospital authority, on 30.06.2013 at 01.30 p.m., PW18 - the learned Judicial Magistrate, Aranthangi, rushed to the hospital for the purpose of recording dying declaration of the deceased. He reached the hospital at 01.30 p.m. PW14 - Dr.Rajarajeshwari was attending on the deceased. PW14 gave opinion that the deceased was in a fit and conscious state of mind to give dying declaration. PW18, in order to ascertain as to whether the deceased was in a fit state of mind to make a dying declaration, enquired her by asking few questions and from the answers of the deceased and from the opinion of the doctor, the learned Magistrate was satisfied that the deceased was in a fit state of mind to give dying declaration. At 01.45 p.m. he started recording the dying declaration. In the said dying declaration, which is very cryptic in nature, the deceased told that on 30.06.2013 at 10.00 a.m. at her house, the accused poured kerosene on her and set fire. (d) PW20, the then Inspector of Police took up the case for investigation on 30.06.2013. He proceeded to the place of occurrence, prepared an observation mahazar and rough sketch. He also examined the witnesses present, including the daughter of the deceased (PW1). On 01.07.2013 at 11.15 a.m., PW20 arrested the accused at Arasarkulam Village. On such arrest, he made a voluntary confession, in which he disclosed that he would show the place where he had hidden the kerosene can and match box. In pursuance of the said disclosure statement, the accused took the Police and the witnesses to the said place and produced the said material objects. On returning to the Police Station, PW20 forwarded the accused to the Court for judicial remand. While so, on 07.08.2013, the deceased succumbed to the injuries at Grace Kennet Foundation Hospital, Madurai. Therefore, PW20 altered the case into one under Section 302 IPC. Ex.P17 is the altered report. Again, he examined PW1 and other witnesses, and recorded their statements during inquest. Ex.P18 is the inquest report. He forwarded the body for post-mortem. PW13 - Dr.Punithakumar conducted autopsy on the dead body of the deceased on 08.08.2013. He found partial burn injuries, measuring 55%. He opined that the deceased died due to burn injuries. Ex.P7 is

the post-mortem certificate. PW2 examined the doctors, collected the medical records and finally laid charge sheet against the accused. (e) Based on the above materials, the trial Court framed charges, as detailed in the first paragraph of the judgment. The accused denied the same as false. In order to prove the same, on the side of the prosecution, as many as twenty witnesses were examined, 18 documents were exhibited and 2 material objects were marked. (f) Out of the said witnesses, PW1 is the daughter of the deceased, who was hardly 11 years old, at the time of occurrence. Though, according to the case of the prosecution, she was present at the time of alleged occurrence witnessing the fact that the accused poured kerosene and set fire to the deceased, she has stated that the deceased set fire to herself. She has not even stated that the accused was present at the time of occurrence. Therefore, she was treated as hostile. PW2, who is the neighbour of the deceased and who took the deceased to the hospital, has also turned hostile. She has not supported the case of the prosecution in any manner. PWs.3, 4, 5 & 6 have also turned hostile. They have not supported the case of the prosecution in any manner. PW7 is a relative of the deceased. He is a resident of different village viz., Amrasimmapuram. According to him, on hearing about the said occurrence, he went to the Government Hospital at Aranthangi and just before the learned Magistrate recording the dying declaration, he was talking to her. Since the Magistrate had come, according to him, he left the place and thereafter, the Magistrate recorded the dying declaration. PW8 and PW9, who are the Mahazar witnesses, have turned hostile. They have not supported the case of the prosecution in any manner. PW10 has spoken about the observation mahazar and rough sketch prepared by PW20. (g) PW11 is the brother of the deceased. He has also stated that on hearing about the occurrence, he rushed to the Aranthangi Government Hospital on 30.06.2013. He has further stated that when he enquired the deceased about the injuries, she told him that her husband set fire to her. PW12 Dr.Ibrahim Sha has spoken about the treatment given to her at Sheeba Medical Centre, Aranthangi. PW13 - Dr.Punithakumar has spoken about the post-mortem conducted and his opinion regarding the cause of the death. PW14 - Dr.Rajarajeshwari has spoken about the statement made to her by the deceased at the time when the deceased was admitted and she has further stated that she gave opinion to the learned Magistrate that the deceased was in a fit state of mind

for making dying declaration to enable the Magistrate to record the dying declaration. PW15 is a Police Constable, who carried the FIR to the Court. PW16 is the a Constable, who handed over the body for post- mortem. PW17 is Dr.Shalini, who has declared the death of the deceased at Grace Kennet Foundation Hospital, on 07.08.2013 at 9.45 p.m. PW18 is the learned Magistrate, who has spoken about the dying declaration recorded by him from the deceased. PW19 is the Sub Inspector of Police, who recorded the statement of the deceased under Ex.P13 and he has also spoken about the registration of the case. PW20 has spoken about the entire investigation done. (h) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, he has not chosen to examine any witness nor marked any document on his side. (i) Having considered all the above materials, the trial Court has convicted the accused as detailed in the first paragraph of the judgment and accordingly punished him. That is how, they are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for the State. We have also perused the records carefully. 4 The learned counsel appearing for the appellant would submit that there is no eyewitness to the occurrence in this case and the prosecution relies only on the multiple dying declarations made by the deceased. The learned counsel would further submit that immediately after the occurrence, the deceased was taken to the Government Hospital at Aranthangi on 30.06.2013 at 11.40 a.m. and at the earliest point of time, without there being any prompting or tutoring, according to the learned counsel, the deceased has made a statement to the Doctor (PW14) that she set fire to herself in an attempt to commit suicide. The learned counsel would further submit that on 31.08.2013, when she was admitted at the Grace Kennet Foundation Hospital, it was taken note of that she sustained accidental thermal burn injuries. The learned counsel would further point out that on 30.06.2013, PW7 came to the hospital. He was talking to the deceased for some time. At that time, the learned Magistrate came to the hospital for recording dying declaration of the deceased and the deceased made a different statement saying that the accused poured kerosene and set fire to her. That was also repeated again to the Sub Inspector of Police - PW19. Thus, according to the

learned counsel, there are multiple dying declarations and there is no reason to prefer the dying declaration made to the learned Magistrate. The learned counsel would further submit that the dying declaration made to the Magistrate was out of tutoring and prompting which would have been made by PW7. Thus, according to the learned counsel, no reliance can be made on the dying declaration recorded by the learned Magistrate and the Sub Inspector of Police.

5. The learned Additional Public Prosecutor would, however, oppose this appeal stoutly. According to him, in a case where there are multiple dying declarations, the Court ought to give weightage only to the dying declaration made to the learned Magistrate. In this case, in the dying declaration recorded by the learned Magistrate the deceased has stated that the accused poured kerosene and set fire to her. The other dying declarations have got no authenticity, the learned Additional Public Prosecutor submitted. Thus, according to the learned Additional Public Prosecutor, from and out of the dying declaration recorded by the learned Magistrate under Ex.P11 and the dying declaration recorded by the Sub Inspector of Police under Ex.P13, the prosecution has proved the case beyond reasonable doubts. These dying declarations are duly corroborated by the evidence of PWs.7 & 11, he contended.

6. We have considered the above submissions. At the outset, we should say that in a case where there are multiple dying declarations, contradicting each other, the Court should make endeavour to prefer a dying declaration which inspires the confidence of the Court. If it is not possible, then the Court has to reject all the dying declarations giving the benefit arising out of the same to the accused. In this case, as soon as the occurrence, PW2 had taken the deceased to the Government Hospital at Aranthangi. She was admitted at 11.40 a.m. on 30.06.2013 itself. According to PW14 - Dr.Rajarajeshwari, at that time, the deceased was conscious and that she was oriented and she told her that she sustained suicidal burn injuries by pouring kerosene and setting fire on 30.06.2013 at 10.30 a.m. at her house. PW14 is not an interested witness in the case. This being the earliest version of the deceased, we are of the opinion that this dying declaration deserves preference. After the admission in the said hospital, on information, PW7 had gone to the hospital. PW7 even in chief examination

admitted that about six persons including him had gone to the hospital and they were all talking to the deceased and when they were so talking to the deceased, the learned Magistrate had just arrived. Therefore, they were asked to leave the hospital. According to him, he, along with the others, therefore left the hospital, leaving it possible for the learned Magistrate to record the dying declaration. He would further submit that after the learned Magistrate left, when he enquired, she told him that the accused set fire on her. In our view, as rightly pointed out by the learned counsel for the appellant, these persons, including PW7, would have prompted or tutored the deceased to make a different version and such prompting or tutoring cannot be ruled out at all in this case. It was only, thereafter, she made a dying declaration to the Magistrate, wherein she has stated the accused set fire on her by pouring kerosene and the same was, subsequently, repeated to the Sub Inspector of Police.

7. The learned Additional Public Prosecutor would place reliance on a judgment of a Hon^{ble} Supreme Court in *Mallella Shyamsunder Vs. State of Andhra Pradesh*, reported in 2015 (2) SCC486. We have gone through the said judgment. That was also a case of multiple dying declarations. On appreciating the facts, the Hon^{ble} Supreme Court has held that the first declaration recorded by the learned Sub Inspector of Police, based on which FIR was registered, deserves acceptance, because it was in the nature of an evidence, inspiring confidence of the Court. The Hon^{ble} Supreme Court further held that there was no room or chance for tutoring or prompting. Referring to the said judgment, the learned Additional Public Prosecutor would submit that in the instant case, the dying declaration recorded by the learned Magistrate and the Sub Inspector of Police should be given preference.

8. But, the observation made by the Hon^{ble} Supreme Court in the said judgment which was based on the facts are totally distinguishable. In that case, the Hon^{ble} Supreme Court was ensured that there was no room or chance for tutoring or prompting. But, in this case, the prosecution has not ruled out any such chance or room for prompting or tutoring. To the contrary, there is positive evidence that six persons came to the hospital and they were talking to the deceased and thereafter, only the learned Magistrate recorded the statement. As has been held

by the Hon^{ble} Supreme Court in the said judgment, the first dying declaration which may not be out of tutoring deserves acceptance. In the instant case, when the deceased was taken to the hospital, there was nobody else, except PW2. PW2 was not an interested witness. It is not even the case of the prosecution that PW2 had prompted the deceased to make such a statement. The cross examination of PW2 made by the prosecutor, after treating her as hostile, would go to show that it was not even suggested to PW2 that she promoted the deceased to make such a statement to the doctor. Therefore, we have got every reason to hold that the dying declaration made before the doctor has got no doubt and that it was not made out of any prompting or tutoring. Therefore, we are inclined to accept the same. We are not inclined to accept the dying declaration recorded by the learned Magistrate and by the Sub Inspector of Police, as there are reasons to believe that these two dying declarations were made out of prompting or tutoring by PW7 and the five other persons, who accompanied him. Since there is no other evidence except the above dying declarations, we are of the view that the prosecution has failed to prove the case beyond reasonable doubts and the trial Court was not right in convicting him.

9. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/accused is set aside and he is acquitted. The fine amount paid, if any, shall be refunded to the appellant. Since it is reported that the appellant is in Central Prison, Tiruchirpalli, he is directed to be released forthwith unless his presence is required in connection with any other case. To 1.The District and Sessions cum Mahila Judge, Pudukkottai. 2.The Inspector of Police, Nagudi Police Station, Pudukkottai District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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