

(2010) 08 MAD CK 0354
In the Madras High Court
Case No : Criminal A. No. 1359 of 2003

Selvarasu and Dhanabakiyam	Vs	APPELLANT
State of Tamilnadu		RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 1 LW(Cri) 1299 : (2011) 8 RCR(Criminal) 159

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : S. Senthilnathan, for the Appellant; J.C. Durairaj, GA, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Basha, J.—The challenge in this appeal is to the judgment of the learned Additional District Judge (Fast Track Court-III), Vridhachalam dated 31.7.2003 made in S.C. No. 67/2001, convicting the Appellants, who have been arrayed as A1 & A2 for the offence u/s 498A IPC and sentencing each of them to undergo 3 years rigorous imprisonment and to pay a fine of Rs. 2,000/- each, in default to undergo 6 months rigorous imprisonment. There are totally four accused in this case and the learned Trial Judge acquitted A3 & A4 from all the charges. The learned Trial Judge also disbelieved the prosecution case for the offence u/s 304-B IPC and acquitted the Appellants and other accused for the said charge.

2. The prosecution case in a nutshell is hereunder:

2.1. PW1 is the father of the deceased. PW2 is the mother of the deceased. A1 is the husband of the deceased. A2 is the mother-in-law of the deceased. A3 and A4 are the sisters-in-law of the deceased. A1 and the deceased loved each other and thereafter got married i.e., four years prior to the occurrence. On their return to the village, PW1 also performed their marriage at Sirumangalam Vinayagar Temple in the presence of villagers. He was not given any Seervarisai

at that time of marriage. After the marriage, A1 left for Rajkot along with the deceased. A1 and the deceased have been blessed with a child. At the time of pregnancy, A1 left the deceased in the house of PW1 and stated that after the birth of the child, he would take the deceased to his house. After the birth of the child, A1 took the deceased along with the child to Rajkot.

2.2. PW1 called the deceased over the phone and invited her for Kumbhabhishekam festival of the temple in the village. Ten days thereafter, the deceased came to the village and at that time, PW1 was working at Vridhachalam. Both the deceased and her mother, PW2 met PW1 and at that time the deceased informed PW1 that her mother-in-law, A2 finding fault with them for not giving Seervarisai and asked her to get Grinder, Mixie, Bureau, Cot etc. The deceased also asked Rs. 2,00,000/- from PW1 stating that her husband is going to Singapore, but PW1 expressed his inability.

2.3. On 6.3.2000 at 9.30 p.m, while PW1 was working in the shop at Vridhachalam, a boy from Cuddalore village came and took PW1 to Vridhachalam Government Hospital. On enquiry, he told him that A1 to A4 treated the deceased cruelly and as a result she committed suicide by self immolation. The deceased was in the hospital for three days and thereafter she died at Cuddalore Government Hospital.

2.4. The Doctor, PW11 attached to Government Hospital, Vridhachalam examined PW1 on 6.3.2000 at 10.40 p.m. The deceased stated to the Doctor that as she has not liked to live, she has poured kerosene and set fire on herself in her house at Kovilur. The Doctor, PW11 found the following injuries:

Burns involving face, neck, both upper limbs, both thighs, both legs and abdomen. External: More than 90%. H/o of 5MA. Treatment given. Patient is conscious. Answering to questions.

Ex.P9 is the Accident Register. He recorded dying declaration under Ex.P10 from the deceased. In the said dying declaration, the deceased stated that due to family quarrel between herself and A1, due to frustration she has poured kerosene and set fire on herself. Thereafter, PW11 also referred the deceased to Government Head Quarters Hospital, Cuddalore for further treatment.

2.5. PW10, the Judicial Magistrate, Cuddalore, received the intimation, Ex.P7 from the Cuddalore Government Hospital on 7.3.2000 at 3.05 a.m. and went to the hospital. One Doctor Geetha informed PW10 that the deceased was conscious and fit to give dying declaration. PW10 by putting questions, satisfied himself that the deceased was in a fit state of mind to give dying declaration and recorded her statement under Ex.P8 at 3.25 a.m.

2.6. PW14, the Inspector of Police, received the information through wireless message about the occurrence on 7.3.2000 at 6.00 a.m and thereafter, he went to the Cuddalore Head Quarters Hospital and recorded the statement of the deceased and returned to the police station at 6.30 a.m and registered the case

in Crime No. 82/2000 for the offence u/s 498A IPC. Ex.P12 is the F.I.R. He examined the deceased and PWs.1 & 2. PW14, took up the investigation and went to the scene of occurrence on 8.3.2000 at 7.00 a.m. He prepared the Observation Mahazar, Ex .P1 and the Rough Sketch, Ex.P13. He recovered M.O.1, Air Stove from the scene in the presence of witnesses under Ex.P2. On 8.3.2000 at 2.45 p.m, he has received the death intimation from the hospital. He has altered the offence u/s 498A and 304-B IPC. The altered F.I.R is Ex.P14.

2.7. PW15, took up further investigation. He has examined PWs. 1, 2 and others. He has arrested A1 on 25.4.2000 at Kovilur Village near the Primary School. On 10.7.2000, A2 to A4 surrendered before the Magistrate Court.

2.8. PWs. 12 & 13, the Doctors attached to Government Head Quarters Hospital, Cuddalore, conducted postmortem on the body of the deceased. They found the following injuries:

A moderately nourished body of a female lies on back. Burns present over the face, chest, neck, abdomen, both upper and lower limbs and back. Skin peeled off in many places. Eyelids closed. Tongue inside the mouth.

Thorax: Heart chambers contains fluid blood. Normal.

Lungs: congested. Hyoid - Intact.

Abdomen: Stomach - pale, Empty.

Liver, Spleen, Kidneys - Pale.

Intestines distended with gas. Bladder empty.

Uterus enlarged to 22 wks? Size. On dissection, a male fetus of about 22 wks found inside, clear liquor. Placenta round intact. Head: No fracture skull bones. Membranes intact. Brain normal. Viscera sent for analysis. Tox.H.450/2000 dt. 7.4.2000. The above five articles were examined but poison was not detected in any of them.

Ex.P11 is the Postmortem Certificate. They are of the opinion that the deceased would appear to have died of extensive burns and septicemia about 24-26 hrs prior to autopsy.

2.9. PW15, on receipt of the Postmortem Certificate, Ex.P11 and the Dying Declaration, Ex.P8, the Dying Declaration, Ex.P10, recorded by the Magistrate and on completion of investigation laid the charge sheet against the accused on 10.8.2000 for the offence under Sections 498A & 304-B IPC.

3. The prosecution, in order to bring home the charges against the accused, examined PWs. 1 to 15, filed, Exs.P1 to P15 and marked M.O.1.

4. When the accused were questioned u/s 313 of the Code of Criminal Procedure, in respect of incriminating materials appearing against them, they have come forward with the version of total denial. They have not chosen to examine any

witness on their side.

5. Mr. S. Senthilnathan, learned Counsel appearing for the Appellants, vehemently contended that the prosecution has miserably failed to prove its case by adducing clear and consistent evidence and put forward the following contentions:

(i) The evidence of PW1 does not reveal that the accused ill-treated or cruelly treated the deceased.

(ii) The evidence of PW2 makes it clear that she has come forward with the exaggerated version and she has come forward with several other allegations which are not spoken by PW1, her husband and further categorically admitted in her cross examination that she has not stated so during the course of investigation to the Investigating Officer, PW14.

(iii) PW14, also admitted in his cross examination that PW2 has not stated about the information given by the deceased to the effect that A1 demanded Rs. 2,00,000/- for going to Singapore.

(iv) The prosecution has come forward with the version of recording multiple dying declarations from the deceased viz., Ex.P8 recorded by the Judicial Magistrate, PW10, Ex.P10 recorded by the Doctor, PW11 and Ex.P12 statement recorded by PW14, the Investigating Officer, which is treated as an F.I.R in this case and there are variations and developments between the three dying declarations and as such no reliance could be placed on the dying declarations.

(v) The prosecution has not marked the original dying declaration namely the F.I.R, Ex.P12 and only a Xerox copy was marked before the Trial Court.

(vi) PW9, the RDO admitted in his cross examination that as per the report Ex.P5, the panchayatdars stated that they cannot come to a definite conclusion whether the deceased was died due to dowry harassment and cruelty.

6. Per contra, Mr. J.C. Durairaj, learned Government Advocate (Crl.side) submitted that the prosecution has proved its case by adducing clear and cogent evidence through PWs.1 & 2. It is submitted that the prosecution has also proved its case through the dying declaration, Ex.P8 recorded by the Magistrate, PW10 and by the Doctor, PW11 under Ex.P10 as well as the statement recorded by the Investigating Officer, PW14 under Ex.P12. It is contended that the dying declarations is also corroborated by the evidence of PWs.1 & 2.

7. I have given my careful and anxious consideration to the rival contentions put forward on either side and thoroughly scrutinized the entire materials available on record and perused the impugned judgment of conviction.

8. The prosecution heavily placed reliance on the evidence of PWs. 1 & 2, who are the father and mother of the deceased, as well as the dying declaration recorded by the Magistrate, PW10 under Ex.P8 and by the Doctor, PW11 under Ex.P10. At the outset, it is to be stated that PW1, who is none else than the

father of the victim has not come forward with any definite and specific allegations of cruelty against A1 & A2. At this stage, it is to be stated that PW1 has not chosen to give any report to the police. The perusal of the evidence of PW1 reveals that he has merely stated that he was informed by his daughter, the deceased that her mother-in-law A2 was making sarcastic comments about not bringing Seervarisai. It is to be stated at this stage that even as per the admitted case of the prosecution, the marriage between A1 and the deceased is a love marriage and they got married on their own will and wish and thereafter they returned to the village. At that time, PW1 said to have performed another marriage in the presence of villagers in the Vinayagar Temple at Sirumangalam. It is admitted by PW1 that he has not given any Seervarisai at that time. Except such bald and vague allegation, PW1 has not whispered a word about any ill treatment or cruel treatment said to have been caused either by A1 or by A2. Therefore, this Court is of the considered view that the evidence of PW1 is not at all helpful to advance the case of the prosecution.

9. Now coming to the evidence of PW2, who is none else than the mother of the deceased, she was come forward with the exaggerated version and she went to the extent of stating that A1 and A2 had committed murder of the deceased for which there is not an iota of material available on record. It is to be stated that PW2 has come forward with new allegations which were not spoken by PW1. It is pertinent to note that PW2 herself has categorically admitted in her cross examination that all her present version to the effect of ill-treatment and cruel treatment said to have been caused by A1 & A2 has not been stated during the course of investigation to PW14, the Investigating Officer. PW14 also categorically admitted in his cross examination that PW2 has not stated during the course of his investigation about A1 to A4 said to have poured kerosene and set fire on the deceased. PW14 also admitted in his cross examination that PW2 has not stated about the demand of household articles namely bureau, cot etc., made by the accused. Again, PW14 also admitted in his cross examination that PW2 has not stated about the alleged demand of Rs. 2,00,000/- for A1 going to Singapore. Therefore, it is crystal clear that PW2 has come forward with the developed and exaggerated version only for the first time before the Court. Therefore, this Court is of the considered view that the evidence of PW2 not at all inspires the confidence of this Court and as such her evidence is unbelievable and unreliable.

10. Lastly, we have been left with the dying declarations said to have recorded by PW10, the Magistrate, PW11, the Doctor and PW14, the Inspector of Police. There are three dying declarations viz., Exs.P8, P10 & P12, which have been relied by the prosecution. It is to be stated at the outset that there are several variations, inconsistencies, developments and exaggerations between all these three dying declarations. It is well settled in a catena of decisions of the Hon'ble Apex Court that there is no bar for placing reliance solely on the basis of the dying declaration of the deceased, provided the same is clear, consistent and inspires the confidence of the Court. However, as far as the case on hand is

concerned, this Court is constrained to state that the dying declaration not at all inspires the confidence of the Court, as the same is not clear and consistent.

11. At this juncture, it is relevant to refer few decisions of the Hon''ble Apex Court relating to reliability of the dying declaration. The Hon''ble Apex Court in *P. Mani Vs. State of Tamil Nadu*, has held hereunder:

Indisputably conviction can be recorded on the basis of the dying declaration alone but therefore the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the Court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on record suggest that such dying declaration does not reveal the entire truth, it may be considered only as piece of evidence in which event conviction may not be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them.

12. In yet another landmark decision, the Hon''ble Apex Court in *Laxman v. State of Maharashtra* reported in 2002 SCC (Cri.) 1491 : 2003 2 L.W. (CrI.) 814, has held hereunder:

3..... The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination.....

13. In respect of multiple dying declarations, the Hon''ble Apex Court in *Amol Singh Vs. State of M.P.*, , has held that multiple dying declarations consisting inconsistencies and discrepancies make the dying declarations doubtful and it would not be safe to convict the accused.

14. In yet another decision, the Hon''ble Apex Court in *Samadhan Dhudka Koli v. State of Maharashtra* reported in 2008 (8) SCC 719 has held that:

16. Consistency in the dying declaration, therefore, is a very relevant factor. Such a relevant factor cannot be ignored. When a contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they should not be accepted on their face value. In any event, as a rule of prudence, corroboration must be sought from other evidence brought on record.

15. 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 far as the case on hand is concerned, it is to be noted that the dying declaration Ex.P8 was

recorded by the Magistrate, PW10 on 7.3.2000 at 3.25 a.m. The perusal of Ex.P8 reveals that the deceased has not made a whisper about A1, her husband and there is absolutely no allegation whatsoever made against A1. On the other hand, it is seen from the perusal of Ex.P8 that even A1 also tried to put off the fire. Therefore, the conduct of A1 also should be taken into consideration. The deceased made an allegation only against A2, her mother-in-law to the effect that she has scolded and beat her and the deceased has also implicated her sister-in-law for having scolded her. The learned Trial Judge has rejected the case of the prosecution in respect of A3 & A4.

16. The next dying declaration is Ex.P10 recorded by the Doctor, PW11. It is seen that this is the first dying declaration recorded on 6.3.2000 at 10.40 p.m. The perusal of Ex.P10 reveals that there is not a whisper made against A1 and there is absolutely no allegation made against A1 and even in respect of A2, it is merely stated that there were family disputes and quarrels between herself and A2 and as a result due to frustration, she has depressed and she has poured kerosene and set fire on herself and there is no allegation of A2 scolding or beating the deceased. Therefore, it is crystal clear that the version of the deceased is quite developed in Ex.P8 said to have been recorded by the Magistrate, PW10.

17. Lastly, it is seen that the 3rd dying declaration, Ex.P12 was said to have been recorded by the Inspector of Police, PW14 on 7.3.2000 at 2.30 p.m. It is seen that Ex.P12 contains elaborate statements and on the face of it the same is unbelievable and unreliable. It is pertinent to note that at this stage, the deceased has suffered 90% burn injuries. It is also seen that on the next day afternoon the deceased died and as such, the condition of the deceased would have deteriorated day-by-day and such being the position, it may not be possible for the deceased to give such a detailed statement like Ex.P12. It is also seen that the original dying declaration was not marked before this Court and only a copy was marked and there is no explanation for the same, as per the materials available on record. In view of all these infirmities, inconsistencies and inherent improbabilities, this Court is of the considered view that the dying declarations are also unreliable, as the same are not corroborated by any other acceptable evidence and also the same does not inspire the confidence of this Court.

18. In view of the aforesaid infirmities, inconsistencies and inherent improbabilities, this Court has come to the irresistible conclusion that the impugned judgment of conviction is unsustainable. Accordingly, the appeal is allowed and the conviction and sentence passed by the learned Additional District Judge (Fast Track Court-III), Vridhachalam by the judgment dated 31.7.2003 made in S.C. No. 67/2001 is hereby set aside and the Appellants are acquitted. Fine amount, if any paid, is directed to be refunded to the Appellants. Bail bonds, executed if any, shall stand cancelled.