

CASE NO.:
Appeal (crl.) 1230 of 2001

PETITIONER:
Chacko

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 22/11/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant in this case has been convicted by the Sessions Judge, Kollam, for an offence punishable under Section 302 IPC for having committed the murder of his mother Saramma on 28.7.1996 at about 10 a.m. at their house in Kottarakkara village by pouring kerosene on her and setting her ablaze. It is the prosecution case that suspecting his mother would give away her entire earnings to her 3 daughters to his exclusion, the appellant committed this crime. It is the prosecution case that even though the deceased was set afire while she was sitting in a chair at about 10 a.m., nobody witnessed the incident in question and it is only about 4.30 p.m. when PW-2, the grand-daughter of the deceased, came to the house, she came to know of the incident. The prosecution also alleges that by that time the concerned Police had received an anonymous telephone call intimating of the incident in question as having been caused by the deceased's son. Registering a case based on the said information in the general diary, the Police also came to the house of the deceased and found her seriously burnt, hence, took her to Kottarakkara hospital where PW-3, the doctor, gave her preliminary treatment and recorded the wound certificate wherein he noted as he being told by the deceased that the injury suffered by her was caused by her son. It is also the case of the prosecution that the deceased made a dying declaration Ex. P-4 to PW-5 who recorded the same and got the thumb impression of the deceased in which she specifically stated that it was her son who caused the burn injuries to her because of the fact that he suspected that the deceased would not given him a share in her earnings. Though PW-3 is said to be present at the time of making of the dying declaration, he has not either certified that the deceased was in a fit state of mind to make the said declaration nor has he attested the said declaration. Thereafter, it is stated that PW-3 advised the Police to take the deceased to the Medical College Hospital at Trivandrum and when she was being so transferred, she died on the way at about 7 p.m. on 28.7.1996. The courts below relying on the said dying declaration Ex. P-4 accepted the prosecution case and convicted the appellant, as stated above.

Mr. Ranjit Kumar, learned senior counsel appearing for the appellant, assailed the dying declaration Ex. P-4 as

a document got-up subsequently by the prosecution, hence, he contended that the same cannot be relied upon. In support of his contention, he pointed out that the writings in Ex. P-4 are so managed so as to fit the contents of the document into a sheet of paper on which a thumb impression was already taken. He submitted that it is clear to naked eye that this document was not prepared in the manner stated by the prosecution. He also contended that the contents of the document which is so elaborate in particulars also create a doubt whether a 70 year old lady who suffered more than 80% burn injuries on her body at about 10 a.m. could ever be able to make such an elaborate statement as found in Ex. P-4 nearly 7 to 8 hours after the burn injuries suffered by her. He also pointed out even though PW-5, the doctor, was supposed to be present, according to the prosecution, at the time when this statement was recorded, he has not chosen to either attest the said declaration or to certify the medical condition of the deceased as to her capacity to make such a statement. He also pointed out that if, as a matter of fact, deceased had made a statement as recorded in Ex. P-4 then the same would have been clearly reflected at least to the extent of the name of the accused in the inquest report prepared by PW-7 on 29.7.1996 at about 12.30 p.m. The fact that in the said inquest report the name of the accused is not mentioned itself throws considerable doubt on the earlier dying declaration which has named the accused on 28.7.1996 itself. Learned counsel also pointed out that though the first information report was recorded on 28.7.1996 at about 5 p.m. and the wound certificate was issued by PW-3 at 5.20 p.m. on 28.7.1996 itself and the dying declaration as per Ex. P-4 had come into being by about 5.30 p.m. on 28.7.1996, it is surprising that the FIR reached the Court of the Magistrate at Kottarakkara only at about 4 p.m. on 29.7.1996 which is situated in the very same town as the Police Station is situated. In the above circumstances, the learned counsel pointed out that it is unsafe to rely upon the dying declaration as the sole evidence to base a conviction. Mr. Ramesh Babu, learned counsel appearing for the State contended that there is absolutely no reason why Ex. P-4 should be discarded merely because the writing in the said document is written in a particular manner. Learned counsel pointed out, the fact of the deceased having suffered the injury because of the act of the appellant is also noted in the wound certificate issued by PW-3 who in his oral evidence also has spoken to the same and also PW-5 the investigating officer who recorded the dying declaration in evidence has confirmed the statement made by deceased as per Ex. P-4 which has not been effectively challenged by the appellant, therefore, there is no reason to discard the said evidence.

Having heard learned counsel for the parties and perused the records, we find it difficult to accept the prosecution case based on the dying declaration allegedly made by the deceased. As pointed out by the learned counsel for the appellant, it is very difficult to accept the prosecution case that the deceased who was of about 70 years, and had suffered 80% burns could make a detailed dying declaration after 8 to 9 hours of the burning giving minute particulars as to the motive, the manner in which she suffered the injuries. This, in our opinion, itself creates a doubt in our mind apart as to the genuineness of the declaration [See : Munnu Raja & Anr. vs. State of Madhya Pradesh, (AIR 1976 SC 2199 para 6)]. Further in

the absence of any certificate by a competent doctor as to the mental and physical condition of the deceased to make such a dying declaration, we think it is not safe to rely on the same. We are aware of the judicial pronouncements of this Court that it is not always necessary that a dying declaration should be certified by a doctor before reliance could be placed on the same. But then in the absence of any such certificate, the courts should be satisfied that from the material on record it is safe to place reliance on such uncertified declaration.[See : Ram Bai vs. State of Chhattisgarh (2002 (8) SCC 83)]. In the instant case it is not as if the doctor was not available. As a matter of fact, PW-3 who treated the deceased in the first instance was available at the time when the deceased allegedly made the dying declaration, still we find he has not either given a certificate as to the condition of the deceased nor has he attested the said document. That apart, a perusal of the dying declaration as per Ex. P-4 shows that the contents of the documents are so arranged so as to accommodate the space which is above the thumb impression which we think is not a normal way of recording a statement if the same was genuine. This is also a ground to suspect the genuineness of the document. Then again as complained by the learned counsel for the appellant, we notice that on 28.7.1996 at about 5.30 p.m. the Police had known that it was the appellant who had committed this crime but in the inquest report which was drawn on 29.7.1996 in Column No.12 corresponding to name of the suspect, it is specifically mentioned 'No' meaning thereby the officer who drew this document did not have the knowledge that it is the appellant who had caused the injury. This is the very same person (PW-5) who has scribed Ex. P-4. The above factor coupled with the manner in which the incident has been recorded in Ex. P-4 certainly creates a grave doubt in our mind as to the genuineness of the dying declaration Ex. P-4. The fact that PW-4, the doctor, had recorded that "patient conscious, talking" in the wound certificate by itself would not in any manner further the prosecution case as to the condition of the patient to make the dying declaration nor does his oral evidence as also that of the investigating officer made in the court for the first time would in any manner improve the prosecution case.

In view of the fact that the courts below have solely relied on the dying declaration Ex. P-4 without noticing the doubtful circumstances noted by us and there being no other evidence in support of the prosecution case, we think it unsafe to place reliance on the evidence adduced by the prosecution to base a conviction.

In the said view of the matter, this appeal succeeds, the judgments and conviction of the courts below are set aside. The appeal is allowed. The appellant, if in custody and not required in any other case, shall be released forthwith.