P. Mani vs State Of Tamil Nadu on 24 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1319, 2006 (3) SCC 161, 2006 AIR SCW 1053, 2007 CRI LJ (NOC) 179, 2006 (2) AIR JHAR R 292, 2006 (1) CALCRILR 574, 2006 ALL MR(CRI) 1184, 2006 (2) SCC(CRI) 36, 2006 CALCRILR 1 574, (2006) 3 CTC 193 (SC), (2006) 2 SCALE 482, (2006) 40 ALLINDCAS 727 (SC), 2006 (4) SRJ 523, (2006) ILR (KANT) 2401, (2006) 1 DMC 471, (2006) 2 ALLCRILR 561, (2006) 3 ICC 162, (2006) 2 ALLCRIR 1204, (2006) 2 SUPREME 415, (2006) 2 EASTCRIC 138, (2006) 33 OCR 761, (2006) 2 PAT LJR 213, (2006) 2 RECCRIR 159, (2006) 4 SCJ 783, (2006) 4 CURCRIR 241, (2006) 2 JLJR 256, (2006) 55 ALLCRIC 284, (2006) 2 CRIMES 9, (2006) 1 ORISSA LR 610, (2006) 1 GCD 605 (SC), (2006) 1 HINDULR 739, (2006) 1 MAD LJ(CRI) 323, (2006) SC CR R 487, 2006 CHANDLR(CIV&CRI) 390, 2006 (2) ANDHLT(CRI) 217 SC, (2006) 2 ANDHLT(CRI) 217

Bench: S.B. Sinha, P.P. Naolekar

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           CASE NO.:
Appeal (crl.)  1081 of 2005

PETITIONER:
P. MANI

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
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JUDGMENT S.B. SINHA, J. 1.

The appellant was convicted on a charge of commission of an offence under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also a fine of Rs. 5000 by a judgment and order dated 10-01-2001 passed by Additional Sessions Court Kanyakumari District at Nagercoil in S.C. No. 183 of 1999.

2. The deceased was the wife of the Appellant. They were not in good terms. The deceased nurtured grudge against him in the belief that the Appellant was having affairs with another woman (PW-12) who is wife of his elder brother (PW-11). On 4-10-1998 at 10.45 a.m. some children had been witnessing television in the house of the Appellant. They came out therefrom stating that the

deceased had asked them to go out of the house and bolted the door from inside, upon hearing the same PWs 1, 2 and the Appellant herein went back and broke open the door. Allegedly, the Appellant had poured kerosene on her and set fire to the deceased.

3. It is not in dispute that the door of the room was broken open. The said witnesses as also PWs 3 to 6 saw the deceased in flames. The fire was extinguished and she was taken to the government hospital. It is moreover not in dispute that the Appellant took her to the hospital along with other witnesses. They reached hospital at about 11.15 a.m. A dying declaration was recorded by a judicial Magistrate between the period 12.25 p.m. and 12.45 p.m. in the presence of a doctor (PW-15). A Head Constable (PW-23), in-change of Kulachal Police Station in the meantime received information about the said incident whereupon he arrived at the hospital recorded the statement of the deceased again from 14.15 p.m. to 14.45 p.m. on the basis whereof the First Information Report was lodged. A case under Section 307 of the Indian Penal Code (Code) was registered against the Appellant. In Column No. 7 of the said First Information Report the name of the Appellant was shown as accused. The Investigating Officer (PW-24) on 5-10-1998 made seizure of kerosene can, matchstick, iron bolt etc. She died in the government hospital at about 11.15 a.m. on 9-10-1998, whereafter the charge in the F.I.R. was altered to Section 302 of the Code. The Appellant was arrested in connection with the said case on 21-10-1998.

4. The Appellant was put on trial, a charge-sheet having been filed for commission of an offence under Section 302 of the Code. It is not in dispute that before the learned Sessions Judge, Kanyakumari District at Nagercoil in whose court the case was transferred for disposal, all the material witnesses turned hostile. The defence case was that she committed suicide as after undergoing a Histectomy operation, she suffered hormonal unbalance leading to mental stress and strain. She was said to have been not only suffering from mental illness and unsoundness of mind but also from depression. The son and daughter of the deceased categorically stated that the deceased had been suffering from mental illness and had made attempts to commit suicide by pouring kerosene and setting fire on her person on an earlier occasion but the same was prevented by PW-9.

5. The learned Sessions Judge convicted the Appellant relying only upon the dying declaration made by the deceased. The High Court on appeal preferred by the Appellant herein from the said judgment and order of conviction and sentence upheld the same inter alia holding that the dying declaration made by the deceased is reliable. The High Court moreover took into consideration also the circumstances that the Appellant had absconded from the place of occurrence from 4-10-1998 to 21.10.98. The learned court opined that it was for the Appellant herein to offer some explanation in terms of Section 106 of the Evidence Act as the occurrence took place inside a room and the Appellant was present therein. Only because the deceased had undergone Histectomy operation, the court was of the view, the same would not mean that she would lose her mental balance.

6. Mr. V.J. Francis, learned counsel appearing on behalf of the Appellant, would, inter alia, submit that the dying declarations were not reliable in view of the fact that the deceased died five days thereafter. The learned counsel also pointed out certain discrepancies in the two dying declarations. It was argued that in view of the fact that the witnesses did not support the prosecution case, the

learned Sessions judge as also the High Court acted illegally in passing the judgment and order of conviction and sentence.

7. Mr. Subramonium Prasad, learned counsel appearing on behalf of the State, on the other hand, would argue that keeping in view of the fact that the dying declaration was made by the deceased shortly after she was brought to the hospital before the Magistrate, the High Court cannot be said to have committed an error in placing reliance thereupon. It was also submitted that although motive for commission of the offence could not be proved, the conviction and sentence can be upheld on the basis of the said dying declarations alone. Our attention has also ben drawn to the conduct of the Appellant.

8. There are certain striking features in this case. All the prosecution witnesses in unison stated that the children who were witnessing television came out the room saying that the deceased had bolted the same from inside. PW-1 Kumaradas and PW-2 Saravanadas have been engaged in the work of soaking coconut husk. They categorically stated that they together with the Appellant forced open the door and doused fire. Their neighbours, PWs 3 to 6, also made identical statements. It is furthermore not in doubt or dispute that the room had two doors and both were found to have ben locked from inside. The Investigating Officer admittedly stated that at the place of occurrence neither a gas stove nor a kerosene stove nor firewood was found. He had seized the bolt from inside the house in a molten condition. There were only two entrances in the front and back of the house.

9. The High Court, however, did not pay much credence to the said statements of the Investigating Officer and other witnesses inter alia on the ground that the burden of proof thereof lies upon the Appellant in terms of Section 106 of the Evidence Act as also, in view of the fact that the Appellant did not suffer any burn injury.

10. We do not agree with the High Court. In a criminal case, it was for the prosecution to prove the involvement of an accused beyond all reasonable doubt. It was not a case where both, husband and wife, were last seen together inside a room. The incident might have taken place in a room but the prosecution itself has brought out evidences to the effect that the children who had been witnessing television were asked to go out by the deceased and then she bolted the room from inside. As they saw smoke coming out from the room, they rushed towards the same and broke open the door. Section 106 of the Evidence Act, to which reference was made by the High Court in the aforementioned situation, cannot be said to have any application whatsoever.

11. The High Court furthermore commented upon the conduct of the Appellant in evading arrest from 4.10.1998 to 21.10.1998. The Investigating Officer did not say so. He did not place any material to show that the Appellant had ben adsconding during the said record. He furthermore did not place any material on records that the Appellant could not be arrested despite attempts having ben made therefore. Why despite the fact, the Appellant who had been shown to be an accused in the First Information Report recorded by himself was not arrested is a matter which was required to be explained by the Investigating Officer. He admittedly visited the place of occurrence and seized certain material objects. The Investigating Officer did not say that he made any attempt to arrest the Appellant or for that matter he had ben evading the same. He also failed and/or neglected to make

any statement or bring on record any material to show as to what attempts had been made by him to arrest the Appellant. No evidence furthermore has been brought by the prosecution to show as to since when the Appellant made himself unavailable for arrest and/or absconding.

12. Absence of injury on the person of accused had been found by the High Court to be one of the grounds for believing the prosecution case. All the prosecution witnesses categorically stated that the fire was doused by pouring water. In that situation, no wonder, the Appellant did not suffer any burn injury. It is not the case of the prosecution that in fact any other person had suffered any burn injury in the process of putting out the fire. The incident admittedly took place inside a small room. It had two doors. The prosecution witnesses knocked both the doors. Their call to the deceased to open the door remained unanswered and only then they took recourse to breaking open the door. According to them, not only the Appellant herein was with them at that point of time, but also he took part in dousing the flames. Indisputably, he took the deceased to the hospital. If the version of the deceased in her dying declaration is accepted as correct, the witnesses and in particular the neighbours would have lodged a First Information Report and in any event, would not have permitted the Appellant to take her to the hospital.

13. The question is as to whether in the aforementioned situation reliance should be placed on the dying declaration. The son and daughter of the deceased categorically stated that she had ben suffering from depression and she had made an attempt to commit suicide a week prior to the date of occurrence. It is the positive case of the prosecution itself that she was not keeping good relation with the Appellant on the belief that he had an affair with another lady. The same admittedly has not been proved. If she had ben labouring under a false belief and if in fact she has ben suffering from depression for whatever reasons, the possibility of her making wrong statement before the Magistrate cannot be ruled out. In any event, the materials brought on records do not support the prosecution case, but support the defence.

14. Indisputably conviction can be recorded on the basis of dying declaration alone but therefore the same must be wholly reliable. In a case where suspicion can be raised as regard 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 records suggests that such dying declaration does not reveal the entire truth, it may 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 impeceable character would depend upon several factors; physical and mental condition of the deceased is one of them. In this case the circumstances which have ben brought on records clearly point out that what might have been stated in the dying declaration may not be correct. If the deceased had ben nurturing a grudge against her husband for a long time, she while committing suicide herself may try to implicate him so as to make his life miserable. In the present case where the Appellant has ben charged under Section 302 of the Indian Penal Code, the presumption in terms of Section 113A of the Evidence Act is not available. In absence of such a presumption, the conviction and sentence of the accused must be based on cogent and reliable evidence brought on record by the prosecution. In this case, we find that the evidences are not such which point out only to the guilt of the accused.

15. We are, therefore, of the opinion that it is a fit case where the ``Appellant is entitled to the benefit of doubt.'' He shall be released to with if not required in any other case. ``The impugned judgments are set aside. The appeal is accordingly allowed.''