

CASE NO.:
Appeal (crl.) 799 of 1997

PETITIONER:
Chinnamma

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 24/02/2004

BENCH:
N.Santosh Hegde & B P Singh.

JUDGMENT:
JUDGMENT

SANTOSH HEGDE, J.

Appellant herein was convicted by the Court of Session, Pathanamthitta, Kerala for an offence punishable under section 302 IPC and was sentenced to undergo imprisonment for life for having committed the murder of her sister in law by name Suma Varghese. Her appeal to the High Court of Kerala at Ernakulam having failed she is before us in this appeal. The facts necessary to be noted for the disposal of this appeal are as follows :

Deceased Suma Varghese was the wife of Jose Mathew PW-1 and was residing with her husband and father in law PW-2 in Nellickal house. PW-2 father in law of the deceased had purchased a property which the appellant who was his daughter and sister in law of the deceased, wanted him to hypothecate to secure a housing loan for her. It is alleged PW-2 agreed to do so but the deceased objected to the same. It is because of this reason the appellant, according to the prosecution, had entertained an ill-will against the deceased. Prosecution alleges that on 8.7.1989 at about 8.45 a.m. when the deceased was dressed and ready to go to her mother's house, the appellant came to her house and struck her on the back of head with a piece of fire-wood because of which the deceased fell down. Thereafter it is alleged the appellant poured kerosene oil on her chest and set her on fire which caused serious burn injuries. On hearing the alarm raised by the children of the deceased, PW-2 and others came running and extinguished the fire, noticing the severe burn injuries suffered by the deceased. She was removed to the Government hospital at Kanjirappally where the Medical Officer on duty after giving first aid and noticing the nature of injuries on her body, referred her to the Medical College Hospital at Kottayam. The prosecution alleges that while she was in the Medical College Hospital, two dying declarations of hers were recorded; one by Head Constable Karunakaran Nair, PW-14 on 10.7.1989 at about 10.45 p.m. and the other by Judicial First Class Magistrate, PW-8 on 14.7.1989. As per the said dying declarations, the deceased implicated the appellant as the person who poured kerosene on her and lit the fire causing her burn injuries. A complaint in this regard was lodged on 10.7.1989 by PW-6 father of the deceased, based on which the investigation was initiated by the jurisdictional Police and on completion of the same a chargesheet as against the appellant was filed for an offence punishable under section 302 IPC. Deceased Suma died on 28.7.1989. As stated above, after trial the appellant was found guilty of the offence charged by

the trial court which finding was confirmed by the High Court. Mr. V.B. Saharya, learned amicus curiae appearing for the appellant, contended that the courts below have erred in placing reliance on the two dying declarations made by the deceased which when examined in the light of other evidence led by the prosecution, would clearly go to show that the deceased had implicated the appellant falsely and her own evidence as corroborated by the other evidence led in this case, indicates that the deceased had suffered accidental burns and she had falsely implicated the appellant as the assailant.

Learned counsel during the course of his arguments, pointed out that there was absolutely no motive for the appellant to commit such a gruesome crime. He also pointed out that even according to the entry made by the doctor, PW-11, in the wound certificate Ex. P-11, deceased had told him that she suffered the burns accidentally when she was cooking food for the piglings. Learned counsel then pointed out the discrepancies in the two dying declarations Ex. P-10 and 15. It is based on the said contradictions in the prosecution case, learned counsel pleaded that the appellant has been wrongly convicted by the two courts below.

Mr. Ramesh Babu, learned counsel appearing for the respondent, however, contended that both the courts below have rightly accepted the prosecution case which is not only supported by two dying declarations made by the deceased as per Ex. P-10 and 15 but is also supported by other evidence led by the prosecution which clearly showed that it is the appellant who was responsible for causing the burn injuries because of the enmity she had with the deceased.

In this case at the outset it must be noted that there are no eye witnesses to the incident in question. The prosecution primarily relies on the two dying declarations made by the appellant and other evidence led in this case to establish the motive as also the act of the accused causing the death of the deceased. In this background, we will first consider the two dying declarations made by the deceased on which both the courts below have placed strong reliance. The first dying declaration is recorded by the Head Constable of Police who came to the hospital on being informed about the admission of the deceased in the said hospital and recorded the statement of the deceased on 10.7.1989 at about 10.45 p.m. In the said dying declaration the deceased stated that she was married about 2 = years earlier to PW-1 and was staying in his house and that she had two children. She further states that the appellant who is the sister of her husband was annoyed with her because of a property dispute. She then states that on Friday morning (7.7.1989) she wanted to go to her mother's house hence she told her husband that she will be going there to which her husband had told her not to go still she changed her dress to go. She further says that at that point of time the appellant came to the house and asked her "where are you going ?" but the deceased did not reply. She then proceeds to state that on Saturday (8.7.1989) at about 9 a.m. she got dressed up again to go to her mother's house when the appellant came inside the house and standing behind her hit her on the back of her head once and she fell on the floor. She proceeds to state that the appellant then took the kerosene tin which was kept in the room and poured it on her chest. When she felt heat on her chest, she got up and ran outside the house and fell unconscious in the courtyard. She then states that some people brought her to the hospital in a vehicle to Kanjirappally hospital. From the above statement made to the Police Head Constable on 10.7.1989, following facts can be deduced :

That on 7.7.1989 when she wanted to go to her mother's house, her husband did not allow her to go. On 8.7.1989 she still wanted to go to her mother's house, so she dressed up when she was attacked on the head by the appellant, and then the appellant took the kerosene oil which was kept in the room and poured it on her chest. She had not noticed the factum of the appellant setting her on fire and when she felt heat, she ran outside the house and fell unconscious. She also remembers having gone to Kanjirappally hospital.

We will now examine the contents of the second dying declaration Ex. P-10 recorded by the Magistrate on 14.7.1989. It should be noted here that this was a statement recorded about 6 days after the incident in question during which time she was being looked after in the hospital by her father and other relatives. This statement of the deceased was recorded in the presence of the Duty Doctor who had certified her to be conscious and coherent to give a statement. In this statement which is in the form of questions and answers, the deceased told the Magistrate that on last Saturday (8.7.1989), she took food for piglings from the kitchen of her husband's house, and as soon as she entered the kitchen, she got a beating on the back of her head. That was by her sister-in-law whose name is Chinnamma. She then fell down and became unconscious. She then states that while she was unconscious, the flames started and there was smell of kerosene. To a question asked by the Magistrate, she states that it was her sister-in-law who beat her therefore, she suspects that her sister-in-law set her body on fire. While answering a question as to who all were attending on her, she said that her father, mother, two brothers, two sisters and her husband were attending on her. In regard to the reason for the attack, she states that there was some talk that she had done some evil magic on her husband, therefore, her husband was not loving his sister (the appellant) after their marriage. A careful consideration of this dying declaration made about 14 days before her death, shows that in this statement she states that when she entered the kitchen, she was struck on the back of her head which she assumes was by her sister-in-law (the appellant). She then states that she became unconscious thereafter and when she regained consciousness, she saw flames and smelt kerosene. She also says that she suspected her sister-in-law of having set her on fire. The motive given for this attack by the appellant in this dying declaration was that the appellant had suspected the deceased of having cast certain evil magic on her husband because of which he stopped loving his sister, the appellant. A comparison of these two dying declarations, in our opinion, shows certain glaring contradictions. In the first dying declaration, we have noticed that there was an incident on the previous day when she desired to go to her mother's house and got dressed up for the same. Her husband did not allow her to go to her mother's house. But the next day, when she got dressed again to go to her mother's house, the appellant came and standing behind her, hit her on the back of her head when she fell on the floor and she saw the appellant taking kerosene which was kept in the room and pouring on her chest and thereafter she felt the heat and ran outside the house and fell unconscious. The factum of she having seen the appellant taking out the kerosene from the room and pouring the same on her was not spoken to by her in her second dying declaration. This fact has some relevance while appreciating the correctness of the two dying declarations because if really she was conscious and had seen the appellant take the kerosene and pouring the same on her, she would not have forgotten to

mention it again in her second dying declaration. Again, while she was certain that it was her sister-in-law (appellant) who poured the kerosene on her and set her on fire as per her first dying declaration; in the second dying declaration, she was not so sure because she says that she only suspected the appellant as having set her on fire. This is because she had earlier stated in that statement, she became unconscious when her sister-in-law had hit her on the head. Even the motives given in the two dying declarations are entirely different. These contradictions, in our opinion, create grave suspicion in our minds whether the injury suffered by the deceased was really because of the act of the appellant or was a figment of the imagination of the deceased. This suspicion of ours becomes all the more stronger if we notice the evidence of PW-11 who treated her in the first instance when she was taken to Kanjirappally hospital. It is seen from the wound certificate Ex. P-11 given by this doctor that when he examined the deceased for the first time at Kanjirappally hospital, she stated that she suffered the injury due to accidental burning while preparing food for the piglings. This very important aspect of the case was rejected by both the courts below on the ground that the entry made in the wound certificate might not have been a correct entry because the witnesses who took her to the hospital, had stated that she was not in a fit condition to talk. But then we should remember that this is an entry made in a document regularly maintained and the doctor had no reason whatsoever to make an incorrect entry, and no question was asked to this doctor when he was in the witness box as to the correctness of the entry, therefore, due weight should be given to the contents of this wound certificate and the courts below ought not to have rejected the same on the basis of oral evidence given by certain witnesses. It is also very relevant to mention here that the deceased was prevented from going to her mother's house by her husband on 7.7.1989 and the deceased being adamant in spite of protest from her husband, had decided to go to her mother's house again on 8.7.1989 which indicates that there may be reasons other than the alleged enmity entertained by the appellant for suffering by the burn injuries which led to her ultimate death. From the material on record, we are also unable to find any strong motive which would have induced the appellant to commit such a heinous crime of burning her sister-in-law to death. The conduct of the appellant in being present with the deceased right through the journey to the hospital also indicates otherwise. There is another important aspect of the case which was not considered by the two courts below properly i.e. it is the case of the deceased that she was beaten on the back of her head with a firewood, consequent to which she fell down and had lost her consciousness. Though during the course of inquest of the dead body, it was noticed that there was a contusion on the head, the doctor who examined the deceased before she died as also the doctor who conducted the post mortem, did not notice any such injury on the head which indicates that the first part of the attack on the deceased by the appellant could be concocted. At any rate, the prosecution has failed to establish the first part of the attack by the appellant on the head of the deceased. Learned counsel appearing for the State, however, contended that because of the burn injuries, the doctors might not have noticed the head injury caused by the attack with a firewood on the head of the deceased. We have perused the medical report which shows that all the burn injuries suffered by the deceased were below the neck and on the limbs and so far as the head is concerned, there was no burn injury. The absence of any injury at the back of the head of the deceased as also non-recovery of the firewood which was used in the assault on the deceased indicates that the first part of the dying

declaration is not true. In this background, the second part of the dying declaration that she fell down and became unconscious also cannot be believed. These discrepancies would indicate that her statement made to the doctor PW-11 that she suffered burn injuries accidentally while cooking becomes more probable. Be that as it may, the abovementioned facts create a doubt in our mind as to the truthfulness of the contents of the dying declaration as also the possibility of she being influenced by her parents in making the dying declaration cannot be ruled out.

Having very carefully perused the material on record, we are unable to come to the conclusion that the prosecution in this case has established its case beyond all reasonable doubt to base a conviction on the appellant. Hence, we are of the opinion that both the courts below have erred in coming to the contra conclusion.

For the reasons stated above, this appeal succeeds and the judgment and conviction recorded by the courts below are set aside. The appeal is allowed. We are told that the appellant is on bail. If so, her bail-bonds shall stand discharged.