

SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

Karuppasamy

Crl.A.No.573 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

20.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Madras High Court directing acquittal of the respondent (hereinafter referred to as the `accused'). Learned Sessions Judge Tirunelveli, had found the accused guilty of offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') and sentenced him to imprisonment for life.

2. Prosecution version as unfolded during trial is as follows: Kamalam is the deceased in this case. She is the daughter of P.W.2. P.Ws 1, 5 and 6 are the sons of P.W.2 and incidentally, they are the brothers of Kamalam. The accused is the husband of Kamalam. Even prior to their marriage, on account of their acquaintance, Kamalam conceived. Thereafter, their marriage took place. The family of the accused wanted a sum of Rs.4,000/- to be given at the time of their marriage, which was accordingly provided by P.W.1. Six months after their marriage, Kamalam gave birth to a child. The accused had developed an illicit intimacy with a lady called Parvathi. Since Kamalam objected to it, there were quarrels between the accused and Kamalam often. Around 10.00 a.m. on 12.9.1990, P.W.2 was in her house. She came to know that her daughter was in flames. Immediately, P.W.2 went to the house of Kamalam. At that time, P.W.2 found some burn injuries above the hip of her daughter. Kamalam was made to rest on the pial of her house. PWs.1 and 5 are masons by profession. On that day, they were working in the house of the brother in law of the accused. P.W.2 sent word to them about the incident. Immediately, P.Ws 1, 5, 6 and another person went to the house of Kamalam, where they found Kamalam lying on the pial with burn injuries. The accused was also by her side at that time. When Kamalam was asked as to how she came to sustain the burn injuries, she replied that, "She objected to her husband's relationship with Parvathi; the accused asserted that he would continue to have such relationship. Whenever she objected to her husband's relationship with Parvathi, the accused used to threaten her stating that, he would pour kerosene and set fire to her; she told her husband that she is prepared even to die for the sake of her husband severing his relationship with Parvathi;

immediately the accused picked up a kerosene tin; poured kerosene on her head and set fire to her". P.W. 3 & 4 did not support the prosecution. A taxi was arranged for and in that taxi, Kamalam was transported to the Government Hospital at Palayamkottai. P.Ws 1, 2 and others accompanied Kamalam to the hospital. P.W.8 is the Medical Officer in the Government Hospital at Tirunelveli. At 12.50 p.m. on 12.9.1990, Kamalam was brought before him and he was informed that she had come to sustain the burn injuries at the hands of her husband, by his pouring kerosene and setting fire to her. Kamalam was admitted as an inpatient in the hospital. PW 8 found extensive burn injuries on the person of Kamalam. He sent Ex.P4 to the police. Ex.P5 is the intimation sent by him to the Magistrate to record the dying declaration of Kamalam. P.W.11 is the Trainee Magistrate, who reached the said hospital at 2.00 p.m. on that day. Doctor Kanchana was by the side of Kamalam at that time. She certified that Kamalam was conscious and oriented to give a statement. He examined Kamalam and recorded her statement. Ex.P11 is the dying declaration of Kamalam. In Ex.P.11, Kamalam had put her left thumb impression. P.W.12, on receipt of Ex.P.4/intimation, went to the hospital, examined Kamalam and recorded a statement from her. The statement so recorded from Kamalam was read over to her and after she affirmed the same, her left thumb impression was obtained on it. Ex.P.1 is that complaint. P.W.12, over telephone, sent an intimation regarding the crime to the Investigating Police Station. Accordingly, a Head Constable from the Investigating Police Station came to the police outpost; collected Exs. P.1 and P.4 and handed over the same to P.W.13. P.W.15 is the Sub-Inspector of Police. He collected Exs.P.1 and P.4 from P.W.13 and registered it in Crime No.400/90 for the offence punishable under Section 307 I.P.C. He sent the material records to the Court as well as to the higher officials. Ex.P.12 is the F.I.R. He handed over the material records to the Inspector of Police personally. Despite treatment given to Kamalam, she died at about 7.50 p.m. on 15.9.1990. P.W.9 is the Medical Officer, who sent Ex.P.6 to the police outpost at Tirunelveli. Ex.P7 is the case sheet. On receipt of Ex.P.6, the police outpost at Tirunelveli, passed on that message to the Investigating Police Station over telephone. Ex.P.13 is the death intimation, which was handed over at the Investigating Police Station. At 9.00 p.m. on 12.9.1990, after receiving a copy of Ex.P.12, P.W.17 went to the scene; at 10.00 p.m. on that day, in the presence of P.W.7 and another, he prepared Ex.P.2/observation mahazar and Ex.P.17/plan. At 10.30 p.m. on that day, from the scene of occurrence, P.W.17 recovered a plastic can containing kerosene; a match box and a partly burnt turkey towel (M.Os 1 to 3), under Ex.P.3 attested by witnesses. P.W.17 examined P.Ws. 1, 2 and 7 and recorded their statements. Further witnesses were examined by him on 13.9.1990 and their statements were recorded. On receipt of the death intimation at 7.50 p.m. on 15.9.1990 from P.W.15, P.W.17 altered the section of offence into one under Section 302 I.P.C. and prepared the altered printed F.I.R. Ex.P.18 is the altered F.I.R. It was sent to the Court as well as to the higher officials. As death had taken place within 1-1/2 years after the marriage of the accused with the deceased/Kamalam, a copy of the F.I.R. was sent to the Revenue Divisional Officer, having jurisdiction. P.W.16 is the Revenue Divisional Officer, who on receipt of the copy of the F.I.R. went to the hospital and conducted inquest over the dead body of the deceased between 11.00 a. m. and 1.00 p. m. on 16.9.1990. Ex.P.14 is the inquest report. During inquest, P.W.16 examined P.Ws. 1, 5, 6 and another and recorded their statements. P.W.17, arrested the accused on 17.9.1990. The Doctor who conducted post mortem report was of the opinion that the deceased died due to burn injuries. After completion of investigation charge

sheet was filed. The accused pleaded innocence and, therefore, the trial was held. In his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the `Code') the accused took the stand that he was not in the house when the occurrence took place. When he returned from work place he found his wife with burn injuries and immediately he rushed her to the hospital. The prosecution relied on two sets of evidence; one related to the oral evidence of PWs 1, 2, 4, 5 & 6. Admittedly they were not eye witnesses. They have been examined to prove what the deceased declared when she was alive and was fighting for a life, about the cause of her death. The next set of evidence is primarily the dying declaration Ex.P.11 recorded by (PW 11), the Magistrate. The Doctor who was attending the deceased as an indoor patient was by the side of the patient all through. PW 11's evidence indicated that she was conscious, oriented and was in a fit condition to give the statement. Relying on the aforesaid evidence the Trial Court found the accused guilty. 6 In appeal the High Court was of the view that PW 11 should have inquired from the deceased as to whether she was in a fit condition to make the statement. The doctor has not been examined but at the foot of the dying declaration her opinion was recorded. High Court found that the evidence of PWs. 2, 3, 4, 5 & 6 about the dying declaration was not believable. It also discarded evidence of PW 1 on the ground that he was one of the brothers of the deceased. The Doctor, PW8 had recorded that the deceased's condition was dexterous and the level of consciousness would depend upon several factors. Reference was made to the evidence of PW 9 to conclude that the evidence of PW 8 was not free from doubt. The High Court noted that, the FIR (Exh.P12) disclosed that the husband brought the intimation from the hospital to the police. Because of the aforesaid factors, the High Court considered the prosecution version to be full of suspicious circumstances and, as noted above, the acquittal was directed.

3. In support of the appeal, learned counsel for the appellant submitted that the analysis made by the High Court is clearly erroneous. No reason has been assigned to discard the dying declaration. The criticism of the High Court that PW 11 entirely went by the version of the Doctor, should not have been treated as a factor to discard the testimony of PW 11. There are certain other factual erroneous conclusions also.

4. The respondent has not appeared in spite of service of notice.

5. The conclusions of the High Court that PW 11 should not have gone by what the doctor i.e. Dr. Kanchana said and should have made independent enquiries, is to say the least an absurd conclusion. The High Court has recorded as follows: "His evidence shows that Doctor Kanchana certified that Kamalam was conscious oriented and was in a fit condition to give the statement. Doctor Kanchana was present by the side of PW 11 throughout. It appears from the evidence of PW 11 that he was totally carried away by the opinion of doctor Kanchana. His evidence in chief does not show that he enquired Kamalam to find out as to whether she was conscious oriented and was in a fit condition to give the statement."

6. It is not understood as to what the High Court meant by observing that PW 11 should have found out from the deceased as to whether she was conscious, oriented and was in a fit condition to give the statement. The doctor who was attending to the deceased has clearly certified that she was in a fit condition to make the statement. The Doctor has made the

following observation: "Certified that the patient Smt. Kamalam was conscious at the time of taking the dying declaration and taken in my presence."

7. The High Court was of the view that the evidence of PW 11 shows that her satisfaction was a subjective satisfaction solely on the basis of the opinion of the Doctor. There is nothing wrong in such a satisfaction being arrived at because the doctor is an appropriate person to certify on that aspect.

8. In addition, we find that the High Court recorded the finding that the accused brought the intimation from the hospital to the police station which is Ex.P 12, the FIR. The factual position is clearly to the contrary. The accused did not take the intimation because PW 12 who was working as Grade I constable at the out post police station attached to the medical college hospital received Ex. P 4 intimation from the hospital on 12.9.1990 at 1.15 PM.

9. According to PW 12, after receiving the intimation he went to the hospital, examined the deceased who was undergoing treatment for burn injuries. The deceased gave the statement regarding the occurrence which was recorded as Ex. P 1 and he sent the intimation through the phone to the police regarding the substance of the statement. The High Court has also not assigned any reason as to why the declaration made before PWs 1, 2, 4, 5 & 6 was unreliable. The Trial Court had analysed their evidence and come to the conclusion that the deceased made statement before them as to the cause of death clearly implicating the accused. Similarly the evidence of the doctor, PW 8 has been discarded without even indicating reason for doing so.

10. Above being the position the High Court's judgment is clearly unsustainable and is set aside. The respondent shall surrender to custody forthwith to serve the remainder of sentence. The appeal is allowed.