2025 INSC 318

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.540 OF 2013

SURESH **...APPELLANT(S)**

Versus

STATE REP. BY INSPECTOR OF POLICE **...RESPONDENT(S)**

JUDGMENT

SUDHANSHU DHULIA, J.

1. The appellant before us has challenged the order dated 28.02.2012 by which the High Court of Madras has upheld the appellant's conviction and life sentence for an offence under Section 302 of the Indian Penal Code ('IPC').

2. The brief case of the prosecution is that on 12.09.2008 at around 6 pm, the appellant caused the death of his wife ('deceased') by pouring kerosene on her body and setting her on fire, which ultimately resulted in her death after a period of approximately three weeks in a hospital. The appellant used to reside in his house at Narayanachetti Street, Tuticorin with his wife and a 2 ½ year old son. The Mother-in-law (PW-1) and Father-in-law (PW-2) of the appellant used to reside in the street next to the appellant's street.

On the fateful day i.e., 12.09.2008 when the child of the deceased was crying, the deceased called her mother (PW-1) to pacify the child and the child was taken away by her mother (PW-1) to her house which was in the neighbourhood. Meanwhile, PW-1 and PW-2 were informed by a neighbourhood child that their daughter Sumathi (deceased) had caught fire. She was then immediately taken to a nearby hospital, and then to another hospital (American Hospital) and eventually admitted in a Government Hospital at Thoothukudi.

3. At around 9:30 pm, when police received the information, PW-9 (Head Constable) reached the hospital and recorded the statement of the deceased. In her statement to PW-9, the deceased stated that she caught fire while working in the kitchen. She also states that at the time of the incident, the appellant was sleeping and when she screamed, the appellant woke up and tried to put off the fire. On the basis of this statement, a general diary entry was made by police on 12.09.2008.

4. Thereafter, on 15.09.2008, a case for accidental fire was registered. On the same day, PW-15 (Sub-Inspector) visited the scene of the occurrence and seized a kerosene can and matchstick. On this day, police recorded another statement of the deceased where she stated that her husband had set her on fire by pouring kerosene and she did not state so in her earlier statement as her husband was present while PW-9 recorded her statement on 12.09.2008. On 15.09.2008,

the accidental fire case was converted to a case under section 307 of IPC against the appellant. Finally, upon the death of the deceased on 02.10.2008, section 307 of IPC was modified to section 302 of IPC.

5. Before the death of the deceased, on 18.09.2008, a Judicial Magistrate recorded a statement of the deceased and this statement was used by the prosecution as the dying declaration. In this statement, the deceased stated before the Judicial Magistrate (PW-12) that it was the appellant who had poured kerosene on her and set her on fire on 12.09.2008.

6. The Trial Court treated this statement given to PW-12 as the dying declaration and convicted the appellant under section 302 of IPC. In appeal before the High Court, the conviction and sentence of life imprisonment, imposed by the Trial Court, have been affirmed by the impugned order dated 28.02.2012. Aggrieved by the same, the appellant is here before us.

7. We have heard both sides and perused the material before us.

8. Before coming to the issue of dying declaration, we would like to go through the evidence of other witnesses who were there before the Trial Court. There were as many as 17 witnesses from the side of the prosecution. PW-1 and PW-2, who are the mother and father of the deceased respectively, had both deposed that when they reached the house of the deceased, they found the deceased was burnt and also

deposed that PW-3 (neighbour) had already reached there and tried to douse the fire. PW-1 and PW-2 also deposed that they were the ones who had taken the deceased to the hospital.

9. PW-1 and PW-2 also tried to suggest that the appellant had set the deceased on fire and neither did he make any attempt to douse the fire nor did he accompany them when they took the deceased to the hospital. On the other hand, it is to be noted that PW-3 and PW-4 deposed that they were the first to reach the deceased's house and they deposed that the appellant was the one who informed PW-1 and PW-2 about the incident. PW-3 also deposed that she and her father (PW-4), as well as, the appellant tried to extinguish the fire. However, these two prosecution witnesses i.e. PW-3 and PW-4 were declared hostile. Moreover, PW-13 (doctor) had deposed that when the deceased was brought to the hospital, the appellant was with the deceased. Here, it is to be noted that the appellant suffers from 40% physical disability resulting from a polio attack. Also, the version that the appellant had not made any attempt to take the deceased to the hospital is not only in contradiction with the deposition of PW-13 but would also be fatal for the prosecution case itself as the prosecution case mainly relies on the story that the deceased had made a false statement due to the presence of the appellant in the hospital, in other words, appellant was there in the hospital with the

deceased when her statement was recorded by the Police, immediately on the arrival of the deceased in the hospital.

10. PW-13 is the doctor who attended to the deceased when she was taken to the Government Hospital. PW-13 deposed that the deceased had told him that she caught fire while cooking. In his cross-examination, this witness admitted that there was no smell of kerosene oil emanating from her body. PW-11, the doctor who conducted the post-mortem, deposed that the deceased died due to burn injuries and complications therefrom. In the cross-examination, PW-11 deposed that there were no external injuries on the body of the deceased except the burn injuries. This rules out any possibility of an assault on the deceased before she had caught fire.

11. While convicting the appellant under section 302 of IPC, the Trial Court mainly relied upon the evidence given by PW-1 and PW-2 and the dying declaration, which was recorded by the Judicial Magistrate (PW-12) on 18.09.2008. Thereafter, in appeal, without appreciating the facts of the case in their proper perspective, the High Court also mechanically upheld the conviction and life sentence of the appellant.

12. Now coming to the issue of the dying declaration. There is no doubt regarding the well-settled position of law that a dying declaration is an important piece of evidence and a conviction can be made by

relying solely on a dying declaration alone as it holds immense importance in criminal law. However, such reliance should be placed after ascertaining the quality of the dying declaration and considering the entire facts of a given case. This Court in ***Uttam v. State of Maharashtra (2022) 8 SCC 576***, with respect to inconsistent dying declarations, observed as follows:

> "15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution."

In other words, if a dying declaration is surrounded by doubt or there are inconsistent dying declarations by the deceased, then Courts must look for corroborative evidence to find out which dying declaration is to be believed. This will depend upon the facts of the case and Courts are required to act cautiously in such cases. The matter at hand is one such case. In the present case, the deceased had given two statements which are totally different from her subsequent statements including the statement made before PW-12 on 18.09.2008, which has been considered a dying declaration based on which the appellant has been convicted. The first statement was made to the doctor (PW-13) on the

day of the incident itself where she told PW-13 that the incident occurred while she was cooking. On the same day, the second statement was made to the police constable (PW-9) where the deceased said the same thing i.e. she caught fire by accident while cooking in the kitchen.

13. Now, the variances in deceased's statements cast serious doubts on the veracity of her subsequent statement of 18.09.2008 made before the Judicial Magistrate (PW-12) where the deceased had blamed the appellant for the incident. The deceased tried to explain her conduct by stating that she made false statements on the day of the incident as she could not tell the truth in the presence of her husband. It is very difficult to believe this version of the deceased because no other evidence corroborates the deceased's statement that the appellant had poured kerosene on her and then set her on fire. Moreover, in his cross-examination, Judicial Magistrate (PW-12) admitted that he did not question the deceased with regards to the details of her previous statements made before the police. The deceased did not say anything to the Judicial Magistrate regarding her previous statements of 12.09.2008 and 15.09.2008. In other words, the deceased did not tell the Magistrate that she lied in her statement of 12.09.2008. It is not a case of dowry harassment as all such possibilities were already ruled out during the investigation. When the Judicial Magistrate (PW-12)

questioned the deceased about the reason for which appellant had set her on fire, as claimed by the deceased, the deceased answered as follows:

> "I had beaten my son Rubiston. My husband had asked me why you are beating the child. My husband had abused me with filthy language. I told him that I am going to die. He said that why do you die and he himself had poured kerosene and burnt me"

This is also contradictory to the other evidence on record and here, the timeline of the events becomes important. From the deposition of PW-1, it comes out that PW-1 was called by the deceased around 2 pm and PW-1 went to deceased's house and brought the deceased's son to her house. The incident occurred in the evening at around 6 pm. As per the deceased's dying declaration, she was beating her child to which the appellant raised objections and the matter escalated, leading to the alleged incident. All of this makes the dying declaration extremely doubtful.

14. As discussed above, in cases where the dying declaration is suspicious, it is not safe to convict an accused in the absence of corroborative evidence. In a case like the present one, where the deceased has been changing her stance and has completely turned around her statements, such a dying declaration cannot become the sole basis for the conviction in the absence of any other

corroborative evidence.

15. On this point, the prosecution would argue that Observation *Mahazar* prepared by PW-15 talks about the recovery of an empty kerosene can and match stick from the spot. PW-15 also mentioned in the Observation *Mahazar* that when he visited the deceased's house on 15.09.2008, it was full of the smell of burnt kerosene. According to the prosecution, this *Mahazar* corroborates the dying declaration made by the deceased. However, the veracity of this Observation *Mahazar* is itself in doubt. Apart from the fact that there had been an inordinate delay in sending the *Mahazar* to Court, the witnesses (PW-5 and PW-6) to the seizure of the above articles had also been declared hostile. PW-5 and PW-6 deposed that the site was visited by PW-15 but they did not support that any articles with kerosene smell were seized from the place.

16. Moreover, no other witnesses had deposed about seeing any empty kerosene can or match stick. Even PW-1 and PW-2, who reached the scene and hospitalised the deceased, had not deposed anything like that. On the contrary, PW-13 (doctor) had categorically stated in his evidence that there was no smell of kerosene in the body of the deceased when she was brought to the hospital. Normally, where the death is caused by burning through kerosene, the smell of kerosene would definitely remain for a few hours, however, the smell does

weaken after some time. Since, in the present case, the deceased was immediately brought to the hospital barely within a few hours of the incident, if kerosene was involved then the smell of kerosene ought to have been there. Even the doctor (PW-13), who had examined the deceased immediately after the incident, states that there was no such smell.

17. There is also another aspect to the case. It has come on record that the relations between the two families i.e., the family of the accused and the family of the deceased, had soured. In 2006, barely two years before the incident, the appellant's brother had filed a criminal case of assault against the appellant's father-in-law (PW-2) and brother-in-law. In that case, PW-2 and his son were convicted. Before the Trial Court as well as the High Court, the appellant had tried to unsuccessfully contend that the dying declaration of 18.09.2008 is an afterthought of the deceased and the deceased made such a statement upon being tutored by PW-1 and PW-2. We are not in a position to give any definitive view on this aspect but considering the other evidence on record, the possibility of what the appellant is suggesting, cannot be ruled out. Thus, in our considered opinion, inspite of a dying declaration here, for the reasons stated above, total reliance on it would be misplaced. Consequently, the appellant deserves to be given the benefit of doubt.

18. We accordingly allow this appeal and acquit the appellant by setting aside the order of the High Court dated 28.02.2012. The appellant shall be released from jail forthwith.

19. Pending application(s), if any, stand(s) disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

New Delhi.
March 04, 2025.

ITEM NO.1501 COURT NO.12 SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 540/2013

SURESH **Appellant(s)**

VERSUS

STATE REP.BY INSPECTOR OF POLICE **Respondent(s)**

Date : 04-03-2025 This appeal was called on for pronouncement of Judgment today.

For Appellant(s) : Mr. Aravindh S., AOR

For Respondent(s) : Mr. V. Krishnamurthy, Sr. A.A.G.
Mr. Sabarish Subramanian, AOR
Mr. Vishnu Unnikrishnan, Adv.
Ms. Azka Sheikh Kalia, Adv.
Ms. Jahnavi Taneja, Adv.
Mr. Danish Saifi, Adv.

Hon'ble Mr. Justice Sudhanshu Dhulia pronounced the reportable Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ahsanuddin Amanullah.

The operative portion of the Judgment reads as follows :-

> ***"We accordingly allow this appeal and acquit the appellant by setting aside the order of the High Court dated 28.02.2012. The appellant shall be released from jail forthwith."***

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA) **(RENU BALA GAMBHIR)**
ASST. REGISTRAR-CUM-PS **ASSISTANT REGISTRAR**

(Signed reportable Judgment is placed on the file)