

Shanmugam Vs. State

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Court : Chennai

Decided On : Nov-13-1996

Reported in : I(1997)DMC212

Judge : Rengasamy and ; M. Karpagavinayagam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 625 of 1989

Appellant : Shanmugam

Respondent : State

Advocate for Def. : S. Anbalagan, Addl. P.P.

Advocate for Pet/Ap. : Angamuthu, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. The appellant Shanmugam challenges the judgment in S.C. No. 34 of 1987 on the file of Sessions Judge, Thanjavur, convicting him for the offence under Section 302, Indian Penal Code and sentencing him to undergo life imprisonment, in this appeal.

2. The indictment is that on 20.12.1986 at about 6.00 p.m., the appellant set fire to the body of the victim, his wife Tamilselvi, aged about 26 years, after pouring kerosene over her, resulting in her death at about 4.00 p.m. on 21.12.1986 at Peravoorani Government Hospital.

3. The brief facts are as follows :

(i) The appellant Shanmugam is the husband of the unfortunate victim deceased Tamilselvi. By about seven years prior to the occurrence, the appellant married the deceased. Out of their wedlock, two sons, P.W.2 Ilavarasan and one Ilayaraja, were born. They were living together in the Village Padappanarvayal within the police jurisdiction of Peravoorani.

(ii) The accused is an agriculturist by profession. He has got landed properties at Padappanarvayal. He is a drunkard and used to come to his house in a drunken mood and pick-up quarrel with his wife and beat her. For about one year, he was keeping a woman belonging to Kothamangalam Village. He is also a spendthrift. P.W.1 Selvaraj is the neighbour, whose house is situated on the eastern side of the house of the deceased. The appellant tried to give his land to P.W.1 as Othi. But P.W.1 refused to get the lease of land. Then, he sold the said land to one Rowther. So, the appellant has got properties only measuring 2 ma. in the local village.

(iii) P.W. 3 Tamilarasan is the younger brother of the deceased Tamilselvi. He belongs to Merpanaikadu Village situated next to the Village Padappanarvayal. He is having a tea shop in his village. The deceased got the information through one Subbian Ambalam of Merpanaikadu, that the appellant was trying to harvest the crops standing in his fields and sell it to a paddy merchant, without the knowledge of the deceased.

(iv) On 20.12.1986, the date of the occurrence, at 6.00 p.m. when the accused came to the house of the deceased, the deceased enquired the accused as to whether he has got any proposal to sell the yield after harvest even without keeping anything for house consumption. The appellant retorted by saying,

'xxx xxx xxx xxx'

He also abused her in a filthy language. A wordy quarrel ensued between them. This was witnessed by P.W.2 Ilavarasan, the son of the deceased who was standing in the pial near the window. At that point of time, the appellant suddenly entered into the kitchen and took M.O. 3 kerosene bottle and poured kerosene on the body of the deceased, after closing the doors. The deceased raised cries. He asked her not to shout. He removed a firewood stick M.O.5 and then he beat her. Then he took out M.O.4, the burning chimney lamp and tried to throw it on the body of the deceased. But the chimney light got extinguished. So, he took a match box, lighted a match stick and put it on the deceased. The deceased caught the fire and cried aloud. On seeing this ghastly sight, P.W.2, the son aged about six years, raised his voice saying, 'xxxxx' On hearing the voice, P.W.1 Selvaraj and his father Natesan Ambalam and others, came rushing to the scene house. They saw the victim Tamilselvi burning in flames, while the accused was standing in the house with an underwear. P.W.1 then took a gunny bag and put on the deceased and tried to extinguish the fire. In the meantime, the victim deceased fell down and became unconscious.

(v) Immediately, a message was sent to P.W.3 Tamilarasan the brother of deceased at Merpanaikadu Village. On hearing the news, P.W.3 came and saw the victim with burn injuries all over her body. P.W.10 Bagyam of Merpanaikadu Village, who was a Nurse, on hearing the noise, came to the house of the deceased and enquired the deceased, who was in a semi-conscious state. Though she was not able to open her eyes, she identified P.W.10 through her voice and said that she was set fire to by her husband, after pouring kerosene. Then the neighbours asked P.W.3 to arrange for a taxi for taking the victim to the Peravoorani Hospital. So, P.W.3 went and came with a taxi and took the deceased to the Peravoorani Hospital.

(vi) At 9.45 p.m., P.W.4 Dr. Jayapal attached to the General Hospital, Peravoorani, examined the victim and found 90% burn injuries all over her body. He also enquired the deceased as to how she sustained the burn injuries, to which she replied that her husband poured kerosene on her and set fire. Then he prepared Ex.P-1, the intimation, and sent to the Police Station. In the intimation itself, he indicated to the police that dying declaration is to be recorded urgently. Ex.P-2 is

the wound certificate issued by P.W.4 doctor. This was recorded at 9.45 p.m.

(vii) P.W.6, the Sub-Inspector of Police, Peravoorani Police Station, received Ex.P-1 from the doctor at about 10.15 p.m. He went to the hospital and obtained an oral statement from the victim, which was 307 Indian Penal Code and prepared Ex.P-7 First Information Report. These documents were forwarded to the Court as well as to the Senior Police Officials.

(viii) At 10.45 p.m., P.W.7, the Executive Magistrate, Peravoorani, on receipt of Ex.P-6, the requisition from P.W.6, came to Peravoorani Hospital. Then, he contacted the doctor P.W.4 and went to the Ward in which the deceased was admitted. After verifying about her fitness to make a statement through the doctor P.W.4, who was present then, he recorded her statement from 11.00 p.m. to 11.25p.m. After reading the contents of the statement to the deceased, P.W.7 obtained her thumb impression in the said statement. Ex.P-9 is the dying declaration.

(ix) In the meantime, the appellant, who was at his house when P.W. 1 and others came to the house and they were trying to put out the fire engulfed on the deceased, ran away from the house with the Jatti worn by him. At about 8.00 p.m. he went to the house of one Pan-neerselvam, the brother of P.W.12 Arumaikannu, and requested him to give a Lungi. The said Panneerselvam instructed P.W. 12 to give a Lungi to him. So, he handed over a Lungi to the appellant. In the meantime, P.W.12 got the information about the incident. So he went to the house of the deceased and saw her with burn injuries. He came back to inform his brother at the house. Meanwhile, the appellant got the money from P.W.12's brother and left for Aranthangi by bus.

(x) P.W.13, the Inspector of Police received the message on 21.12.1986 at about 8.45 a.m. through a Constable and obtained a copy of the First Information Report registered in Crime No. 430 of 1986 under Section 307 Indian Penal Code. He then took up the investigation and went to Peravoorani Hospital at about 9.00 a.m. He recorded a statement from the deceased, who was admitted in the Hospital. Thereafter, at 11.00 a.m. he went to the scene Village Padappanarvayal and inspected the spot. He prepared the observation mahazar Ex.P13 and drew rough

sketch Ex.P-15. He recovered M.O.1 Saree pieces, M.O.2 Dhoti, M.O.3 kerosene bottle, M.O.4 chimney lamp, M.O.5 firewood, M.O.6 match box and M.O.7 series, burnt match sticks numbering five, under Ex.P-14 mahazar, attested by P.W.II Govindaraju and another.

(xi) At 4.00 p.m. on 21.12.1986, the deceased died inspite of the prompt treatment given to the deceased by doctor P.W.5. The report containing the details about the treatment is Ex.P-3. He sent the death intimation Ex.P-4 to the police. P.W.6, the Sub-Inspector of Police, on receipt of the death intimation, altered the First Information Report into Section 302, Indian Penal Code and prepared the express report Ex.P-8. The same was forwarded to the Court as well as to the Senior Police Officials, P.W.13, the Inspector of Police, on receipt of the express report, straightaway went to the Hospital at 5.00 p.m. He conducted the inquest over the dead body of the deceased and examined P.W.1 and P.W.2 and two others and recorded their statements. Ex.P-16 is the inquest report. He conducted the inquest between 5.00 p.m. and 7.00 p.m. on 21.12.1986. Then he entrusted the dead body to P.W.8 Constable along with the requisition Ex.PIO for being handed over to the doctor for post-mortem. On the same day, P.W.8 handed over the body alongwith the requisition to P.W.9 Doctor.

(xii) Meanwhile, P.W.13, on information, went to Peravoorani Railway Station and arrested the accused at about 8.00 p.m. and obtained his statement. Then on the next day, 22.12.1986, since he found some burn injuries on the body of the appellant, he sent him alongwith the Constables Nos. 2611 and 406, with a memo No. 227 of 1986, to doctor for examination. P.W.9 on the basis of the memo handed over by these Constables, examined the appellant and treated for the burn injuries found on his body. The appellant stated to the doctor that on 20.12.1986 at about 7.00 p.m. he sustained burn injuries in his bid to save his wife while she was in flames. The doctor found the following injuries on the appellant:

1. Whole left arm is burnt except palm and back of upper arm below the olecranon.
2. Left side back lower front, left side cheek lower 2/3rd area burnt.
3. In the upper, middle, front part of right side chest, burns present of size 1' x 1'.

4. Tip of the nose 1 cm. burnt of size 1 x Vi cm.

5. Left ear burnt in front part of size 2' x Vi cm. He issued the wound certificate, Ex.P-12.

(xiii) P.W.9, Doctor, on 22.12.1986 at 11.00 a.m. commenced the postmortem. He found 90% burn injuries all over the body of the deceased. He found the following injuries on the body of the deceased.

Appearances found at the post-mortem of the female body lying on the back with skin peeled off irregularly all over the body, whole body is burnt (90% burns) except soles and some on of the scalp. Hair in the head is charred. Eyelids closed. Swollen. Mouth closed. Tongue kept inside. Jaws clenched. Hands empty.

Internal Examination: Heart 175 gms. Lungs Right 260 gms. Left 250 gms. Hyoid Bone intact. Stomach contains 240 gms. undigested food Liver 600 gms. Spleen 120 gms. Kidney right 100 gms. left 120 gms. Intestines ; Distended. Bladder empty. Uterus Empty. Normal size. Brain 1025 gms.

She gave the opinion in her post-mortem certificate Ex.P-11 that the deceased should have died because of shock because of extensive burns and death would appear to have occurred about 18 to 20 hours prior to the post-mortem. Then, P.W.8, the Constable received the dead body and handed over the same to the relations of the deceased, came to the Police Station and informed this to the Inspector of Police.

(xiv) On 29.12.1986, P.W.13 entrusted all the material objects to the Court. After examination of the witnesses and finishing investigation, he filed a charge-sheet against the appellant on 8.2.1987 for the offence under Section 302 Indian Penal Code.

(xv) On committal, the Sessions Court framed the charge for the above offence and questioned the appellant. The appellant pleaded not guilty and claimed to be tried.

(xvi) To substantiate the charge framed by the Sessions Court, the prosecution examined P.W.I to P.W.13, filed Ex.P-1 to Ex.P-16 and marked M.O.I to M.O.7.

(xvii) After the evidence was over, when the appellant was questioned under Section 313, Code of Criminal Procedure, with reference to the incriminating materials found against him in the evidence, the appellant chose to deny his complicity in the crime. However, he stated that on the date of the occurrence at about 6.30 p.m. when he came home, he heard the shrieks and cries of his wife from a distance of about 100'. that he rushed to the house and the deceased was found in the flames and he removed her Saree and carried her outside the house, due to which he. also sustained injuries on the hands. He further stated that he went to the Police Station for giving information about this incident and there he was detained by the police. However, no evidence was adduced on behalf of the defence.

4. On termination of trial, the Trial Court, on consideration of the evidence, oral and documentary, and the statement given by the accused, found the accused guilty holding that the prosecution has established the case against the accused beyond reasonable doubt. Hence, this appeal.

5. Mr. Angamuthu, learned Counsel appearing for the appellant, took us through the entire evidence and contended that there are lot of infirmities, which would affect the core of the prosecution case. He also pointed out several portions in the depositions by the witnesses to show that the evidence of the eyewitness and the other witnesses, who give the res gestae evidence, cannot be accepted, in view of the vital contradictions. Mr. S. Anbalagan, learned Additional Public Prosecutor, repelled the contention by pointing out various circumstances found available on the case records and contended that the prosecution proved its case beyond reasonable doubt. In short, the contention of the learned Additional Public Prosecutor is that the verdict given by the Sessions Court is with valid reasonings, which are unassailable and the same has to be confirmed by this Court.

6. Before considering the various infirmities pointed out by the Counsel for the appellant, let us, at the outset, discuss about the materials produced by the prosecution to establish the guilt of the appellant. There are two important

materials available in this case, which are, in our view, well corroborated by the other materials. The first material is the narration of event as spoken to by P.W.2, the only eye-witness in this case and the second material is the dying declaration made by the deceased to several persons and authorities on various occasions on the very same date of occurrence.

7. P.W.2, Ilavarasan, is the eldest son of the appellant and the deceased. At the time of occurrence, he was aged about 6 or 7 years. He was examined at the time of inquest, which was conducted by P.W.13 on 21.12.1986 at about 5.00 p.m. Before commencing his examination, questions were put by the Court in order to find out whether he has got an understanding capacity to depose evidence in the Court. A reading of the questions and answers would make it clear that P.W.2, then aged about six years, had the capacity to understand the questions and give rational answers. Of course, this Court as well as the Apex Court, on various occasions, held that it is not safe to accept the evidence of a child witness in the absence of the corroboration. But before dealing with the corroborative materials, let us first discuss the credibility of the testimony tendered by P.W.2. According to him, when the quarrel ensued between the accused and the deceased, the accused beat the deceased, due to which the deceased fell down, that then the accused took a kerosene bottle and poured it over her body and lighted a match and set fire on her. He would further say that when this occurrence was taking place, he was standing at the pial of the house and peeping through the window. During this occurrence, the deceased cried aloud. P.W.2 also shouted, 'xxxxxx' Since a tape-recorder was playing in the neighbouring house of P.W.1, the inmates of that house were not able to hear these shrieks and cries. So, P.W.2 raised his voice and shouted with force. This only made the neighbours to hear the screams and rush to the scene. P.W.1 also would say that during the relevant time, he was in the house and was hearing songs by playing the tape-recorder. He would also say that he also heard the sound of P.W.2, 'xxxxxx' So, the reading of evidence of P.W.2, the child witness which is well corroborated by the evidence of P.W.1, would go to show that both P.W.2 and P.W.1 appeared to be natural and truthful witnesses. P.W.2 also would say that after the occurrence was over, the accused carried the deceased and came outside and then dropped the victim on the entrance and ran away saying, 'xxxxxx' He further stated that after hearing his

cries, P.W.1 and others came to the scene and saw the deceased with burn injuries. P.W.1 also would say that when he came into the house of the deceased, he saw the accused standing with the Jatti and he also found some injuries on the left hand of the appellant. He would further say that then the accused fled away from the scene of occurrence. P.W.2 also stated that then P.W.3 came and took the deceased in a taxi to the hospital. This evidence is corroborated by the evidence of P.W.3, who stated that he came to the house, arranged for a taxi and then took her to the hospital, where she was admitted. P.W.4 Doctor also would speak to the fact that the deceased was brought to the hospital by P.W.3. This is mentioned in Ex.P-1, the intimation given to the police by the doctor regarding the admission of the deceased in the hospital. So, though this Court is on scions of the fact that there are some restrictions with reference to the reliability of the child witness, this Court has no hesitation to accept the evidence of P.W.2, the child witness in toto in view of the availability of the abundant materials through the other witnesses corroborating the version of P.W.2. Further more, there is no necessity for P.W.2, who is none else than the son of the appellant, to speak falsehood against his father. This evidence is also corroborated by the medical evidence of P.W.4, who found burn injuries on the body and the evidence of P.W.9 Doctor, who conducted the post-mortem. According, to P.W.9, the death was due to the burn injuries found on the body of the deceased. Moreover, the injuries found on the accused, as spoken to by P.W.1 and P.W.2, are also well established by the fact that after his arrest, the accused was produced before the Doctor P.W.9, who gave treatment to him and gave certificate Ex.P-12. In his statement under Section 313, Code of Criminal Procedure, the accused admits that he sustained burn injuries at the time of the occurrence. So, the evidence of P.W.2 in corroboration of the materials adduced by P.Ws.1 and 3 and doctors P.Ws.4 and 9, would make it clear that the accused alone perpetrated this crime of causing bum injuries on the deceased by setting fire to her.

8. The next important material is the dying declaration. The first dying declaration is the oral dying declaration given by the deceased to P.W.10. P.W.10 is working as a Nurse hailing from Merpanaikadu Village, to which P.W.3 belongs. According to P.W.10, though she belongs to Merpanaikadu, which is a neighbouring village to Padappanarvayal, the village of the deceased, she could see the house of the

deceased and could hear the sound. P.W.10 would say that at about 7.30 p.m. on the date of the occurrence, on hearing the hue and cry from the house of the deceased, she came to the house of the deceased and found the deceased with burn injuries. She enquired her as to what happened. The deceased told her that she was set on fire by her husband by pouring kerosene over her body. This statement was given at about 8.00 p.m. on 20.12.1986 by the deceased to P.W.10. At about 9.45 p.m., P.W.4 doctor examined the deceased. At that time, she was able to talk. P.W.3 and P.W.4, both would speak about the stage of her consciousness. After hearing her statement, implicating her husband P.W.4 Dr. recorded the same in wound certificate Ex.P-2. The next dying declaration is Ex.P-5, the statement recorded by P.W.6 at 10.45 p.m. On receipt of Ex.P-1 the intimation from the hospital, P.W.6, Sub-Inspector of Police went to the hospital and recorded a statement. According to him, she was conscious enough to give the statement. After recording the statement, the same was read-over to the deceased. The deceased admitted the same to be correct and then put her thumb impression in Ex.P-5. The next dying declaration is recorded by P.W.7, the Executive Magistrate. Ex.P-9 is the statement given by the deceased at 11.00 p.m. to P.W.7, the Executive Magistrate on the same day. On receipt of the requisition from the Police Officer Ex.P-6 at 10.45 p.m., P.W.7, the Executive Magistrate went to the hospital at 11.00 p.m. and recorded her statement in the presence of P.W.4 doctor. Before recording the statement, according to P.W.7, he asked P.W.4 Doctor as to whether she was fit enough to give dying declaration. After the said verification, he recorded the statement. This has been spoken to by P.W.4 doctor and P.W.7. Moreover, P.W.7 would say that after recording the statement, it was read-over to her and then her thumb impression was obtained thereon. So, there are three recorded dying declarations and one oral dying declaration. The reading of the contents of all these dying declarations would make it clear that the occurrence had taken place in the manner as spoken to by P.W.2, the sole eyewitness. Nothing has been elicited in the cross-examination from P.W.10, who speaks about oral dying declaration, P.W.4, who speaks about Ex.P-2, the wound certificate in which there was reference about dying declaration, P.W.6, the Sub-Inspector of Police, who recorded Ex.P-5 dying declaration and P.W.7, the Executive Magistrate, who recorded Ex.P-9 dying declaration at 11.15 p.m. - on the same

day, to discredit their testimony. It is not even suggested to them that they are inimical towards the accused. Especially, the statement given to P.W.6, the Sub-Inspector of Police, and the dying declaration recorded by P.W.7, the Executive Magistrate, would show that the contents of her dying declarations were consistent without any contradiction. So, in view of the above discussion, there is no difficulty in accepting the testimony of these witnesses to come to the conclusion that the case of the prosecution has been established against the accused beyond doubt. .

9. Of course, P.W.2's presence is not mentioned in the dying declaration in Exs.P-5 and P-9. The reason is, as correctly pointed out by the learned Additional Public Prosecutor, the deceased would not have watched P.W.2 standing on the pial and witnessing the occurrence. But we should not forget that in Ex.P-5 and Ex.P-9, the presence of P.W.1 and others were mentioned and that P.W.1 speaks about the weeping and crying sound of P.W.2 and that on hearing the voice, he came to the scene of occurrence. It is also pointed out that there is no reference about the existence of the window in the evidence of P.W.13 and the observation mahazar. It is quite true. But the reading of the deposition of P.W.2 would show that there is no question put to P.W.2 with reference to the window and no suggestion was put to him that there is no such window.

10. It is also pointed out that the contents of Exs.P-5 and P-9 are verbatim the same and so, both the documents must have been prepared only by the police. We do not see any reason to doubt the genuineness of Ex.P-5 and P-9 because Ex.P-5 was recorded by P.W.6 Sub-Inspector at about 10.45 p.m. and Ex.P-9 was recorded by the Executive Magistrate at 11.25 p.m. It is not correct to say, the contents of these documents are verbatim the same. There are some variances in the wordings. But one thing is very clear, the reason for the quarrel, the manner of the occurrence and after hearing the shouts, the fact of the neighbours coming and attending on the deceased, are all clearly spelt out in these documents. There is consistency with reference to the motive and the act of the accused, who set fire to the body of the deceased.

11. It is also contended on behalf of the defence that there is no evidence to show that P.W.3 had enquired the deceased before she was taken to the hospital. Of course, P.W.3 would say that the deceased was conscious and she was able to talk. When P.W.3 came from his village, he was informed that the deceased sustained burn injuries only due to the act of the accused. So, the concern of P.W.3 was only to take steps to take the deceased to the hospital to save her life. So, he might not have enquired the deceased since he saw the deceased with burn injuries in a painful state of affairs. So, the failure on the part of P.W.3 to enquire about the happenings from the deceased cannot be considered to be an infirmity. On the other hand, the evidence of P.W.3 is corroborated by the doctor P.W.4, who says that the deceased was accompanied by P.W.3 and was able to talk and only from her version, he recorded her dying declaration in Ex.P-2, certificate.

12. Much was said about the non-attestation of doctor in the documents Exs.P-6 and P-9. The depositions given by P.W.4 and P.W.7 would reveal that P.W.4 was very much present at the time of recording dying declaration. P.W.7, the Magistrate asserted that he verified with the doctor with reference to her consciousness and then recorded the dying declaration. So, in the light of the above evidence, the failure to get signature in Ex.P-9 from doctor will not in any way affect the credibility of the witnesses P.W.4 and P.W.7.

13. One other important circumstance in this case is the presence of the injuries on the body of the accused. According to the accused, in his statement under Section 313, Code of Criminal Procedure, when he came back home from a distance of about 100', he heard the shrieks of his wife and when he came to the house, he saw his wife in flames and that he tried to save her by pulling her Saree and he sustained injuries out of that. But the evidence of P.W.12 and P.W.13 would make it clear that on the date of the occurrence at about 8.00 p.m. the accused came to the brother of P.W.12 and informed him that the deceased attempted to commit suicide by pouring kerosene on herself and that he tried to prevent her attempt and in that process, he sustained injuries. A suggestion has been put to P.W.13 that the deceased sustained burn injuries due to the fire accident. So, there are three different versions put forward by the accused, which would make it

clear that the prosecution case is more probable than the defence theory as there are no materials to show that the deceased sustained injuries either due to suicide or due to accident. The learned Additional Public Prosecutor cited a decision of the Supreme Court in *Lallubhai v. State of Gujarat*, : 1972 CriLJ828 , to show that if the Court is satisfied on a close scrutiny of the dying declaration that it is truthful, it is open to the Court to convict the accused on its basis without any independent corroboration. The Supreme Court in *Khushal Rao v. State of Bombay*, : 1958 CriLJ106 , has held as follows :

'A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind on the one hand that the statement is by a person who has not been examined in Court on oath and on the other hand that the dying man is normally not likely to implicate innocent persons falsely.'

In the instant case, there is not only a dying declaration given by the deceased against the appellant, her husband, but also an eye-witness account through the evidence of P.W.2, who is none else than the son of the appellant. In the light of the above discussion, we see no reason to doubt the veracity of these witnesses and the exhibits produced through these witnesses, with reference to the commission of the crime by accused. We also agree with the finding given by the Trial Court with reference to the guilt of the accused and as such the appeal is liable to be dismissed as it has no merits.

14. In the result, confirming the conviction and sentence imposed upon the appellant, the appeal is dismissed.

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