Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO 234 OF 2010

Jose S/o Edassery Thomas ... Appellant

Versus

State of Kerala ...Respondent

J U D G M E N T

Dipak Misra, J.

The present appeal depicts a gruesome and repulsive picture that paints the appellant justifiably as the cruel protagonist who, invaded by passion of an uncultivated mind, insatiated by sexual desire and a further sense of suspicion that leads one into the realm of the worst, committed an act of unthinkable depravity. The ghastly act here is the murder of wife. In fact, the accused-appellant, as the prosecution story would reveal, was not only driven by the fierce frenzy of passion but also his rational thinking had been totally darkened. In the

ultimate eventuate, consumed by the fire and ire of anger, he burnt his wife to death. He might have thought that he would bring an end to the anarchy in his house but his uncontrolled act ushered in anarchy of the darkest hour in his own life. The result is the conviction under Sections 302 and 307 of the Indian Penal Code (for short "IPC") and sentence for life and rigorous imprisonment for three years on both the counts by the learned trial Judge in S.C. No. 169 of 2004 which has received the stamp of approval by the High Court of Kerala in respect of conviction under Section 302 IPC vide judgment dated 17.9.2008 in Criminal Appeal No. 280 of 2005. Hence, the present appeal by special leave.

2. The prosecution case as uncurtained is that the accused was living with the deceased, and their daughter, PW-3, and son-in-law, PW-5, along with their two grand children. The accused harboured a suspicion that his wife was having an illicit relationship with the son-in-law. The said suspicion got aggravated and intensified due to non-cooperation of the wife to satisfy his lustful hunger for sex. The uncontrolled sensual desire was further

inflamed by the seed of suspicion that he himself had planted in his heart and nurtured relentlessly in his mind. The ablaze of anger led him, in the early hours of 23.12.2002, to pour petrol and set his wife on fire. The horrendous act resulted in the tragic incident. She suffered 92% burn injuries and was taken to Jubilee Mission Hospital, Thrissur about 3.40 a.m. on that day where she succumbed to the injuries at 2.15 p.m. on 24.12.2002.

3. It is worthy to mention here that after the incident, the accused surrendered at Thrissur Town West Police station in the early morning of 23.12.2002 and narrated the incident to the police. The Thrissur Town West Police Station informed the incident to Anthikkad Police Station. The Head Constable of Anthikkad Police Station went to the Jubilee Mission Hospital and there the dying declaration, Ext. P-3, of the deceased was recorded by the doctor, PW-1, working in the Jubilee Mission Hospital. Initially, the daughter of the deceased, PW-3, had lodged an FIR, Ext.P-14, and a crime was registered by the ASI for the offence punishable under Section 307 IPC and the

allegation was that the accused had attempted to commit the murder of his wife as well as that of his grand child. The said crime was registered by the Assistant Sub-Inspector, PW-15. Later on, after the death of the deceased, Section 302 IPC was added as per the report contained in Ext.P-16. The accused was arrested on 24.12.2002. The initial Investigating Officer prepared the scene mahazar, conducted the inquest and prepared the report, recorded the statement of the witnesses and, thereafter, his successor-in-office, PW-17, completed the investigation and placed the charge sheet before the Judicial First Class Magistrate, Court II, Thrissur, who committed the case for trial to the Court of Session. It was eventually tried by the learned III Additional Sessions Judge (Ad hoc) Fast Track Court No. I, Thrissur.

4. The accused pleaded innocence and claimed to be tried.

5. The prosecution examined 18 witnesses and brought Exhibits P-1 to P-23 on record. Material objects MO-1 to MO-5 were marked at the instance of the

prosecution. The accused, in his examination under Section 313 of Code of Criminal Procedure (for short 'The Code'), denying the circumstances against him filed a statement stating that the burn injuries on his wife were caused by an accident. His version was that his wife used to sleep, keeping a burning kerosene lamp by her side, and on the fateful day, she accidentally received burn injuries from the said lamp. When the accused attempted to save her life and take her to the hospital, his son-in-law drove him away and later when he was on his way to the hospital, he was arrested by the police.

6. The learned trial Judge, after considering the rivalised submissions and appreciating the evidence brought on record, found that the appellant was guilty of the offences punishable under Sections 302 and 307 IPC and sentenced him as has been mentioned earlier.

7. The High Court, analysing the evidence on record, considering the reliability of Ext. P-3, the dying declaration of the deceased, that has been recorded by PW-1, the doctor, taking note of the motive behind the crime, appreciating the conduct of the accused at

the time of the crime, scanning the testimony of the daughters of the deceased and weighing the strained relationship between the accused and the deceased and the other circumstances, found that the accused was guilty under Section 302 of IPC and, accordingly, it affirmed the conviction under Section 302 of IPC but acquitted him of the offence under Section 307 IPC on the ground that there was no evidence on record to prove his attempt to commit the murder of his grand child.

8. Mr. Kamal Mohan Gupta, learned amicus curiae, has submitted that the whole case is based on suspicion and there is no concrete evidence to implicate the accused in the crime in question. It is urged by him that there has been collusion between the son-in-law and the daughter to rope him in the crime and hence, the concurrent findings should be treated as perverse and the judgment of conviction should be set aside. It is also contended by Mr. Gupta that the dying declaration could not have been placed reliance upon, regard being had to the nature of burn injuries and further the circumstances have been

given undue weightage by the trial Court as well as the High Court which they do not deserve.

9. Per contra, Mr. Jogy Scaria, learned counsel appearing for the State, submitted that the Courts below have microscopically analyzed the evidence on record and nothing has brought on record to discard the testimony of the witnesses treating them as untrustworthy. He has placed heavy reliance on the dying declaration and the other circumstances including the conduct of the accused.

10. First, we shall consider whether the dying declaration recorded by the doctor should be accepted or it is so improbable that it deserves to be thrown overboard. The dying declaration was recorded by PW-1 at 8.15 A.M. on 23.12.2012 when the deceased was in the ICU in the Burns Ward. The doctor, a plastic surgeon, has signed the dying declaration, Ext. P-3. In the dying declaration, the deceased had stated that on the date of the incident, there was a quarrel between her and her husband alleging that the deceased was having illicit relationship with her son-in-law and he had threatened to kill her. She had clearly stated

that her husband was running away and it is he who might have set fire on her. The concerned doctor, in his cross-examination, has stood embedded in his stand that the state of mind of the injured was absolutely clear and she was speaking fluently. She had denied the suggestion of the defence that because of the 92% of the burn injuries, the patient may not be conscious. It is not disputed that the doctor had not endorsed about the condition of the declarant of the dying declaration. In this context, we may refer with profit to the decision in ***Laxman v. State of Maharashtra***[1] wherein the Constitution Bench, while dealing with the concept of dying declaration, the fitness of mind and the necessity of endorsement by Doctor, has stated thus: -

> "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 courts 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

[1] (2002) 6 SCC 710

> guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable."

11. In ***Babu Lal and others v. State of Madhya Pradesh[2],*** while dealing with the value of dying declaration in evidence, this Court has observed thus:-

> "A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his maker with a lie in his mouth" (*Nemo moriturus praesumitur mentire*). Mathew Arnold said, "truth sits on the lips of dying man". The general principle on which the species of evidence is admitted is that they are

[2] AIR 2004 SC 846

> declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

In the case at hand, the deceased was taken to the hospital with 92% burn injuries. Learned counsel for the appellant would submit that a person with 92% burn injuries could not have been in a proper state of mind. On a perusal of the evidence on record, it is manifest that PW-1 has clearly stated that he had recorded the dying declaration, Ext. P-2 at 8.15 P.M. 23.12.2012. It has come out in the evidence that the deceased was conscious and her mind was well-oriented. Other witnesses have also deposed that she was in a fit state of mind. The medical report produced by the Jubilee Mission Hospital also reflects that she was conscious and oriented. She was given a pain killer injection. That apart, there cannot be any thumb rule that a person sustaining a particular percentage of burn injuries would not be in a position to give any declaration. Recently, in ***State of***

Madhya Pradesh v. Dal Singh & Ors., in Criminal Appeal No. 2303 of 2009, this Court while dealing with burn injuries, has expressed thus:-

> "20. Burn injuries are normally classified into three degrees. The first is characterised by the reddening and blistering of the skin alone; the second is characterised by the charring and destruction of the full thickness of the skin; and the third is characterised by the charring of tissues beneath skin, e.g. of the fat, muscles and bone. If a burn is of a distinctive shape, a corresponding hot object may be identified as having been applied to the skin, and thus the abrasions will have distinctive patterns.
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> 21. There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract, can follow due to the inhalation of smoke. (See: Modi's Medical Jursprudence and Toxicology by Lexis Nexis Butterworths Chapter 20)."

12. We have referred to the aforesaid dictum only to show various types and natures of burn injuries. The ample of evidence on record indicate that the deceased was conscious and hence, we are inclined to accept the dying declaration which would reveal the cruel treatment meted out by the husband to the wife, the suspicion harboured by him and the threats given. True it is, she had stated that she had suspected that her husband might have set her ablaze but to prove the said aspect, there are numerous circumstances which the trial Judge as well as the High Court has taken into consideration. The circumstances which lead singularly to the guilt of the accused are that the accused was sleeping in the bed room on the eastern side of the room where she was sleeping and it was a small house; that the bed room was not having any shutters; that PW-3 woke up on hearing the cries of the deceased; that the accused had purchased petrol from the petrol pump belonging to PW-5 in a bottle; that Ext. P-15, Chemical Analysis Report, has clearly mentioned that kerosene was not detected in any of the material objects sent for chemical analysis; that the accused

was seen running away from the house by PW-3 and PW-7; that it has been clearly deposed by PW-3, the daughter, that the father used to demand that mother should sleep with him, but she could not oblige him; and that he had threatened to kill her. The elder daughter has deposed that the father was doubting the husband of PW-3 to have illicit relationship with the mother. She had also deposed that the mother was 52 years of age and was infirm and not in a position to cater to the desire of her husband. All these circumstances appreciated in the context of the dying declaration clearly establish the involvement of the accused in causing burn injuries on the deceased.

13. Quite apart from above, the conduct of the accused is also worth noting. After escaping from the house, he had surrendered at the police station. In his statement under Section 313, Crl. P.C., he has stated that he tried to save his wife, but no burn injuries were found on his body. Though he had taken the plea of accidental fire, yet it has clearly established by the medical evidence that the possibility of causing burn injuries from a small

kerosene lamp is impossible. Therefore, it is evident that the accused has given false statement.

14. Thus, the cumulative effect of the evidence clearly proves the guilt of the accused and the chain of circumstances exclusively leads towards him and none else. The obsession with the inferior endowments of nature made him to do a totally insensible act and ultimately, the addiction with the insatiated desire drove him to become frentic and frenzied to commit the crime. The lust led him to burn his wife and the result is the commission of offence for murder and the conviction and sentence of rigorous imprisonment for life which has been imposed by the learned trial Judge and affirmed by the High Court. The concurrence by the High Court deserves acceptation and we do so.

15. Consequently, the appeal, being devoid of merit, stands dismissed.

.....J.
[Dr. B.S. Chauhan]

.....J.
[Dipak Misra]

New Delhi;

May 22, 2013.