

Selvam Vs. State

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SooperKanoon Citation : sooperkanoon.com/964655

Court : Chennai

Decided On : Mar-21-2013

Judge : C.S.Karnan

Appellant : Selvam

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

21. 03.2013 CORAM THE HON'BLE MR.JUSTICE K.N.BASHA AND THE HON'BLE MR.JUSTICE P.DEVADASS CRIMINAL APPEAL No.716 OF 2011.1.Selvam 2.Mani 3.Dakshina @ Dakshinamurthy 4.Selvi 5.Kasthuri 6.Baby Ammal @ Latha .. Appellants / Accused 1 to 6 Versus State by The Inspector of Police, Somangalam Police Station, Kancheepuram District. .. Respondent / Complainant Appeal filed under section 374 of the Code of Criminal Procedure against the judgment of the learned Sessions Judge, No.2, Kancheepuram, Kancheepuram District dated 10.10.2011 made in SC.No.13 of 2010. For Appellants : Mr.M.G.Udhayashankar For Respondent : Mr.V.M.R.Rajendiran Additional Public Prosecutor JUDGMENT K.N.BASHA, J The challenge in this appeal is to the judgment made in SC.No.13/2010 by the learned Sessions Judge No.2, Kancheepuram, Kancheepuram District dated 10.10.2011 convicting and sentencing the appellants / A1 to A6 which is as follows:-

----- Rank of the
Accused Conviction Sentence Awarded under section

----- A1 to A6
148 IPC Each of the accused were sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- each and in default, to undergo 3 months rigorous imprisonment.

----- A1 to A3
324 IPC Each of the accused were sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/- each and in default, to undergo 3 months rigorous imprisonment.

----- A4 to A6
323 IPC Each of the accused were sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,000/- each and in default, to undergo 3 months rigorous imprisonment.

----- A1 and A2
341 IPC Each of the accused were sentenced to undergo 1 month simple imprisonment

----- A1 and A2
302 IPC Each of the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each and in default, to undergo 3 months rigorous imprisonment.

----- and the sentences were ordered to run concurrently.

2. The factual matrix of the prosecution case, in a nutshell, is as follows:- [a] P.W.1 is the husband of the deceased Rajammal. P.W.6 is the daughter of the deceased and P.W.1 A1 to A6 are their neighbours as the house of the accused is situated adjacent to the house of the deceased. A4 is the wife of A1; A2 is the brother-in-law of A1; A5 is the wife of A2; A6 is the mother of A1. Prior to the occurrence, there was a dispute between the accused party and the deceased party with regard to the land that existed in between their respective houses as the accused party claimed that the said land belongs to them and after the Panchayat, P.W.1 had constructed a compound wall in the said land. [b] Srirangan-P.W.1, in his chief examination has stated that he is the resident of Ettayapuram village, Somangalam. He was working in a bricklyn. Deceased Rajammal is the wife of P.W.1. The accused persons are known to P.W.1 as they are the neighbours of

P.W.1. He has stated that he has no previous enmity with the accused except the dispute with regard to construction of a compound wall in between their houses. It is further stated by P.W.1 that after holding panchayat, P.W.1 constructed a compound wall. [c] On the fateful day of occurrence, i.e., on 05.04.2007, P.W.1 left for his work and when he returned to his home after work at 6.45 p.m. he found his wife lying in front of the house with burn injuries. Immediately P.W.1 took his injured wife in his TVS Moped bike to Kilpauk Medical College Hospital and from Tambaram, he took her to the hospital in a car. As the deceased was in a conscious state, P.W.1 enquired about what had happened to her. The deceased had stated to P.W.1 that their children have returned from school at 4.30 p.m. and after having food, they all went to play. As the deceased watered the compound wall, the water got stagnated near the house of the accused and the same was questioned by the accused and they also abused the deceased. Even after the deceased sought apology, not satisfied with the same, the accused caught hold of the tuft of the deceased and beat her with causerina sticks and hands saying that they wont leave her until she is done to death. As the deceased came onto the road to lodge a complaint against the accused with Somangalam Police Station, she saw the children playing and when she came back to lock the house, A1-Selvam poured kerosene on her and A2-Mani lighted a matchstick and set fire on her. The said occurrence was witnessed by their children. The deceased asked the children not to come near her and she fell into the nearby water tank. Later she came to the house and was lying in front of the house and the children had put a cloth on her. P.W.1 admitted the injured victim at Government Hospital, Kilpauk at 9.00 p.m. The police enquired P.W.1 on the next day at about 5.00 a.m. [d] P.W.3, Dr.Mehjabin, was on duty at the Government Hospital, Kilpauk, at the relevant point of time. P.W.1 brought the injured deceased to the hospital at about 9.30 p.m. The deceased was conscious and she had stated to P.W.3 that four known persons have poured kerosene and set fire on her. The doctor found burn injuries on her face, back and hands. As the deceased sustained 80% burn injuries, P.W.3 gave the First Aid and admitted her in the Special Ward for burn injuries. P.W.3 also informed the police. Ex.P.4 is the Accident Register. [e] P.W.7 - Sub-Inspector of Police attached to Somangalam Police Station, on receipt of information from the Government Hospital, Kilpauk, reached the hospital at about

11.00 p.m. along with the Head Constable Kalyanasundaram and saw the injured victim. At that time, the deceased was conscious. The Head Constable, on instructions from P.W.7, recorded the statement of the victim under Ex.P.7 and after reading the contents, P.W.7 obtained the signature of the injured victim in the said statement. Thereafter, P.W.7 gave a requisition under Ex.P.1 to the learned VIII Metropolitan Magistrate, George Town to record the judicial confession from the injured victim and came to the Police Station and registered a case in Cr.No.38/2007 for the alleged offences u/s.147, 294[B], 341, 324 and 307 IPC. Ex.P.8 is the FIR. He sent the FIR to the higher officials concerned and to the court. [f] P.W.2, learned VIII Metropolitan Magistrate, George Town, Chennai, on receipt of the requisition from the P.W.7-Sub Inspector of Police at about 6.20 a.m. on 06.04.2007, went to the Government Hospital, Kilpauk and asked one Damodaran, doctor to identify the ward in which the injured was admitted. He opined that the injured was in a fit state of mind and conscious to give the statement. When P.W.2 enquired the injured victim on 06.04.2007 at about 6.50 a.m., as to what had happened to her, the injured stated to P.W.2 that two days prior to the occurrence, the accused party quarreled with the deceased with regard to the cutting of a branch of tree; the injured had stated that when she climbed the tree, the branch was broken and she asked apology for that and on the date of occurrence, while the injured was watering the compound wall, the water got stagnated in front of the accused house and the accused questioned the deceased and thereafter, holding her tuft, they had beaten the deceased with wooden logs and on the same day of the occurrence at about 5.00 p.m. A1 poured kerosene on her while A2 lighted a matchstick and set fire on her. The deceased also told P.W.2 that the said occurrence was witnessed by her children. P.W.2 recorded the statement of the victim under Ex.P.2 from 6.50 a.m. to 7.10 a.m. P.W.2 sent Ex.P.2 to the Judicial Magistrate Court concerned along with a requisition letter under Ex.P.3. [g] P.W.4, Dr.Nirmala, attached to the Government Hospital, Kilpauk had stated that while she was on duty on 05.04.2007, at about 9.45 p.m. the deceased was admitted in the hospital and despite treatment, the victim died on 07.04.2007 at about 10.15 a.m. P.W.4 informed the death of the deceased to the police under Ex.P.5-Death Intimation. [h] P.W.8-Kannan, Inspector of Police, was the Circle Inspector at the relevant point of time. On 06.04.2007, he received the

FIR in Cr.No.38/2007 and took up the investigation. He went to the scene of occurrence and prepared the Observation Mahazar [Ex.P.9] and Rough Sketch [Ex.P.16] in the presence of P.W.9 and one Prakash. He enquired P.W.1 [Srirangan]; P.W.6 [Abirami] and P.W.8 [Tamizharasi] and recorded their statements. He went to the hospital and recorded the statement of the deceased. On receipt of the death intimation from the hospital on 07.04.2007, P.W.12 altered the offences into one u/s.302 IPC. Ex.P.17 is the altered FIR. He sent the same to the Court concerned. He held inquest on the dead body of the deceased in the presence of witnesses and panchayatdars on 08.04.2007 from 9.00 a.m. to 11.15 a.m. Ex.P.18 is the Inquest Report. He also sent the dead body for postmortem along with a requisition. [i] P.W.5, Dr.S.Kuppuswamy, attached to the Government Hospital, Kilpauk, conducted postmortem on the dead body of the deceased on 08.04.2007 at about 12.15 p.m. He found the following injuries:- "EXTERNAL EXAMINATION:- Injuries are deeply burned wound seen on the frontal back of chest and abdomen, front and back of left upper lime; front and back of right arm and front and back of right thigh. Ink mark seen on the left big toe. No other injury or wound seen. INTERNAL EXAMINATION:- Hyoid Bone:Intact; Trachea and Larynx: Normal and empty; Heart: Normal C/s.Congested; Lungs, Kidney, liver and Spleen: Normal c/s.congested; Intestine-Empty; Bladder and Uterus-empty, scalp and skull-normal and intact; Membrane and Brain-intact, normal c/s.congested" Ex.P.6 is the Post Mortem Certificate wherein the doctor had opined that the deceased would appear to have died of hypervolumic shock due to burns. [j] P.W.12, in continuation of his investigation, arrested A2 on 08.04.2007 at about 6.00 p.m. at Tambaram bus stand. The accused came forward to give a confessional statement in the presence of witnesses, the admissible portion of which is marked as Ex.P.19 and pursuant to which, M.Os.1,3 and 4, wooden logs, matchbox and shirt were recovered under the cover of the mahazar, Ex.P.20. He arrested A1 and A3 on 18.04.2007 at 7.00 a.m. A1 and A3 came forward to give confessional statements in the presence of witnesses, the admissible portions of which are marked as Exs.P.21 and 22 and pursuant to which M.O.2-White coloured plastic can was recovered under the cover of Mahazar [Ex.P.21]. The material objects were sent to Court under Form 95 [Exs.P.25 and 26] and pursuant to the same, they were sent for chemical examination along with a requisition,

Ex.P.28. He also recorded the statements of P.Ws.8 and 10. [k] Further investigation was done by one Muthuramalingam, Inspector of Police as P.W.12 was transferred. He enquired the witnesses, recorded their statements and after the receipt of the Chemical Analysis report and the Post Mortem Certificate, he completed the investigation and laid the final report against the accused persons for the above said offences.

3. The prosecution in order to bring home the charges against the accused, examined P.Ws.1 to 12, filed Exs.P.1 to 28 besides marking M.Os.1 to 4.

4. When the accused were questioned u/s.313 Cr.P.C., as to the incriminating circumstances appearing against them through the evidence adduced by the prosecution, they have come forward with a version of total denial. The accused have neither examined any witness nor filed any documents on their side.

5. The Trial Court, on consideration and appreciation of the evidence let in by the prosecution, has found the accused guilty and convicted and sentenced them as stated above. Hence, this appeal.

6. Mr.M.G.Udhayashankar, learned counsel for the appellant, while assailing the impugned judgment of conviction, would vehemently contend that the entire prosecution case suffers from serious infirmities and put forward the following contentions:- [a] There are inconsistencies between the dying declaration recorded by the learned Magistrate P.W.2 under Ex.P.2 and the dying declaration recorded by the P.W.17-Sub Inspector of Police under Ex.P.7 and as such, it is not safe to place reliance on the dying declarations as there are certain omissions in the dying declaration recorded by the learned Magistrate under Ex.P.2 as it is stated by the deceased under Ex.P.7 that the children were present at the time of occurrence but in Ex.P.2, it is not stated by the deceased about the presence of the children at the time of occurrence. [b] The statement made by the deceased in dying declarations [Exs.P.2 and P.7] and the version of P.W.6, the eyewitness to the effect that all the accused beat the deceased with causerina sticks and hands is falsified by the medical evidence as the doctor, P.w.5 who has conducted the postmortem, has not found any corresponding injuries. [c] The earliest version of the deceased before the doctor, as per Ex.P.4-Accident Register is to the effect

that four known persons said to have caused burn injuries, whereas the present version is to the effect that A1 poured kerosene and A2 set fire on the deceased and as such, it is unsafe to place reliance on the dying declarations. [d] The evidence of P.W.6, who is the daughter of the deceased, an eyewitness, is unbelievable as she has not informed about the occurrence to anyone till the arrival of her father P.W.1 in the evening at 6.45 p.m. and as such, the conduct of P.W.6 is unnatural. [e] The learned Trial Judge, having disbelieved Ex.P.7-dying declaration recorded by P.W.7 [sub Inspector of Police] and having disbelieved the version of P.W.1, ought to have rejected the entire prosecution case as false.

7. Per contra, Mr.V.M.R.Rajendiran, learned Additional Public Prosecutor would contend that the prosecution has established its case through clear and cogent evidence. It is contended that P.W.1, husband of the deceased, on his return from the work in the evening at 6.45 p.m. has enquired his wife, the deceased as to what had happened to her and the deceased informed him about the accused attacking her and A1 pouring kerosene and A2 setting fire on the deceased. This version was corroborated by the evidence of P.W.6-daughter of the deceased and P.W.1 and the eyewitness to the occurrence. It is further contended that though the learned Trial Judge has disbelieved the dying declaration recorded by P.W.7 under Ex.P.7, holding that the said statement cannot be construed to be a dying declaration, a reading of the said statement clearly shows that the same would amount to a dying declaration. It is pointed out by the learned Additional Public Prosecutor that the Trial Court has rejected Ex.P.7 mainly on the ground that the doctor has not certified that the deceased was in a fit state of mind and conscious to give a statement while recording Ex.P.7 by P.W.7. It is further contended by the learned Additional Public Prosecutor that there is no variation or inconsistency between the statement of the deceased under Ex.P.7 recorded by P.W.7 and the dying declaration recorded by P.W.2-learned Magistrate under Ex.P.2 in respect of the specific overt acts alleged against A1 and A2. It is also contended that even in respect of the presence of children, it is clearly stated in both Exs.P.7 and P.2 that children were present at the scene. The version of the eyewitness P.W.6 as well as the version given in the dying declarations is also corroborated by the medical evidence through the doctor, P.W.5 who has conducted the postmortem.

8. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction.

9. At the outset, it is to be stated that the prosecution heavily placed reliance on the following evidence, viz., [a]oral dying declaration made by the deceased to P.W.1, her husband; [b]the evidence of the eyewitness P.W.6, who is the daughter of P.W.1 and the deceased; [c]the statement recorded by P.W.7, Sub-Inspector of Police under Ex.P.7; and [d]the dying declaration recorded by P.W.2-Magistrate under Ex.P.2.

10. As far as the oral dying declaration is concerned, it is clearly and categorically stated by P.W.1 who is none else than the husband of the deceased that on the fateful of occurrence, i.e., on 05.04.2007, when P.W.1 returned from his work at 6.45 p.m. and found the deceased lying in front of his house with burn injuries and on his enquiry, she has narrated about the occurrence. It is clearly stated by P.W.1 that the deceased has stated to him that A1 poured kerosene and A2 set fire on her by lighting the matchstick. It is also stated by P.W.1 that the deceased informed him that she was also assaulted by the other accused. This version of P.W.1 is corroborated by P.W.6 who is none else than the daughter of P.W.1 and the deceased. P.W.6 also has stated about the arrival of P.W.1 on the date of occurrence at 6.45 p.m. and the deceased informing about the occurrence to P.W.1. It is pertinent to note that immediately, P.W.1 had taken the deceased to the Government Hospital, Kilpauk and the doctor P.W.3 has also stated that the deceased was brought by P.W.1 on 05.04.2007 at 9.30 p.m. We are constrained to state view that the version of P.W.1 is quite clear and natural and there is no reason to disbelieve the evidence of P.W.1. At this juncture, we are also constrained to state that the learned Trial Judge has rejected the evidence of P.W.1 without assigning any valid reasons. It is held by the Trial Court that the statement made by the deceased to P.W.1 cannot be construed to be a dying declaration and such finding of the Trial Court is unsustainable in law. At the risk of repetition it is to be reiterated that as per the version of P.W.1, on his enquiry, the deceased has narrated as to how she has sustained the burn injuries and the deceased ultimately, succumbed to the said burn injuries and died. The doctor,

P.W.5 who has conducted the postmortem has given the opinion in Ex.P.6- Postmortem Certificate that the deceased died of hypervolumic shock due to burns. Therefore, the statement made by the deceased to P.W.1 would clearly amount to a Dying Declaration.

11. Now, coming to the evidence of P.W.6, who is the eyewitness to the occurrence, it is to be stated that her evidence is clear and quite natural. It is pertinent to note that the deceased also categorically stated about the presence of her children under Ex.P.2 as well as Ex.P.7 recorded by the learned Magistrate and by the police respectively. There is no reason to discard the evidence of P.W.6.

12. The next evidence adduced by the prosecution is Ex.P.7 recorded by P.W.7 Sub-Inspector of Police. P.W.7 has categorically stated that on receipt of information from the hospital, he went to the hospital and recorded the statement under Ex.P.7 from the deceased on 06.04.2007 at 5.00 a.m. It is further stated by P.W.7 that thereafter, he has sent the requisition for recording the dying declaration by the learned Magistrate. It is pertinent to note that the statement recorded under Ex.P.7 was treated as FIR and a case was registered in Crime No.38/2007 by P.W.7 on reaching the police station, for the offences u/s.147, 294[b], 341, 324 and 307 IPC. The learned Trial Judge has rendered a finding that the statement recorded under Ex.P.7 cannot be construed to be a dying declaration and further, the same cannot be placed reliance as P.W.7 has not obtained the certificate from the doctor to the effect that the deceased was in a fit state of mind. At this juncture, it is to be pointed out that P.W.1 also has categorically stated about the arrival of P.W.7 and thereafter, recording of statement from the deceased. Merely because the doctor has not certified that the deceased was in a fit state of mind to give a statement, the statement recorded under Ex.P.7 cannot be thrown out. In our considered view the said statement is also a dying declaration as the deceased died on 07.04.2007 at 10.15 a.m. and the death is due to burn injuries as per the opinion of the doctor, P.W.5 who has conducted the postmortem. It is also pertinent to note that the defence has not put any suggestion to P.W.7 that the deceased was not conscious or was not in a fit state of mind to give the statement. It is only elicited by the defence in the cross-

examination that P.W.7 has not obtained any signature from the doctor to the effect that the deceased was in a fit state of mind to give a statement. The statement recorded under Ex.P.7 also contains the signature of the deceased. Even assuming, if not admitting, that the statement recorded under Ex.P.7 by P.W.7 - Sub-Inspector of Police is unreliable, the prosecution placed reliance on the dying declaration recorded by the learned Magistrate, P.W.2 under Ex.P.2. It is seen that the statement made under Ex.P.7 has tallied with the statement made under Ex.P.2 by the deceased in respect of the material particulars.

13. Now coming to the dying declaration recorded by the learned Magistrate-P.W.2 under Ex.P.2, it is to be stated that the said dying declaration does not suffer from any infirmity or inconsistency. A perusal of Ex.P.2, discloses that P.W.2, learned Magistrate has put questions to the deceased and specified that the deceased was conscious and in a fit state of mind to give a statement. Added to such precaution taken by P.W.2, the doctor has also certified that the deceased was fully conscious and well oriented and mentally fit to give declaration. Therefore, there is no reason to doubt the dying declaration recorded under Ex.P.2 by P.W.2.

14. The Constitutional Bench of the Hon'ble Apex Court in its leading landmark decision in LAXMAN Vs. STATE OF MAHARASHTRA reported in 2002 SCC [Cri.] 1491, has held that:- "The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, that the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness or correctness. The Court, however, has always to be on guard to see that the statement of the deceased was not a result of either tutoring or promoting or a product of imagination. The Court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks upto the medical opinion. But, where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical

opinion will not prevail, nor can it be said that since there is no certification of the doctor, as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral, or in written and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate, there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. The certification by the doctor is essentially a rule of caution and therefore, the voluntary and truthful nature of declaration can be established otherwise. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was not certification that the patient was in a fit state of mind, especially, when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration." 15. The principle laid down by the Constitutional Bench of the Hon'ble Apex Court makes it crystal clear that a certification by the doctor is essentially a rule of caution and therefore, the voluntary and truthful nature of the declaration can be established otherwise. It is held by the Hon'ble Apex Court in the decision cited supra that there is no specified statutory form for the learned Magistrate to record the statement of the deceased and what is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. In the instant case, as held by the Hon'ble Apex Court, the Magistrate has put questions to the deceased and was satisfied that the deceased was in a fit state of mind to make a statement and also by way of precaution, has obtained the certificate from the doctor to the effect that the deceased was conscious and was in a fit state of mind to give a

declaration.

16. Learned counsel for the appellant contended that there are variations between the dying declaration recorded under Ex.P.7 by P.W.7 - Sub-Inspector of Police and the dying declaration recorded under Ex.P.2 by P.W.2 Magistrate, contending that the presence of the children was not mentioned in the dying declaration [Ex.P.2] recorded by the learned Magistrate. We are unable to countenance such contention for the simple reason that a perusal of Ex.P.2 discloses that the deceased has also mentioned in Ex.P.2 about the presence of the children at the time of occurrence. As far as the material particulars are concerned, more particularly in respect of A1 pouring kerosene on the deceased and A2 setting fire on her, the dying declarations under Exs.P.2 and 7 are consistent. We are unable to find any serious inconsistency between the two dying declarations. It is also relevant to state that even the oral dying declaration given by the deceased to P.W.1 is also very much in conformity with the dying declarations recorded under Exs.P.2 and 7 respectively. P.W.6, the eyewitness, also corroborated the version given by the deceased in Exs.P.2 and P.7 and the oral dying declaration given to P.W.1.

17. The Hon'ble Apex Court in AMOL SINGH Vs. STATE OF MADHYA PRADESH reported in 2008 [5] SCC 46.has held that:- "Law relating to appreciation of evidence in the form of more than one dying declarations is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If there are more than one dying declaration they should be consistent." The Hon'ble Apex Court in yet another decision in BHAIJU ALIAS KARAN SINGH Vs. STATE OF MADHYA PRADESH reported in 2012 [4] SCC 32.has held that:- "22.The law is very clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the court and could form the sole piece of evidence resulting in the conviction of the accused. This Court has clearly stated the principle that Section 32 of the Evidence Act,

1872 (for short the Act) is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of Section 32 makes the statement of the deceased admissible, which is generally described as a dying declaration.

23. The dying declaration essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a mans mind, the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.

24. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence." The principles laid down by the Hon'ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also, as we have already pointed out, there is no variation or inconsistency between the dying declarations of the deceased, viz., the oral dying declaration given to P.W.1; the dying declaration recorded by P.W.7 under Ex.P.7 and the dying declaration recorded by the learned Magistrate - P.W.2 under Ex.P.2. In view of the same, we are of the considered view that the statements made as stated above, by the deceased, viz., the oral dying declaration made to P.W.1, the statement recorded by P.W.7-Sub Inspector of Police under Ex.P.7 and the dying declaration recorded by the learned Magistrate P.W.2 under Ex.P.2 inspires confidence. We are also of the view that merely because the deceased made a statement to the doctor, P.W.3 to the effect that she sustained burn injuries at the hands of four known persons, the clear, cogent and consistent statements made by the deceased to P.W.1, P.W.2 - Magistrate [under Ex.P.2] and P.W.7 Sub Inspector of Police [under ex.P.7], cannot be discarded. In view of the aforesaid factors, we have no difficulty to come to the irresistible conclusion

that A1 had poured kerosene and A2 had set fire on the deceased which resulted in the death of the deceased.

18. Now, coming to the implication of the other accused, viz., A3 to A6, it is to be stated that they have been implicated only in respect of the earlier incident which preceded the actual occurrence of pouring kerosene and setting fire on the deceased. It is the version of the prosecution that the first incident started due to watering of the compound wall by the deceased and the stagnation of the water in front of the house of the accused and the said act of the deceased was questioned by the accused persons and the deceased asked apology and in spite of the same, all the accused abused the deceased in filthy language and they have pulled the tuft of the deceased and assaulted the deceased with caesarina sticks [M.O.1 series]. It is also alleged that A4 and A5 assaulted the deceased with their hands. The caesarina sticks being a blunt weapon, could not have caused any external injuries and the usage of the caesarina sticks depends upon the force with which the accused have used them. We cannot expect any injury while assaulting with the hands. However, the fact remains that in respect of the incident preceding the actual occurrence, the deceased has categorically stated about the same in the oral dying declaration to P.W.1, in the dying declaration recorded by P.W.7 - Sub-Inspector of Police [Ex.P.7] and in the dying declaration recorded by P.W.2-Magistrate [Ex.P.2] and the other accused have not participated in any manner, in the main occurrence in which A1 poured kerosene and A2 set fire on the deceased which resulted in her death.

19. In view of the aforesaid reasons, we are of the considered view that it is desirable to modify the sentences of imprisonment imposed on A3 to A6 for the offences u/s.148, 324 and 323 IPC to one of period already undergone as all of them have been arrested during the course of investigation and released thereafter and increasing the fine amount from Rs.1,000/- imposed by the Trial Court to Rs.2,000/- for each of the offences, viz., u/s.148, 324 and 323 IPC to each of the accused, would meet the ends of justice.

20. Accordingly, the criminal appeal in respect of A1 and A2 / appellants 1 and 2 is **DISMISSED** confirming the conviction and sentence imposed by the Trial Court in

SC.No.13/2010 by the learned Sessions Judge, No.2, Kancheepuram dated 10.10.2011.

21. The criminal appeal in respect of A3 to A6 / appellants 3 to 6 is PARTLY ALLOWED confirming the conviction but modifying the sentences imposed on them to one of the period already undergone and enhancing the fine amount imposed on each of the accused by the Trial Court for each of the offences u/s.148, 323 and 324 IPC from Rs.1,000/- to Rs.2,000/- and in default, to undergo 6 months simple imprisonment.

21. It is reported that the appellants 3 to 6 are on bail. Accordingly, the bail bonds, if any, executed by them, shall stand terminated. AP To 1. The Sessions Judge, No.2, Kancheepuram.

2. The Inspector of Police, Somangalam Police Station, Kancheepuram District 3.
The Public Prosecutor High Court Madras

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