

J.Peter Raj Vs. The State, Represented By

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Court : Chennai

Decided On : Sep-01-2015

Judge : The Hon'ble Mr. Justice R.Sudhakar

Appellant : J.Peter Raj

Respondent : The State, Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.409 of 2009 J.Peter Raj : Appellant Vs. The State, represented by The Inspector of Police, Arumuganeri Police Station, Thoothukudi District, [Crime No.236 of 2008].. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 29.10.2009 made in S.C.No.99 of 2009, on the file of the learned Additional Sessions Judge [Fast Track Court No.II]., Thoothukudi. !For Appellant : Mr.R.Anand ^For Respondent : Mr.C.Mayil Vahana Rajendran Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. The appellant is the sole accused in S.C.No.99 of 2009, on the file of the learned Additional Sessions Judge [Fast Track Court No.II]., Thoothukudi. He stood charged for the offences punishable under Sections 498(A) and 302 of the Indian Penal Code. By Judgment dated 29.10.2009, the Trial Court has convicted the appellant, as detailed below:- Convicted under Sections Sentence imposed Fine amount 498(A) IPC302IPC To undergo rigorous imprisonment for three years. To undergo imprisonment for life. Rs.2,000/- in default to undergo simple imprisonment for six months. Rs.50,000/- in default to undergo simple imprisonment for four years. The sentences have been ordered to run concurrently. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mrs.Jeyanthi. The appellant herein is her husband. It is alleged that the appellant is a drunkard and he used to quarrel with the deceased frequently in drunken state and harassed her. The accused had also suspected the chastity of the deceased. While so, on 15.07.2008, at 04.00 PM, when the deceased was in her house, the accused poured kerosene on her and set fire. She sustained extensive burn injuries on her body. She was, immediately, taken to the Government Hospital, at Kayalpattinam, by her mother-in-law [PW-3].. PW-15, Dr.V.Pavanasa Kumar, examined her at 04.30 PM, on 15.07.2008. She was, then, conscious. The deceased told PW-15 that while cooking in a kerosene stove, accidentally, the kerosene stove got fire and fire engulfed her. PW-15 noticed 60% of burn injuries. He referred the deceased to the Government Hospital at Tuticorin. EX-P16 is the Accident Register. 2.1. While the deceased was in the hospital, on intimation from the hospital authorities, PW-8, the then learned Judicial Magistrate No.II, Tuticorin, rushed to the hospital, at 12.45 PM, on 16.07.2008. At that time, the deceased was conscious and fit to make dying declaration. PW-16, Dr.N.Deivanathan, who was attending on her, gave certificate that she was conscious and fit to make dying declaration. Having been satisfied about the mental fitness of the deceased, PW-8 recorded the dying declaration. In the said dying declaration, the deceased told that there was quarrel between her and the accused in the house and in the said quarrel, the deceased told that she was going to die. On hearing the same, according to the dying declaration, the accused

poured kerosene on her and set fire. She has further stated that the occurrence was not witnessed by anybody. On hearing the alarm raised, one Muthumari rushed to the house. Then, the accused tried to extinguish the fire. Thereafter, the accused and his sisters took the deceased to the hospital. According to PW-8, since there were burn injuries on both her hands, he obtained impression of the left toe in the dying declaration. 2.2. According to the prosecution, on 17.07.2008, at 08.30 AM, PW-1 had gone to the Arumuganeri Police Station and made a complaint, under EX-P1. PW- 14, the then Sub-Inspector of Police, attached to the Arumuganeri Police Station, registered a case in Crime No.237 of 2008, under Sections 498(A) and 307 of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002. EX-P15 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police. 2.3. Taking up the case for investigation, on 17.07.2008, at 09.30 PM, PW-17 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. Then, he recovered a white colour Plastic Can with kerosene smell from the place of occurrence. He examined PW-1 to PW-3 and few more witnesses and recorded their statements. On 18.07.2008, during the course of investigation, at 07.00 AM, he arrested the accused in the presence of PW-11 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed that he had hidden a cigar light in his shirt pocket. The same was recovered under a mahazer. Then, he forwarded the accused to the Court for judicial remand. 2.4. On 19.07.2008, at 10.45 PM, the deceased succumbed to the injuries in the hospital. Therefore, PW-17 altered the case into one under Sections 498(A) and 307 of the Indian Penal Code and Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act, 2002. EX-P20 is the alteration report. Since the death of the deceased was within five years of the marriage, PW-17 sent intimation to the Revenue Divisional Officer cum Executive Magistrate to hold inquest. Accordingly, PW-10 conducted inquest on the body of the deceased. He concluded that the accused had set fire to the deceased. EX-P9 is the inquest report. 2.5. PW-9, Dr.C.Manoharran, conducted autopsy on the body of the deceased. He noticed the extensive burn injuries on the body of the deceased. He opined that the death was due to the cumulative

effect of all the burn injuries. 2.6. PW-17 continued the investigation. He examined the doctor, collected the postmortem certificate and final opinion. Finally, on completing the investigation, he laid charge sheet against the accused, on 20.09.2008. 2.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, 17 witnesses were examined, 20 documents and two material objects were marked. Out of the said 17 witnesses, PW-1 is brother of the deceased. PW-2 is the brother-in-law of the deceased. They have stated that after the admission of the deceased in the hospital, when they went to the hospital, on enquiry, the deceased told them that the accused set fire to her by pouring kerosene. PW-3 to PW-5 have turned hostile and they have not supported the case of the prosecution in any manner. PW-6 is the sister of the deceased and she has not stated anything incriminating against the accused. PW-7 has spoken about the preparation of the observation mahazer and the recovery of the material objects from the place of occurrence. PW-8, the then learned Judicial Magistrate, has spoken about the dying declaration recorded by him in the Government Hospital at Tuticorin. PW-9, Dr.C.Manoharan, has spoken about the postmortem conducted by him and his final opinion. 2.8. PW-10 is the Revenue Divisional Officer, who has spoken about the inquest held by him and his conclusion that the accused had set fire to the deceased. PW-11, the Village Administrative Officer, has spoken about the arrest of the accused, the disclosure statement made by him and the consequential recovery of the cigar light. PW-12 is the Head Constable, who has spoken about the forwarding of the dead body for postmortem. PW-13 is yet another Head Constable, who has spoken about the despatching of the First Information Report to the Court. PW-14 has spoken about the registration of the First Information Report on the complaint of PW-1. PW-15, Dr.V.Pavanasa Kumar, has stated that when the deceased was in the hospital, she told him that she sustained burn injuries in an accidental fire, while cooking with the use of a kerosene stove. PW-16 has spoken about the certificate issued by him to the learned Judicial Magistrate about the mental fitness of the deceased for making dying declaration. PW-17 has spoken about the investigation done by him. 2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in

respect of the incriminating evidences available against him, he denied the same as false. He did not choose to examine any witness. However, on the side of the accused, two documents, viz., the statement of the deceased made to the Head Constable, on 15.07.2008 and the remand request dated 18.07.2008, were marked as EX-D1 and EX-D2. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that the the judicial dying declaration recorded by the learned Judicial Magistrate under EX-P5 cannot be relied on, as it is the result of prompting and tutoring by PW-1 and PW-2. The learned counsel would further submit that at the earliest point of time, when she was taken to the hospital, the deceased told PW-15 that she sustained burn injuries in an accidental fire, while cooking with the help of a kerosene stove. This being the earliest dying declaration and since there was no chance for any prompting or tutoring, according to the learned counsel, the same should be given much weightage of. He would further submit that on receiving intimation from the hospital authorities, the Head Constable, attached to the Arumuganeri Police Station, had gone to the hospital, from where he recorded the statement of the deceased, on 15.07.2008, at 08.30 PM. The same has been marked as EX-D1. There is no denial of the same. In the said statement, the deceased had stated that she sustained burn injuries in an accidental fire, while cooking in the kerosene stove. This document has been suppressed. He would further submit that having suppressed the said document, thereafter, belatedly, on the basis of EX-P1, which was preferred on 17.07.2008, the present case has been registered. The learned counsel would further submit that PW-1, during cross-examination, has admitted that he made a written complaint to the Superintendent of Police, making allegations against the accused, his mother, sisters and all the other family members stating that they had killed the deceased. Thus, according to the learned

counsel, PW-1 and PW-2 have taken revenge on the accused by tutoring the deceased to make the judicial dying declaration. For all these reasons, according to the learned counsel, the entire case of the prosecution should be disbelieved and thus, the appellant is entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the statement made to the doctor by the deceased, though is a dying declaration, cannot be given any weightage of, because when the said statement was made, her mother-in-law, namely, PW-3 was by her side. May be out of fear, she would have made such a false statement to the doctor. However, when the judicial dying declaration was made to the learned Judicial Magistrate, under EX-P5, on 16.07.2008, the deceased was free to speak the truth and therefore, EX-P5 should be given weightage of. According to him, EX-P5 is duly corroborated by the oral dying declaration made by the deceased to PW-1 and PW-2. He would further submit that the medical evidence of PW-16 also duly corroborates the said dying declaration. Thus, according to the learned Additional Public Prosecutor, the discrepancies and the inconsistencies pointed out by the learned counsel for the appellant are immaterial. Thus, the prosecution has proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed on the accused by the Trial Court needs no interference at the hands of this Court, the learned Additional Public Prosecutor contended.

6. We have considered the above submissions.

7. Admittedly, there is no eye-witness to the occurrence. The prosecution mainly relies on the judicial dying declaration, EX-P5 and the oral dying declaration given to PW-1 and PW-2 by the deceased. Now, the question is as to whether the judicial dying declaration could be believed as free from any tutoring or prompting. In our considered view, there are lot of circumstances surrounding EX-P5, creating lot of doubts about the same. First of all, on 16.07.2008, at 04.30 PM, when the deceased was brought to the hospital, she was fully conscious as spoken to by PW-15. When PW-15 enquired her, the deceased told him that she sustained burn injuries accidentally, while cooking with the use of kerosene stove. The learned Additional Public Prosecutor would submit that this statement should have been

made falsely by the deceased, because PW-3 was by her side. Assuming that there is some force in the said argument, it cannot be accepted, for the reason that after the admission of the deceased in the hospital, PW-15 sent intimation to the Police Station as well as to the learned Judicial Magistrate about the admission of the deceased. One Head Constable attached to the Arumuganeri Police Station had gone to the hospital immediately and recorded the statement of the deceased at 08.30 PM, on 15.07.2008 and the same was brought to the Police Station by him. But, the said document, which has been marked on the side of the defence as EX-D1, has been suppressed by the prosecution. There is no explanation for the same.

8. To be fair in the matter of investigation and in the matter of trial, the prosecution is expected to produce all the materials collected during investigation irrespective of the fact as to whether such materials are in favour of the accused or in favour of the prosecution. In this case, such kind of fairness is missing on the side of the prosecution. In EX-D1, the deceased has stated that she sustained injury in an accidental fire, while she was cooking in the kerosene stove. This is certainly a dying declaration. Absolutely, there is no evidence let in by the prosecution to prove that EX-D1 was not made by the deceased and that it was created by the Head Constable to favour the accused. There was no investigation at all done in respect of EX-D1. Though it is argued by the learned Additional Public Prosecutor that EX-D1 would not have been made by the deceased, we are not convinced by the said argument. The learned Additional Public Prosecutor would submit that in EX-D1, the signature of the deceased is found, whereas, according to the learned Judicial Magistrate, she would not have been in a position to sign due to the injuries sustained by her.

9. It may be true that at the time when the learned Judicial Magistrate had arrived at the hospital, the deceased would not have been in a position to sign due to injuries, but it may also be true that at the time when the Head Constable had gone to the hospital, the deceased would have been in a position to sign. It is for the prosecution to explain and to prove that the deceased would not have been in a position to sign EX-P1, for which the medical records pertaining to the treatment given to the deceased would speak volumes about her condition. Those medical

records have been suppressed by the prosecution, for which also, there is no explanation offered by the prosecution. Therefore, we do not find any force in the argument of the learned Additional Public Prosecutor that EX-D1 is the creation by the Head Constable.

10. Next comes the judicial dying declaration recorded by the learned Judicial Magistrate, under EX-P5, on 16.07.2008, at 12.45 PM. PW-1 has admitted that before the learned Judicial Magistrate had arrived at the hospital to record the dying declaration, PW-1, PW-2 and their relatives were there by the side of the deceased. PW-1 and PW-2 have admitted that they were talking to the deceased. Therefore, there is every possibility for PW-1 and PW-2 to have tutored the deceased to give dying declaration against the accused, as PW-1 and PW-2 were not happy with the accused, as he was a drunkard. The said conclusion is fortified by the admission made by PW-1 during cross-examination. During cross-examination, he has stated that on 17.07.2008, he made a written complaint to the Superintendent of Police, in which he alleged that the deceased was done to death by the accused, his mother - PW-3, his sisters, by name Vennila, Rejina, Muthumari, Ambiga and his brother, by name Vinoth. He has further admitted that at the time when the accused set fire, the above family members were by his side and they induced him. This admission of PW-1 would go a long way to show that he had vengeance against the accused and thus, we have got every reason to say that there was possibility of tutoring the deceased to give judicial dying declaration against the accused. He has not explained to the Court as to why he made such a false complaint to the Superintendent of Police making direct allegations against all the family members, including the accused, as though they were responsible for the death of the deceased. Therefore, we are of the view that EX-P5 is not free from any doubt. Similarly, the so-called oral dying declaration said to have been given by the deceased to PW-1 and PW-2 cannot be believed.

11. Yet another circumstance against the prosecution is that even in the judicial dying declaration, the deceased herself told that the accused tried to extinguish the fire, in which he also sustained burn injuries. But, the records pertaining to the treatment given to the accused have been suppressed. The injury sustained by the accused having not been explained away by the prosecution. This also creates

doubt in the case of the prosecution.

12. In view of the foregoing discussion, we are forced to hold that the prosecution has not proved the case against the accused beyond reasonable doubts. Thus, the conviction and sentence imposed on the accused by the Trial Court is not sustainable.

13. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant, by Judgment dated 29.10.2009, made in S.C.No.99 of 2009, on the file of the learned Additional Sessions Judge [Fast Track Court No.II]., Thoothukudi, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated. To 1.The Additional Sessions Judge [Fast Track Court No.II]., Thoothukudi. 2.The Inspector of Police, Arumuganeri Police Station, Thoothukudi District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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