

Pandi Vs. the Inspector of Police

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SooperKanoon Citation : sooperkanoon.com/926413

Court : Chennai

Decided On : Feb-23-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Acts : [Indian Penal Code \(45 of 1860\)](#) - Section 302, 307; Code of Criminal Procedure (CrPC), - Section 374; District Police Act - Section 75

Appeal No. : Criminal Appeal (MD) No.128 of 2011

Appellant : Pandi

Respondent : The Inspector of Police.

Advocate for Pet/Ap. : Ms.G.Bhagavath Singh, Adv.

Judgement :

Prayer

Appeal filed under Section 374 of Criminal Procedure Code as against the judgment of learned Additional Sessions Judge, (Fast Track Court No.III), Madurai in S.C.No.393 of 2011 delivered on 11/4/2011.

JUDGMENT

(Judgment of the Court was delivered by P.DEVADASS ,J)

1. The accused, who was prosecuted for an offence under Section 302 IPC before the learned Additional Sessions Judge (Fast Track Court No.III), Madurai in S.C.No.393 of 2011, on 11.4.2011 was convicted under Section 302 IPC and was sentenced to life and was also directed to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment, is the appellant.

2. In the said Court, he was prosecuted for the death of one Sethuraman, the brief version of the prosecution case, may be narrated as under:-

(i) One Sethuraman, husband of P.W.11 Panjavarnam and father of P.W.2 Lakshmanan resided in the house belonging to accused Pandi situate in Malaiyan Nagar, Narasingam, Othakadai, in Madurai, under a lease arrangement, under which he had paid Rs.15,000/- to him.

(ii) On 15.11.2009, Sethuraman, demanded return of his money. However, the accused refused to pay and also criminally intimidated him. On 17.11.2009, accused complained to P.W.5 Sathiya, Sub-Inspector, Othakadai Police Station that Sethuraman's conduct towards his children is condemnable and he shall vacate his house (Ex.P.2 complaint). P.W.5 enquired the matter. P.W.3 Malaichami, Ex. Panchayat President, compromised the matter. Sethuraman undertook to vacate the house. P.W.5 filed a petty case under Section 75 of the District Police Act as against Sethuraman.

(iii) In these circumstances, Sethuraman shifted his family to Ayyankottai, near Thanichiyam, where P.W.1 Veeriaperumal, father-in-law of P.W.2 is residing.

(iv) On 22.11.2009, at about 9.30 a.m., Sethuraman was sitting on the pial of the temple. P.W.1, the temple-Priest was in the temple. At about that time, the accused came. He engaged in a wordy duel with Sethuraman. Sethuraman followed him towards the nearby temple - tank. Suddenly, the accused frisked out two quarter bottles containing petrol, opened it, poured petrol on Sethuraman and lit fire to him with a match stick. Sethuraman was in flames. He jumped in the temple tank raising cry of help. P.W.1 seen this ghastly incident. Sethuraman told him that the accused had set fire to him. P.Ws.1, 2 and 11 took him in 108 Ambulance to Government Rajaji Hospital, Madurai.

(v) At about 11.05 a.m., at the said Hospital, P.W.6 Dr.Ravichandran admitted Sethuraman in Ward No.301 with 55% of burn injuries (Ex.P.3 Accident Register copy).

(vi) On receipt of hospital intimation (Ex.P.10), at about 12.13 p.m., P.W.12 G.Muthukumaran, Judicial Magistrate No.VII, Madurai, visited Ward No.301. Seen Sethuraman. P.W.7 Dr.Gunasekaran was with him. He certified him that the patient was conscious and in a fit state of mind to give dying declaration. P.W.12 after having fully satisfied with his fit mental condition, recorded his dying declaration (Ex.P.11). The declarant told P.W.12 that on that day, between 9 a.m and 10 a.m., in Thanichiyam, in connection with dispute regarding return of his lease amount, his house owner Pandi had poured diesel on him, set fire to him and ran away. Since there were blisters in his hands and burn injuries, P.W.12 took his left big toe impression in the dying declaration.

(vii) On 25.11.2009, on receipt of intimation from the said Hospital, at about 2 p.m., P.W.13 Sanjeeviraj, Sub-Inspector, Vadipatti Police Station visited Ward No.301. He recorded Ex.P.9 Statement from Sethuraman and obtained his left big toe impression. In Ex.P.9, it was attested to by P.W.11. At about 3 p.m., at Vadipatti Police Station, P.W.13 registered a case in Crime No.751 of 2009 under Section 307 IPC (Ex.P.12 FIR). He sent the FIR to the Judicial Magistrate Court, Vadipatti.

(viii) P.W.14 M.Ramachandran, Inspector of Police, Vadipatti Police Station, on receipt of copy of FIR, visited the scene place. In the presence of P.W.4 Santhana Velaar and Perumal, prepared Ex.P.5 observation mahazar. Drew Ex.P.13 rough sketch. Examined the material witnesses. Recorded their statements. At the Government Rajaji Hospital, Madurai, he examined Sethuraman and recorded his statement.

(ix) On 26.11.2009, at about 10 a.m., at the said Hospital, Sethuraman passed away. On receipt of death intimation, P.W.14 altered the Section of law to Section 302 IPC. Sent Ex.P.14 Alteration Memo to the Court. At the mortuary, in the presence of Panchayatdars, P.W.14 held inquest over the dead body (Ex.P.15 inquest report). He gave Ex.P.5 requisition to the hospital to conduct post-mortem. He re-examined P.Ws.1 and 2 and recorded their further statements. He also

examined P.Ws.3 and 5 and recorded their statements. He also examined the Doctors.

(x) P.W.8 Dr.R.Chandrasekar, at the said Hospital, conducted post-mortem on the dead body of Sethuraman. He opined that the deceased would appear to have died of extensive superficial burns of about 60% and its complications thereof (Ex.P.6 post-mortem certificate).

(xi) On 30.11.2009, the accused surrendered before Judicial Magistrate No.VI, Madurai. On 8.12.2009, P.W.14 took him to police custody from the Court. On 8.12.2009, at about 1.45 p.m., in the presence of P.W.10 Chidambaram, VAO, Neeraethan Village and his Assistant Karuppaiah, accused gave Ex.P.10 confessional statement to P.W.14. In pursuance of that, from a place in the burial ground, in Ayankottai, accused produced three quarter bottles (M.O.1 series). P.W.14 seized them under Ex.P.8 mahazar. He produced the accused to the Court for judicial custody. He examined the autopsy Doctor. Concluding the investigation, he filed the Final Report for an offence under Section 302 IPC.

3. In the trial Court, the accused has been proceeded with for a charge under Section 302 IPC.

4. To substantiate the said charge, prosecution examined P.Ws.1 to 18, marked Exs.P.1 to P.16 and exhibited M.O.1 series.

5. Considering the above evidence, the trial Court placing reliance on dying declaration and the oral evidence came to the conclusion that the accused had killed Sethuraman, he is guilty of an offence under Section 302 IPC and thus, convicted and sentenced him as already stated at the outset.

6. According to Mr.G.Bhagavath Singh, learned counsel for the appellant/accused, a case of suicide has been shown a case of homicide and the accused has been implicated in it. Elaborating his submissions, the learned counsel submitted as under:

(i) Sethuraman, the deceased misbehaved with the mentally retarded daughter of the accused. On 17.11.2009, accused gave a complaint against Sethuraman to

P.W.5, Sub-Inspector, Othakadai Police Station. At the instance of police, P.W.2 canned his father Sethuraman. P.W.11, Sethuraman's wife also attempted suicide. Ashamed of his behaviour, Sethurman committed suicide.

(ii) Subsequently, on the tutoring of P.W.1, father-in-law of P.W.2 and P.Ws.2 and 11, Sethuraman made false declarations implicating the accused. The dying declarations are surrounded with suspicion. It is unsafe to act upon them. (iii) There is inconsistency as to the place of occurrence. At one place, it was stated that it is before Ayyankottai Ayyanar temple, in another place it is stated that it was near Thanichiyam. To P.W.6, Dr.Ravichandran it was stated by Sethuraman that it was near his house in Othakadai. They are all different places. Between them, there is much distance.

(iv) Motive/reason for what prompted the accused to set fire on Sethuraman has not been established.

(V) Murugan, a shop-keeper, near the temple and Deivendran, who admitted Sethuraman in the hospital, are material witnesses, but, they were not examined. This has become fatal to the prosecution case.

(vi) The incident is stated to have taken place on 22.11.2009. P.W.6, the causality doctor signed the hospital intimation on 22.11.2009 itself. However, the F.I.R. has been registered only on 25.11.2009. In the circumstances, non- production of the said hospital intimation has weakened the prosecution case. (vii) Ex.P.9 statement has been recorded from Sethuraman only on 25.11.2009. Based on that, F.I.R. was registered only on that day. It was sent to the Court belatedly. Actually, on 22.11.2009 itself, P.W.13, Sub-Inspector of Police knew that Sethuraman attempted suicide. A complaint to that effect also has been received. However, that earliest version has been burked. There is long, unexplained delay in lodging the F.I.R. and sending it to Court.

(viii) The statements of material witnesses recorded under Section 161 Cr.P.C. have been sent to Court after long delay. It had shaken the credibility of the said witnesses.

(ix) The accused is alleged to have poured petrol from quarter bottles, on the deceased, on 22.11.2009. The bottles (M.O.1 series) were stated to have been recovered on 08.12.2009, on the basis of the confessional statement of the accused, but, they bears the manufacturing date 25.11.2009. Thus, the Section 27 Evidence Act recovery is false.

(x) Thus, the dying declarations pressed into service are not genuine and voluntary. It is quite unsafe to act upon them.

(xi) The prosecution has not established its case beyond all reasonable doubts. Thus, the accused is entitled to acquittal.

7. The learned counsel for the appellant cited the following decisions in support of his submissions:

(1) VIJAI KUMAR Vs. STATE OF RAJASTHAN [1986 (1) WLN 123]. (2) SUJATHA Vs. STATE [2006-2-L.W. (CRL.) 587].

(3) NANHAR & ORS. Vs. STATE OF HARYANA [2010 CIJ 759 SC (1)]. (4) STATE OF KARNATAKA Vs. VENKATESH [AIR 1992 SUPREME COURT 674]. (5) ILAM SINGH AND OTHERS Vs. STATE OF U.P. [1976 SCC (Cri) 630]. (6) MEHARAJ SINGH Vs. STATE OF U.P. [1994 SUPREME COURT CASES (Cri) 1390].

(7) SOMASUNDARAM Vs. STATE, etc. [2003-2-L.W. (CrI.) 767]. (8) SEVI Vs. STATE OF T.N. [1981 SUPREME COURT CASES (Cri) 679]. (9) NADIMUTHU AND OTHERS Vs. STATE BY PUBLIC PROSECUTOR [1997 (2) MWN (Cr.) 149].

(10) RAJEEVAN Vs. STATE OF KERALA [(2003) 3 SUPREME COURT CASES 355]. (11) GANGADHARAN, S. Vs. GOVINDAN [1986 L.W. (Cri.) 270].

8. On the other hand, Mr.K.S.Duraipandian, learned Additional Public Prosecutor submitted as under:

(i) The motive/reason for setting fire on the deceased by the accused is evident from the evidence of P.Ws.1, 2, 3, 5 and 11.

(ii) In his oral, written and judicial dying declarations, the deceased had clearly stated that the accused had set fire to him and also stated that why he did so and where he did so.

(iii) P.W.7, the medical officer certified the consciousness and the fit mental condition of the deceased to give dying declaration to P.W.12, the Judicial Officer.

(iv) The evidence on record clearly shows that there was no tutoring and prompting to the deceased to make false dying declaration.

(v) The delay occurred in sending the death intimation, lodging F.I.R., despatching it to Court, sending of police statements to Court have all been explained. Further, merely on account of delay in sending these documents to Court, prosecution case can not be thrown out, when especially, there are clinching oral, documentary evidence and acceptable dying declarations.

(vi) It is not a case of suicide, it is a clear case of culpable homicide amounting to murder.

(vii) In the facts and circumstances, the trial Court has rightly convicted the accused and sentenced him accordingly.

9. We have given our anxious consideration to the submissions of both sides, gone through the evidence on record, trial Court's findings and also perused the decisions cited at the bar.

10. Sethuraman, husband of P.W.11 Panchavarnam and father of P.W.2 Lakshmanan resided with his family in the house belonging to the accused, situate in Narasingam, in Othakadai, on the outskirts of Madurai City.

11. The overwhelming evidence of P.Ws.11 and 2, P.W.1 Veeriaperumal, father-in-law of P.W.2, P.W.3 Malaichami, Ex. panchayat president of the place clearly shows that Sethurman came to reside in the said house under a lease arrangement with the accused and under which he had paid him Rs.15,000/- and with regard to the return of this amount there arose dispute between Sethuraman and the accused.

12. P.W.1 gave his daughter, Prema in marriage to Sethuraman's son P.W.2. P.W.1 is residing in Ayyankottai. He is a priest in the nearby Ayyanar temple. His house is very near to the temple. In view of the strained relationship between Sethuraman and the accused, Sethuraman shifted his family to P.W.1's house.

13. On 22.11.2009, at about 9.30 a.m., near the said temple Sethuraman was found with burn injuries. Sethuraman told P.W.1 that his house owner/accused had poured petrol on him and set fire to him.

14. Sethuraman was brought to Government Rajaji Hospital, Madurai. P.W.6 Dr.Ravichandran noticed burn injuries of 55% and admitted him in Ward No.301 an in-patient (See Ex.P.3, Accident Register). On intimation from the hospital, P.W.12 Muthukumaran, Judicial Magistrate No.VII, Madurai visited ward No.301 and seen the patient. P.W.7 Dr.Gunasekaran certified his consciousness and fit mental condition to give dying declaration. P.W.12 having satisfied with his fit mental condition recorded his dying declaration (Ex.P.11).

15. P.W.12 questioned the patient cA;fSf;F vd;W vA;F vg;go jPf;fhak; Vw;gl;lJ? cA;fSf;F Vw;gl;l fhaA;fSf;F ahh; fhuzk;? (when, where and how you got the burn injuries? Who is responsible for your burn injuries.)

16. Sethuraman answered him as under:

;nd;W fhiy Rkhh; 9 to 10 kzpastpy; jdpr;rpaj;jpy; vd; khkdhh; tPl;oy; nUe;j BghJ xj;jfilapy; ehd; FoapUe;j tPl;L Xdh; ghz;o vd;gtUf;Fk; vdf;Fk; xj;jp gzk; bgWtJ rk;ke;jkhf Vw;gl;l gpur;rid fhuzkhf Bkw;go ghz;o, S/o.Kj;ijah Oriy vd; k PJ Cw;wp jPia bghWj;jptpl;L Xotpl;lhd;. ehd; tPl;oy; nUe;j BghJ mth; Tg;gpl;lhh;. vd; khkdhh; tPl;ow;F btspBa ehd; te;jBghJ mth; Bkw;brhd;dthW Oriy Cw;wp jPia bghWj;jp itj;J tPl;L brd;Wtpl;lhh;. Bkw;go ghz;of;F taJ 38, 40 nUf;Fk;. vdf;F Vw;gl;Ls;s jPf;fhaA;fSf;F Bkw;go ghz;ojhd; fhuzk;. mth;jhd; bghWg;ghthh;. (Due to the dispute between him and Pandi, who owns the house situate in Othakadai, in which he had resided, today between 9 to 10 a.m, at Thanichiam, Pandi poured diesel on him and set fire to him and ran away. When he was in the house, the accused called him, when he came out, he poured diesel and set fire to him and went away. Pandi is aged about 38, 40. The said Pandi is responsible for the burn

injuries caused to him.)

17. On receipt of intimation from the Hospital, on 25.11.2009, at about 2 p.m., P.W.13 Sanjeeviraj, Sub-Inspector, Vadipatti Police Station, visited Ward No.301 and recorded Ex.P.9 statement from Sethuraman, wherein he had stated about the lease arrangement with the accused, his payment of Rs.15,000/- to him, his occupation of his house in Othakadai, his demand of Rs.15,000/- on 15.11.2009, the complaint given by the accused to Othakadai Police Station, intervention of P.W.3, Ex. panchayat president, a petty case having been filed by P.W.5 Sathiya, Sub Inspector, Othakadai Police Station against him, his shifting of the family to P.W.1's house in Thanichiyam, on 22.11.2009, at about 9.30 a.m., near Ayyankottai Ayyanar temple, the accused having poured diesel on him and set fire to him, his jumping into temple tank and his cry for help and his putting up of his big toe impression in the statement. Based on this Ex.P.9, on that day, at about 3 p.m., P.W.13 registered this case for an offence under Section 307 I.P.C. (Ex.P.12 F.I.R.).

18. In the circumstances, on 26.11.2009, at about 10 a.m., at the said hospital, Sethuraman passed away.

19. P.W.8, Dr.R.Chandrasekar, who performed autopsy on the dead body opined that he died of extensive superficial burns of about 60% and its complications thereof. (See Ex.P.6 postmortem certificate.)

20. Now, Sethuraman is no more. While alive, on 22.11.2009, he made oral declaration to P.W.1. And on the same day, afternoon, he made declaration to P.W.12, the judicial officer and on 25.11.2009, he gave (Ex.P.9) written declaration to P.W.13, Sub-Inspector of Police. After his death, since they relates to his cause of death they became his (i) oral dying declaration, (ii) judicial dying declaration and (iii) written dying declaration.

21. Dying declarations are statement of persons, who cannot be called as witnesses. It is hearsay evidence permissible under Section 32(1) of the Indian Evidence Act,1872.

22. In SHARDA Vs. STATE OF RAJASTHAN [2010 (2) SCC 85], it is stated as under:

23. The principle on which dying declarations are admitted in evidence is indicated in legal maxim:

Nemo moriturus praesumitur mentire-a man will not meet his Maker with a lie in his mouth.

It is indicative of the fact that a man who is on a deathbed would not tell a lie to falsely implicate an innocent person. This is the reason in law to accept the veracity of her statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Besides, if the dying declaration is to be completely excluded in a given case, it may even amount to miscarriage of justice as the victim alone being the eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence. Though a dying declaration is entitled and is still recognised by law to be given greater weightage but it has also to be kept in mind that the accused had no chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of the deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration.

23. In MOHAN LAL Vs. STATE OF HARYANA [2007 (3) SCC (Cri) 94], the Hon'ble Apex court laid down the following guidelines for the appreciation of dying declaration:

This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in PANIBEN V. STATE OF GUJARAT, [(1992) 2 SCC 474]: (SCC pp. 480-81, paras 18-19) (i)

There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See MUNNU RAJA V. STATE OF M.P. [(1976) 3 SCC 104])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See STATE OF U.P. V. RAM SAGAR YADAV, [(1985) 1 SCC 552] and RAMAWATI DEVI V. STATE OF BIHAR [(1983) 1 SCC 211])

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K.RAMACHANDRA REDDY V. PUBLIC PROSECUTOR, [(1976) 3 SCC 618])

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See RASHEED BEG V. STATE OF M.P., [(1974) 4 SCC 264])

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (See KAKE SINGH V. STATE OF M.P., 1981 SCC (Cri) 645)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See RAM MANORATH V. STATE OF U.P., [(1981) 2 SCC 654]) (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See STATE OF MAHARASHTRA V. KRISHNAMURTI LAXMIPATI, 1981 SCC (Cri) 364)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See SURAJDEO OJHA V. STATE OF BIHAR, 1979 SCC (Cri) 519) (ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the

dying declaration, the medical opinion cannot prevail. (See NANHAU RAM V. STATE OF M.P. [1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See STATE OF U.P. V. MADAN MOHAN [(1989) 3 SCC 390])

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. (See MOHANLAL GANGARAM GEHANI V. STATE OF MAHARASHTRA, [(1982) 1 SCC 700])

24. In PURAN CHAND V. STATE OF HARYANA [2010 (3) SCC (Cri) 197], the Hon'ble Apex Court once again reiterated the above mentioned principles.

25. In PANNEERSELVAM Vs. STATE OF T.N. [2010 (4) SCC (Cri) 496], the Hon'ble Apex Court held as under:

8. ... It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of the conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

26. Recently, in SURINDER KUMAR Vs. STATE OF HARYANA [2012 (1) SCC 230], the Hon'ble Apex Court observed as under:

Though there is neither a rule of law nor of prudence that dying declaration cannot be acted upon without corroboration but the court must be satisfied that the dying declaration is true and voluntary and in that event, there is no impediment in basing conviction on it, without corroboration. It is the duty of the court to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. Likewise, where the deceased was unconscious and could never make any declaration the evidence with regard to it is rejected. The dying declaration which suffers from infirmity cannot form the basis of conviction.

27. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered.

28. If, after careful scrutiny, the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make a basis of conviction, even if there is no corroboration. With these principles, let us consider the statement of Sethuraman and its acceptability.

29. The accused owns several houses. One such house is situate in Narasingam, in Othakadai, Madurai. We have already seen that in that house Sethuraman came to reside on Othi (lease) basis on payment of Rs.15,000/- to him.

30. It has been contended by the learned counsel for the appellant that actually after the death of the father of the accused, his mother alone is looking after the property matters.

31. But, accused is not a different person. He is a main man in the family. P.Ws.2 and 11 have clearly stated about payment of Rs.15,000/- to him. P.W.3, Malaichami, the past panchyat president, a neutral person also spoken about this. Thus, the attempt of the accused to extricate himself from his receipt of Rs.15,000/- has become abortive.

32. In his complaint, Ex.,P.9, which has now become his written dying declaration, Sethuraman had stated that he had demanded return of his Rs.15,000/-, however, the accused had refused to pay and also criminally intimidated him. This aspect also has been spoken to by P.W.2 and the neutral man P.W.3 also spoken about this.

33. With regard to this issue accused having given a complaint (Ex.P.2) to Othakadai Police Station has been spoken to by its Sub-Inspector P.W.5 Sathiya. In Ex.P.2, the accused having demanded the deceased to vacate the house and the deceased having undertaken to vacate the house on 18.11.2009 also have been stated. In fact, as promised, on 18.11.2009, Sethuraman also vacated the house and shifted his family to Ayyankottai to P.W.1's house.

34. In his complaint (Ex.P.2), the accused had also stated that Sethuraman's conduct is condemnable and considering the future of his children also he wanted Sethuraman to vacate his house. With regard to this issue, P.W.3 effected a compromise. P.W.5 also spoken about that.

35. It is pertinent here to note that on 22.11.2009, when Sethuraman made his oral dying declaration to P.W.1, he had stated that his house owner Pandi/accused had poured diesel on him and set fire to him. In his judicial dying declaration (Ex.P.11) also Sethuraman had stated that the reason for the accused having poured diesel on him was with regard to the dispute arose in obtaining the Othi (lease) amount from him. Further, in his written dying declaration (Ex.P.9) also Sethuraman had elaborately stated about this issue.

36. Of course, the evidence of P.W.2 shows that the accused is having a mentally retarded child. P.W.5 had stated that when she had enquired the girl, she did not state that Sethuraman had misbehaved with her. It is an incidental matter. The dispute between Sethuraman and accused was mainly with regard to return of Othi (lease) amount, that appears to be predominant reason for the occurrence.

37. P.W.11 Panchavarnam, wife of Sethuraman had stated that because the accused had given a complaint against her husband, she had attempted suicide. At the police station, in connection with the complaint given by the accused Sethuraman was enquired. In this connection, his son P.W.2 was also enquired. P.W.11 denied the suggestion that her husband had attempted suicide. All will goes to show that Sethuraman had not attempted suicide.

38. On 18.11.2009, Sethuraman shifted his family to P.W.1's house in Ayyankottai, it is near the Ayyanar temple. P.W.1's house is outside the village and after the main road. Within 10 minutes walk from the temple P.W.1's house can be reached. P.W.1's house and the Ayyankottai Ayyanar temple are in Thanichiam area. So, they having been called it Thanichiyam is understandable.

39. Near the temple, the occurrence had taken place. At that place only P.W.1 had spotted Sethuraman with burn injuries. At about that time Sethuraman and family resided in P.W.1's house. That is why in his dying declaration Sethuraman had

stated that while staying in Thanichiam in the house of his uncle, the occurrence had taken place. P.W.1 is uncle to P.W.2. Sethuraman makes this also clear in his Ex.P.9 written dying declaration stating that the occurrence had happened when he and his family were staying in P.W.1's house in Thanichiam. That does not mean in P.W.1's house, it means, it had taken place, while Sethuraman and his family was staying in P.W.1's house and on that day, Sethuraman came to the nearby temple by walk and at that time the occurrence had taken place.

40. Ex.P.7 is the case-sheet of Sethuraman, maintained in the Government Rajaji Hospital, Madurai. The entries were made by P.W.6 Dr.Ravichandran. In Ex.P.7 it is mentioned that the occurrence is alleged to have taken place on 22.11.2009, at about 9.30 a.m., near his house in Othakadai.

41. It is to be seen that at about that time Sethuraman was brought to the hospital with 60% burn injuries. The entry in Ex.P.7 was written by P.W.6. On 18.11.2009 itself Sethuraman had shifted his family to Thanichiam area. On 22.11.2009, he was brought to the said hospital with burn injuries by P.Ws.1, 2 and 11. It is also pertinent here to note that in Ex.P.3 Accident Register, it is mentioned that the occurrence had taken place in Thanichiam.

42. Thus, there is no confusion as to the occurrence place. It had taken place near the Ayyankottai Ayyanar temple, which is situate in Thanichiam area.

43. In his cross-examination, it is true that P.W.1 could not answer that after the fire set on Sethuraman, Sethuraman ran on the road, whether towards Vadipatti direction or towards Madurai direction.

44. The incident was on 22.11.2009. P.W.1 was examined on 10.01.2011. It is quite an insignificant matter. In all human probability that cannot be remembered in his mind by P.W.1 for so long and repeat it exactly in Court. It is also not a material discrepancy going to the root of the prosecution case.

45. Sethuraman was brought to the hospital by his wife P.W.11, their son P.W.2, their son's father-in-law P.W.1 and his brother Deivendran. Then Sethuraman was in a critical condition. They are the persons, who are closely related to him, mainly

they alone could come to his rescue. The Magistrate (P.W.12) was very categorical in his evidence that at the time of recording the dying declaration near the patient except him and P.W.7 no one was present. In his cross-examination also he confirms this. There is nothing on record to show that Sethuraman was tutored or prompted to make false declaration implicating the accused.

46. P.Ws.1 and 2 have clearly spoken to about the matters pertaining to the occurrence. There is nothing to reject their cogent and convincing evidence. Deivendran, brother of P.W.1, also accompanied Sethuraman in the Ambulance to the hospital. He has not been examined. One Murugan, who is having his shop near the Ayyanar temple also has not been examined.

47. Already as to the matters prior to the occurrence and subsequent to the occurrence many witnesses were examined. Both Murugan and Deivendran have not witnessed the occurrence. They are not material witnesses in this case. As per Section 134 of the Indian Evidence Act, more number of witnesses are not required to prove a fact. Merely because some of the witnesses, who are closely related to the deceased, their evidence cannot be discarded.

48. In this connection, it is relevant to note the following observations of the Hon'ble Apex Court made in MAHESH Vs. STATE OF M.P. [2011 (3) SCC (Cri) 783]:

The prosecution has examined at least three eyewitnesses to the occurrence of the incident who have stated as to how the incident had happened. They have also stated the different and various, roles played by the accused person. Since the eyewitnesses were available and examined, there was no necessity of examining any other witness, inasmuch as, there is no necessity for the prosecution to multiply witnesses to prove and establish the prosecution case. There is no requirement in the law of evidence that any particular number of witnesses is to be examined to prove something. The evidence has to be weighed and not to be counted. The witnesses who were examined were relatives of the deceased and, therefore, there is no ground and reason why they should be disbelieved. There is also no reason why they would not speak the truth so as to see that the actual guilty persons are convicted.

49. According to P.W.12/Judicial Officer, on 22.11.2009, at about 12.13 p.m., when Sethuraman made dying declaration, he was conscious and he was having fit state of mind. After satisfying himself about his fit mental condition only P.W.12 had recorded his dying declaration. His fit mental condition also has been certified to him by the medical officer/P.W.7.

50. The incident of pouring petrol from two quarter bottles on Sethuraman took place on 22.11.2009, at about 9.30 a.m., near the temple in Thanichiam area. From there, Vadipatti Police Station is at a distance of 7 k.m. From Thanichiam, Government Rajaji Hospital is also at a distance. The running time between both the places is nearly about one and a half an hour. On 22.11.2009, at about 11.05 a.m. Sethuraman was admitted in Ward No.301 in the said hospital. On intimation from the Hospital, at about 12.13 a.m., P.W.12 came to the hospital and recorded his dying declaration. On 25.11.2009, at about 2 p.m., P.W.13 Sub-Inspector, Vadipatti Police Station, at the said hospital, recorded Ex.P.9 statement from the deceased.

51. In the cross-examination, it was elicited from P.W.6 Dr.Ravichandran that he had signed the hospital intimation on 22.11.2009. There is no evidence when and at what time it was received at the Vadipatti Police station. In the circumstances, the non-production of the hospital intimation has not affected the prosecution case.

52. The F.I.R. was registered on 25.11.2009, at about 3 p.m., at the Vadipatti Police station. Sethuraman passed away on 26.11.2009, at about 10 a.m. at the said hospital. On receipt of the wireless message, P.W.14, Inspector Ramachandran altered the Section of law to Section 302 IPC and duly intimated the same to the Judicial Magistrate, Vadipatti.

53. Of course, the F.I.R. had reached the Magistrate's Court only on 26.11.2009 and statement of witnesses recorded under Section 161 Cr.P.C., were also not despatched in time to the Court and they reached the court after delay. Merely on account of delay in lodging the F.I.R., in sending it to the Court, so also delay in recording the statement of witnesses under Section 161 Cr.P.C and in submitting them to the court, it cannot be said that the prosecution case has to be brushed aside, when especially, there are ample and cogent evidence as to the occurrence

and the matters which are prior to and subsequent to the occurrence have been very clearly brought out in the evidence.

54. In GARLAPATI KRISHNA Vs. STATE OF ANDHRA PRADESH [2012 (1) SCC (Cri) 396], it was held that delay in preferring complaint by itself is not a ground to reject the prosecution case.

55. In BHAJAN SINGH Vs. STATE OF HARYANA [2011 (3) SCC (Cri) 241], the Hon'ble Apex Court held that delay occurred in despatching the F.I.R. to the court by itself is not a circumstance which can throw out prosecution's case in its entirety.

56. In JOHN PANDIAN Vs. STATE [2011 (3) SCC (Cri) 550], the Hon'ble Apex Court held that the delay in recording of statement under section 161 Cr.P.C. itself not make the prosecution case false, it all depends upon quality of evidence. Further, by mere delay in submitting the material documents and other documents of the prosecution to the court, the court cannot hold that the prosecution case has to be thrown out, it all depends upon how far it affects the credibility of the witnesses. Further, when the prosecution witnesses is clear and their evidence is cogent, these delay will not speak on the prosecution case.

57. On 18.12.2009, P.W.14 took police custody of the accused and based on his confessional statement Ex.P.16, in the presence of P.W.10 Chidambaram, V.A.O. and his Assistant, P.W.14 is stated to have recovered M.O.1 series- quarter bottles near a burial ground in Ayyankottai. In the cross examination, it was elicited from him P.W.10 that M.O.1 series bear the manufacturing date 25.11.2009. But, M.O.1 has not been shown to P.W.14 and clarification has been elicited. Further, in the presence of so much clear cut oral and documentary evidence, it had not affected the prosecution case at all.

58. As per the law laid down by the Apex Court, based on sole dying declaration, a conviction can be recorded, if it is true and voluntary. In this case, the contents of oral dying declaration to P.W.1, judicial dying declaration to P.W.12 and written dying declaration to P.W.13 stand corroborated on its material particulars by the overwhelming and unimpeachable evidence let in with regard to the various

aspects referred to and pertaining to the dying declaration. The dying declarations are not result of tutoring or prompting from the dear and near ones of Sethuraman. At that time, when the dying declaration was given, he was conscious and was in a fit mental condition. His dying declarations are genuine, voluntary and are not result of pressure exerted upon him. In the circumstances, based on his dying declaration, a conviction can be safely recorded.

59. By the foregoings, we hold that the prosecution has established its case beyond all reasonable doubts. In the circumstances, we concur with the findings of the trial Court. Thus, the accused has been rightly convicted under Section 302 I.P.C. and was sentenced accordingly.

60. In the result, this Criminal Appeal is dismissed, confirming the conviction recorded and the sentence imposed upon the appellant in S.C.No.393 of 2010, on 11.04.2011, by the learned Additional Sessions Judge, (Fast Track Court No.III), Madurai.

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