



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
16.04.2019	30.04.2019

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CORAM:

**THE HON'BLE MR. JUSTICE P.N. PRAKASH
AND
THE HON'BLE MR. JUSTICE B. PUGALENDHI**

Crl. A. (MD) .No.296 of 2017 and Crl.M.P. (MD) No.2395 of 2018

Jith @ Indira Jith

Appellant/Sole Accused

Vs.

State through
The Inspector of Police
Kumbakonam West Police Station
Thanjavur District
Crime No.22/2015

Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment in S.C.No.353 of 2015 dated 01.02.2016 on the file of the II Additional District and Sessions Judge, Thanjavur.

For appellant Mr.A.Thiruvadikumar

For respondent Mr.R.Anandharaj
Additional Public Prosecutor

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JUDGMENT

P.N. PRAKASH, J.

This criminal appeal is filed against the judgment dated 01.02.2016 in S.C.No.353/2015 on the file of the II Additional District and Sessions Judge, Thanjavur.

2. The facts in a nutshell, leading to the institution of this criminal appeal, are as follows:

2.1 The appellant was the Councillor of Ward No.42 in Kumbakonam Municipality. The deceased Sangeetha was married to Kasinathan (P.W.1) through whom, she has two children and she was a resident of Ward No.42. The appellant, who is already married with children, developed illegal intimacy with Sangeetha and wanted her to leave her husband and be his permanent mistress.

Sangeetha was not agreeable for that. Infuriated at that, on 12.01.2015, around 10.00 p.m., the appellant barged into the house of the parents-in-law viz., Nagalingam (P.W.2) and Kalyani (P.W.3) of Sangeetha and asked her to come with him. When she refused, he poured kerosene on her and set fire to her right in front of her parents-in-law. Sangeetha was ablaze and she rushed out of the house in flames. On seeing her husband coming towards the house, Sangeetha hugged him and the clothes of Kasinathan (P.W.1) also caught fire. Both of them were rushed by 108 ambulance to the Government Hospital, Kumbakonam, where Dr.Karthiga (P.W.11) examined Sangeetha at 11.40 p.m. on 12.01.2015 and noted 100% burns on her. The copy of the Accident Register was marked as Ex.P.11.

2.2 Dr.Karthiga (P.W.11) examined Kasinathan (P.W.1) at 11.45 p.m. on 12.01.2015 and noted 40% burns on him. She (P.W.11) admitted both of them in the Burns Ward and sent intimation to the Judicial Magistrate, Kumbakonam for recording their dying declarations.

2.3 Mr.Saravanabhavan (P.W.9) Judicial Magistrate, Kumbakonam came to the hospital at 00.35 hrs. on 13.01.2015 and first recorded the dying declaration of Sangeetha, which was marked as Ex.P.5. In the dying declaration (Ex.P.5), Dr.Karthiga (P.W.11) has certified that Sangeetha is in a fit state of mind to give statement. The free English translation of the dying declaration is as follows:

"The Councillor of my street doused kerosene and set fire to me. His name is Jithu. It happened just two hours back. It happened in my mother-in-law's house. He wants me to be friendly with him always. I told him that I will not speak to him. That is why, he set me on fire. He must be punished. I curse him. The Councillor is from this place. I have nothing more to say."

Thereafter, Mr.Saravanabhavan (P.W.9) recorded the statement of Kasinathan (P.W.1) and the said statement was marked as Ex.P.7. The statement of Kasinathan (P.W.1) is slightly more elaborate and therefore, we are only giving the relevant excerpts:

"Our Ward Councillor Indrajith used to frequently talk to my wife Sangeetha. My wife is not a bad lady. He has ruined several families. He frequently threatened me by brandishing knife. He wants my wife to always speak to him and if she refuses, he would threaten her that he will abduct our child. He has recorded something in his mobile phone and has been blackmailing my wife. <https://hcservices.tcourts.tn/hservices/> telling my wife that he will get me liquor and bring me under his control. He set my wife on fire



and on hearing the sound, I came towards my mother's house and tried to save her, because of which, I also suffered burn injuries."

2.4 However, Kasinathan (P.W.1) survived and therefore, his statement lost the character of a dying declaration and became a previous statement, which can be used either to corroborate or contradict him. The hospital authorities informed the local police, pursuant to which, Gowthaman (P.W.14) Sub Inspector of Police came to the hospital and recorded the statement of Sangeetha and obtained her left thumb impression, which was marked as Ex.P.14. Based on the complaint, Gowthaman (P.W.14) registered a case in Crime No.22/2015 on 13.01.2015 at 3.45 a.m. under Sections 294(b) and 307 IPC and prepared the printed FIR (Ex.P.13), which reached the jurisdictional Magistrate at 10.30 a.m. on 13.01.2015, as could be seen from the endorsement thereon.

2.5 Investigation of the case was taken over by Mahadevan (P.W.15) Inspector of Police, who went to the hospital and recorded the statement of Sangeetha and Kasinathan (P.W.1). He (P.W.15) also recorded the statement of some of the witnesses and came to the place of occurrence, viz, the house of Nagalingam (P.W.2) and Kalyani (P.W.3), where he prepared the observation mahazar (Ex.P.16) and rough sketch (Ex.P.17). At the place of occurrence, he seized the following items under the cover of mahazar (Ex.P.18), viz.,

- (i) 5 litre kerosene can without cap (M.O.1);
- (ii) a match box (M.O.2); and

(iii) a burnt match stick (M.O.3) in the presence of witnesses Chinnathambi (P.W.8) and Mani (not examined).

2.6 Sangeetha succumbed to the injuries at 6.30 a.m. on 13.01.2015 and therefore, the case was altered to one under Sections 294(b) and 302 IPC and the alteration report (Ex.P.19) was filed. The alteration report reached the jurisdictional Magistrate on 13.01.2015 itself, as could be seen from the endorsement thereon. The Investigating Officer (P.W.15) conducted inquest over the body of Sangeetha and the inquest report was marked as Ex.P.20. The Investigating Officer (P.W.15) despatched the body for postmortem.

2.7 Dr.Diwakar (P.W.10) performed autopsy on the body of Sangeetha and issued the postmortem certificate (Ex.P.8). Dr.Diwakar (P.W.10), in his evidence as well in the postmortem certificate (Ex.P.8), has noted the following injuries:

"Appearances found at the postmortem: A body of Female lying on its back with rigor mortis seen in all 4 limbs, with Eyes closed, mouth opened, tongue inside the mouth, hyoid bone intact, fluid within trachea. Stomach : contain undigested food particles of 300 ml. Intestine:



empty, liver & Spleen congestion present. 100% burns present.

The deceased would have died of shock due to extensive burns 100%."

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2.8 The Investigating Officer (P.W.15) arrested the appellant on 13.01.2015 at 13 hrs. and sent him to judicial custody. The seized articles were sent through the Judicial Magistrate, Kumbakonam to the Tamil Nadu Forensic Science Laboratory for examination and report. Kerosene was detected in the plastic can (M.O.1). The report of the chemical examiner, which is admissible under Section 293 Cr.P.C. was marked as Ex.P.23. After examining the witnesses and collecting various reports, the Investigating Officer (P.W.15) completed the investigation and filed final report in P.R.C.No.55/2015 before the Judicial Magistrate, Kumbakonam under Sections 449, 302 and 326 IPC.

2.9 On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.353/2015 and was made over to the II Additional District and Sessions Court, Thanjavur, for trial.

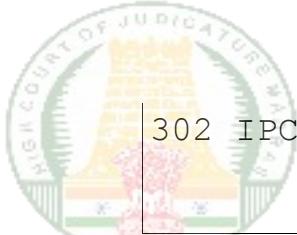
2.10 The trial Court framed the following charges against the appellant.

Charges	Penal Provisions
1	449 IPC
2	302 IPC
3	326 IPC

When questioned, the appellant pleaded not guilty. To prove the case, the prosecution examined 15 witnesses, marked 23 exhibits and 3 material objects.

3. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, two witnesses, viz., his son Phoenixwaran (D.W.1) and Murugan (D.W.2) were examined. After considering the evidence on record and on hearing either side, the trial Court convicted and sentenced the appellant as under:

Section of Law	Sentence of imprisonment	Fine amount
449 IPC	To undergo rigorous imprisonment for ten years	Rs.1,000/-, in default to undergo simple imprisonment for three months



302 IPC

To imprisonment for life	undergo for undergo simple imprisonment for three months	Rs.1,000/-, in default, to
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The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant filed the present appeal through M/s.M.Subash Babu and Mr.C.Susikumar, Advocates, Madurai. The appeal was admitted. But, suspension of sentence and bail were not granted to the appellant by this Court, though the counsel on record had filed a petition seeking the said reliefs.

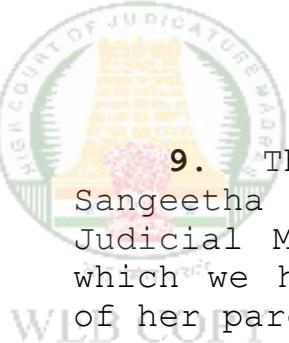
4. When the main appeal itself was taken up for hearing, the appellant sent a communication to the Registry stating that he has withdrawn the vakalatnama given to Mr.M.Subash Babu and Mr.C.Susikumar and represented that he would argue the appeal himself. Therefore, we made arrangements for the appellant to argue his case from the Central Prison, Trichy, by video-conferencing on 09.04.2019. The appellant argued the case by taking us through the deposition of various witnesses and contended that a false case has been put on him and that he was innocent. He further contended that it was Kasinathan (P.W.1), who had set fire to his wife (Sangeetha) by pouring kerosene on her and the appellant had actually gone there to rescue Sangeetha; this has been suppressed and that he has been falsely implicated. Drawing the attention of this Court to the evidence of Kasinathan (P.W.1), Nagalingam (P.W.2) and Kalyani (P.W.3), he contended that there are contradictions in their testimonies. He also placed reliance on the evidence of Phoenixwaran (D.W.1) and Murugan (D.W.2) and submitted that he has disproved the case of the prosecution. The appellant also sent written submissions in Tamil from the prison reiterating his oral submissions and further contending that the dying declaration was tutored to fix him.

5. After his arguments were heard, the learned Additional Public Prosecutor made his submissions.

6. Though Mr.M.Subash Babu, who is a competent lawyer of more than 20 years of standing at the Bar, was ready to argue for the appellant, the appellant stated that he does not require his services. Therefore, we appointed Mr.A.Thiruvadikumar, (Enrollment No.1780/1999), a leading practitioner on the criminal side in the High Court to argue for the appellant on both factual and legal aspects. We directed the Registry to furnish free copies of the typed set of papers to Mr.A.Thiruvadikumar and adjourned the case to 16.04.2019.

7. Mr.A.Thiruvadikumar filed written arguments and also advanced oral arguments.

8. We heard Mr.A.Thiruvadikumar and the learned Additional Public Prosecutor.



9. The fulcrum of this case is the dying declaration of Sangeetha (Ex.P.5) that was recorded by Mr.Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam, the free English translation of which we have extracted above, coupled with the ocular testimony of her parents-in-law Nagalingam (P.W.2) and Kalyani (P.W.3).

10. Kasinathan (P.W.1) has stated in his evidence that he is a carpenter by profession and that Sangeetha was his wife; on 12.01.2015, he went for work and returned home at 6.00 p.m. and at that time, his wife told him that she is going to his parents' house; till 10.00 p.m., she did not return and so, he went to his parents' house looking for her; when he neared his parents' house, his wife rushed out of the house in flames and hugged him by saying "Save me, save me"; he also suffered burns; the people in the street called 108 ambulance; when he asked his wife as to what had happened, she told him that Councillor Indrajith poured kerosene on her and set fire to her; she also said that Indrajith asked her to desert him (P.W.1); she further told him that Indrajith said "If I cannot have you, none can have you."; he went with his wife in 108 ambulance to the hospital and she died the next day.

11. Nagalingam (P.W.2) and his wife Kalyani (P.W.3) have stated in their evidence that they were residing in Mariamman Koil Street, Madulampet; Kasinathan (P.W.1) is their son and Sangeetha is their daughter-in-law; they know the appellant since he is the Councillor of their ward; on 12.01.2015, Sangeetha prepared food and was serving them; around 10 p.m., the appellant came there and asked Sangeetha to leave her husband and be with him, for which, Sangeetha said that she will not leave her children; so, the appellant poured kerosene on her and set fire to her; Sangeetha rushed out of the house in flames; at that time, their son, Kasinathan (P.W.1) was returning home and on seeing him, Sangeetha hugged him saying "Save me"; immediately, 108 ambulance was called and both of them were taken to the hospital.

12. All these witnesses were examined in chief on 12.10.2015 and the appellant did not choose to cross-examine them immediately. They were recalled and cross-examined on 03.11.2015. In the cross-examination, the appellant was not able to make any dent in their testimonies. In fact, Kasinathan (P.W.1), in the cross-examination, has stated that the appellant is a local rowdy and since he being the Councillor, everyone was scared of him and so, none came to the rescue of Sangeetha when she was in flames. Pertinent it is to point out that the appellant himself, during the oral arguments, accepted that he suffered conviction in a murder case and was acquitted in appeal by the High Court. Phoenixwaran (P.W.1), son of the appellant, has stated that the appellant was sentenced in a murder case and was in prison. In the



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cross-examination, it has been suggested to the witnesses that Sangeetha was wanting to have an affair with the appellant and that the appellant was spurning her overtures. However, the appellant's son Phoenixwaran (D.W.1), has stated in the cross-examination that his father was having an affair with Sangeetha. In the dying declaration (Ex.P.5), the free English translation of which has been extracted in paragraph no.2.3 above, Sangeetha has clearly stated that the appellant came to the house of her mother-in-law and wanted her to be friendly with him always; when she told him that she will not speak to him, he doused her with kerosene and set fire to her. Mr. Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam, who recorded the dying declaration of Sangeetha, was extensively cross-examined by the defence and it was suggested to him that Sangeetha had died even before he came to the hospital, which suggestion, he denied.

13. We have no reasons to suspect the evidence of Dr. Karthiga (P.W.11), who identified Sangeetha and gave the certification that she is in a fit state of mind to give statement and also the evidence of Mr. Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam, who recorded the statement of Sangeetha, merely on the suggestion of the appellant that Sangeetha was not alive in the hospital. It is the case of the appellant that the Inspector of Police had tutored Sangeetha to implicate him. We are unable to countenance this plea also, because, even before the police could reach the hospital, Mr. Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam, had reached the hospital and recorded the dying declaration of Sangeetha. From the evidence of Dr. Karthiga (P.W.11) who conducted postmortem and issued the postmortem certificate (Ex.P.8), it is apparent that Sangeetha had died due to 100% burn injuries.

14. We are not adverting to the points raised by the appellant in the written submissions sent by him from the prison, separately, because, the submissions of Mr.A.Thiruvadikumar subsume the points raised by the appellant.

15. The following are the submissions made by Mr.A.Thiruvadikumar and our reasonings therefor:

(1) The complaint statement of Sangeetha that was recorded by Gowthaman (P.W.14) Sub Inspector of Police was not attested by the duty Doctor and the prosecution has marked only the left thumb impression of Sangeetha and not the whole complaint;

Our Reasoning:

Gowthaman (P.W.14) Sub Inspector of Police has stated that he received information at 1.00 a.m. on 13.01.2015 from the Government Hospital, Kumbakonam and went to the Burns Ward at 1.30 a.m. and enquired Sangeetha and obtained her statement. Thus, when he (P.W.14) has clearly stated that he has obtained the



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statement of Sangeetha, the mere marking of the left thumb impression of Sangeetha as Ex.P.13 will not mean that the statement of Sangeetha has not been proved. Gowthaman (P.W.14) has further stated that he came back to the police station and registered a case in Crime No.22/2015 under Sections 294(b) and 307 IPC and prepared the printed FIR (Ex.P.13). In the cross-examination, it was suggested to him that he had merely obtained the left thumb impression of Sangeetha and has not recorded any statement from her, which he denied. The statement of Sangeetha given to the Sub Inspector of Police can also be treated as a dying declaration. However, even before the police reached the hospital, Mr.Saravanabhavan, (P.W.9) Judicial Magistrate, Kumbakonam, has reached the hospital and has recorded the dying declaration (Ex.P.5). There is no contradiction between the statements given by Sangeetha to Mr. Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam and Gowthaman (P.W.14), Sub Inspector of Police.

(2) Sangeetha was accompanied by her relatives, viz., her parents-in-law (P.W.2 and P.W.3) and others and they have tutored her to implicate the appellant.

Our Reasoning:

The chief-examination of Mr.Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam, was done on 26.10.2015 and he was recalled on 01.12.2015 for cross-examination by the appellant. We find that Mr. Saravanabhavan (P.W.9) Judicial Magistrate, Kumbakonam, was subjected to grilling cross-examination by the appellant. In the cross-examination, the Magistrate has stated that Sangeetha was identified by the duty Doctor and he ensured that nobody was around when he recorded the dying declaration. He has further stated in the cross-examination that he put a temporary cabin around the patient for recording the dying declaration. He has also stated that Kasinathan (P.W.1) was also admitted in the same ward.

(3) The dying declaration given by Sangeetha was at the influence of Kasinathan (P.W.1), inasmuch as he was also admitted in the same Ward.

Our Reasoning:

In the Burns Ward of the Government Hospital, there will be several patients with burn injuries. In this case, both Sangeetha and Kasinathan (P.W.1) suffered burns and therefore, they had to be accommodated only in the Burns Ward, which does not mean that both of them were accommodated on the same bed. There is no such suggestion to that effect also in the cross-examination of any of the witnesses including the Doctor and the Magistrate. When the Magistrate has stated that he had erected a temporary cabin for recording the dying declaration and had also ensured that no one was around when he recorded the dying declaration, we cannot



disbelieve his testimony and give a finding that the dying declaration was tutored. It should be borne in mind that Sangeetha had suffered 100% burns and Kasinathan had suffered 40% burns and both of them were fighting for life.

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(4) The dying declaration is very cryptic and therefore, much reliance cannot be placed on that.

Our Reasoning:

In our opinion, the dying declaration has sufficient materials to implicate the appellant. As regards corroboration, we find sufficient materials to corroborate the dying declaration. For example, the parents-in-law of Sangeetha, viz., Nagalingam and Kalyani, who were examined as P.W.2 and P.W.3 respectively have stated that on 12.01.2015, while Sangeetha was serving dinner for them in their house, the appellant barged into the house and asked Sangeetha to come with him; when Sangeetha told him that she cannot leave her two children and come, he got infuriated and poured kerosene on her and set fire to her; the police came to the place of occurrence and seized an empty kerosene can (M.O.1), which was sent to the Tamil Nadu Forensic Science Laboratory and the report (Ex.P.23) states that kerosene was detected in the can. Even if there had not been any dying declaration in this case, the evidence of the two eye witnesses, viz., Kasilingam (P.W.2) and Kalyani (P.W.3) is so candid that the appellant cannot escape culpability.

(5) In the cross-examination of Kalyani (P.W.3), she has admitted that a panchayat had taken place, in which, the appellant agreed not to interfere in the life of Sangeetha; while that being so, the allegation that the appellant wanted to have Sangeetha exclusively for himself cannot be true.

Our Reasoning:

It is seen that Kalyani (P.W.3) the mother of Kasinathan (P.W.1), was examined in chief on 12.10.2015 and she was recalled and cross-examined on 03.11.2015. From the cross-examination of Kalyani (P.W.3), it is seen that some mediation talks had taken place on 12.01.2015, in which, the appellant is said to have assured Sangeetha that he would not interfere in her life. However, a further reading of the cross-examination of Kalyani (P.W.3) shows that after the talks, she went home with her daughter-in-law (Sangeetha). On a complete reading of her evidence, it is seen that only after the panchayat, the incident had occurred. Just because the appellant had given a word in the presence of village elders that he will not interfere in the life of Sangeetha, it does not mean that he would not have changed his mind.

having extra marital affair with Sangeetha.

Our Reasoning:

(i) It is true that neither the husband of Sangeetha nor the parents-in-law (P.W.2 and P.W.3) of Sangeetha have stated that the appellant was having extra marital affair with Sangeetha in clear-cut terms. One cannot expect the husband and parents-in-law of Sangeetha to say candidly that she was having an affair with the appellant. Extra marital affair in any society is not something which one could feel proud about and proclaim it from the roof top. However, in the evidence of Phoenixwaran (D.W.1), the son of the appellant, he has stated that his father was having an affair with Sangeetha.

(ii) Phoenixwaran was examined as D.W-1 in order to show that the appellant was not arrested at the time and place as projected by the Investigating Officer (P.W.15) and that he was taken into custody illegally. The evidence of Phoenixwaran (D.W.1) on this aspect does not inspire our confidence and even assuming for a moment that the appellant was arrested earlier, this cannot have any deleterious impact on the dying declaration of Sangeetha and the evidence of the two eye witnesses, *viz.*, Nagalingam (P.W.2) and Kalyani (P.W.3).

(7) It is the consistent case of the appellant that it was Kasinathan (P.W.1), who set fire to Sangeetha and that the appellant came to the place of occurrence and doused the fire and sent Sangeetha to the hospital. Further, the trial Court has failed to appreciate the evidence of Murugan (D.W-2) in the right perspective. In ***Dudh Nath Pandey v. State of Uttar Pradesh, [(1981) SCC CrI 379]***, the Supreme Court has held that defence witnesses are entitled to equal treatment with those of the prosecution.

Our Reasoning:

(i) We have no hesitation in our mind on this legal position. Murugan (D.W.2) in his evidence, has stated that he is a Mason by profession; everyday about 10 to 15 Masons would gather near Kaliyamman Temple and they will be picked up by the Engineers for construction work; they will again re-assemble in the night near the temple; on 12.01.2015, around 9.30 p.m., he was near the Kaliyamman Temple for consuming liquor, as he had received salary; at that time, he heard a commotion near the temple, in which, Kasinathan (P.W.1), his wife Sangeetha (deceased) and his mother Kalyani (P.W.3) were involved; they were quarreling amongst themselves loudly; in five or ten minutes, he heard a hue and cry and saw Kasinathan (P.W.1) and his wife Sangeetha hugging each other and coming; Kasinathan (P.W.1) fell down near a pial and Sangeetha ran eastward; he, along with others, doused the fire and at that time, the appellant came there in his two wheeler; a boy named Alagar brought a bedsheet and pillow, with which, the

appellant put off the fire on Sangeetha; Kasinathan (P.W.1) got up and kicked the two wheeler of the appellant and picked up a quarrel; people standing there intervened and supported the appellant; they asked the appellant to go away; the appellant asked them to call the police and ambulance and Alagar made a call; they told the appellant that they will tell the police what had happened and asked the appellant to go away; thereafter, Gurumoorthy, Sub Inspector of Police came there and inspected the place and shouted at everybody; someone shifted Kasinathan (P.W.1) and Sangeetha into the ambulance; treatment was given only to Kasinathan (P.W.1) and no treatment was given to Sangeetha.

(ii) We are not adverting to the cross-examination of this witness (D.W.2), because, the chief-examination itself sounds unbelievable. According to this witness, while he was having liquor near the temple, he saw Sangeetha, Kasinathan (P.W.1) and Kalyani (P.W.3) quarreling. The witness has not stated as to how Sangeetha and Kasinathan (P.W.1) were suddenly ablaze. How did the appellant suddenly come to that place like a film hero to save Sangeetha? Did he have premonition or clairvoyance that Sangeetha is going to suffer burns and his help will be required for her? It may be pertinent to state here that neither in the cross-examination of the witnesses nor in the Section 313 Cr.P.C. statement of the appellant, such a case was projected. When this witness had not even gone to the hospital, strangely, he has stated that treatment was given only to Kasinathan (P.W.1) and not to Sangeetha. He has further stated that Kasinathan (P.W.1) got up and kicked the two-wheeler of the appellant. When Kasinathan (P.W.1) must have been seething in pain due to 40% burn injuries, to say that he got up and kicked the two wheeler of the appellant sounds incredible. In the cross-examination, he has stated that he saw Sangeetha rushing out of the house in flames, whereas, in the chief-examination, he has stated that a quarrel amongst the family members took place near the temple, where he was taking liquor. He has further stated in the cross-examination that he saw the appellant slapping Sangeetha. We do not understand why the appellant had to slap Sangeetha, when it is the specific case of this witness that the appellant came from out of the blue to save Sangeetha. Therefore, we have no hesitation in rejecting the testimony of Murugan (D.W.2).

(iii) Kasinathan (P.W.1), in his evidence, has narrated all the circumstances, under which, he was engulfed by fire.

(8) When Nagalingam (P.W.2) and Kalyani (P.W.3) were in the house, Sangeetha should have hugged either of them and not her husband. Further, it would have been impossible for the appellant to have crossed Nagalingam (P.W.2) and Kalyani (P.W.3) and set

Our Reasoning:

Nagalingam (P.W.2) was 63 years old and Kalyani (P.W.3) was 55 years old, when the incident took place, as could be seen from the age column of their deposition. We saw the appellant ourselves. He is stout and strong, and he was 48 years old at the time of the occurrence. It must be remembered that he was the local Ward Councillor. To say that, these two old people would have resisted the appellant either during the attack or after the attack does not appeal to us. After she was set on fire, Sangeetha rushed out of the house and when she saw her husband Kasinathan (P.W.1) coming home, instinctively, she hugged him for saving her and in that process, his garments also caught fire. Therefore, just because Sangeetha did not hug her parents-in-law (P.W.2 and P.W.3), the evidence of Kasinathan (P.W.1) and the consistent evidence of Nagalingam (P.W.2) and Kalyani (P.W.3) that she rushed out of the house and on seeing her husband, she hugged him, cannot be disbelieved.

16. Mr.A.Thiruvadikumar, in support of his contention that the dying declaration in this case is suspicious and in the absence of corroboration, it should be rejected, placed reliance on the judgment of the Supreme Court in ***Surinder Kumar v. State of Haryana (2001) 10 SCC 173***, the relevant portion of which reads as follows:

"28.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. All these principles have been fully adhered to by the trial court and rightly acquitted the accused and on wrong assumption the High Court interfered with the order of acquittal."

17. At the outset, we have no materials to infer that the dying declaration in this case is suspicious. The fact remains that Sangeetha and her husband (P.W.1) were rushed to the Government Hospital for treatment and on seeing their condition, <https://hcservices.ecourts.gov.in/hcservices/> Dr.Raithiga (P.W.11) intimated Mr. Saravanabhavan (P.W.9), Judicial Magistrate, Kumbakonam and to the police immediately.



Ahead of the police, Mr. Saravanabhan (P.W.9), Judicial Magistrate, Kumbakonam, came there and recorded the dying declaration. There is nothing strange or suspicious either in the conduct of Dr. Karthiga (P.W.11) in informing the Magistrate and Police or in the conduct of the Magistrate coming to the hospital and recording the statements of Sangeetha and Kasinathan (P.W.1). As stated above, the dying declaration is adequately corroborated by the evidence of Kasinathan (P.W.1), Nagalingam (P.W.2) and Kalyani (P.W.3).

18. In the result, this appeal is dismissed as being devoid of merits and the judgment dated 01.02.2016 of the trial Court in S.C.No.353 of 2015 stands confirmed. Consequently, connected Miscellaneous Petition is also dismissed.

Before parting, we place on record our sincere appreciation for Mr. A. Thiruvadikumar for his industriousness and erudite manner in which, he presented the case of the appellant. The High Court Legal Services Committee, Madurai, is directed to pay Rs.10,000/- as remuneration to Mr. A. Thiruvadikumar.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The II Additional District and Sessions Judge
Thanjavur
2. The Inspector of Police
Kumbakonam West Police Station
Thanjavur District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.
4. The Record Keeper
Criminal Records Section
Madurai Bench of Madras High Court



5. The Officer (In charge) / The Registrar (Judicial)
The High Court Legal Services Committee
Madurai - 23.

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate (SR-64248 [F] dated
30/04/2019)

judgment made in
Crl.A. (MD) No.296 of 2017
and Crl.M.P. (MD) No.2395 of 2018
30.04.2019

RR/cad

AE/ (13.05.2019) 14P 8C