



Crl.A.(MD) No.698 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	27.04.2026
Pronounced On	:	01.06.2026

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No. 698 of 2023

M.Vigneshwaran

... Appellant/ Sole Accused

Vs.

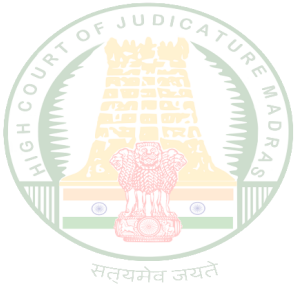
The State rep by its,
 The Inspector of Police,
 Sivakasi Town Police Station,
 Virudhunagar District.
 (In Crime No.66 of 2021)

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records in Spl.S.C.No.23 of 2021 on the file of the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Srivilliputhur and set aside the conviction passed in the judgment dated 27.03.2023.

For Appellant : Mr. Gopalakrishna Laxmana Raju
 Senior Counsel assisted by
 Mr.S.G.L.Rishwanta

For Respondent : Mr.A.Thiruvadikumar
 Additional Public Prosecutor

**JUDGMENT**

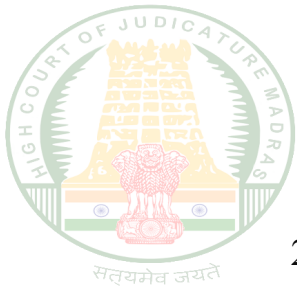
WEB COPY

The sole accused appellant in Spl.S.C.No.23 of 2021 on the file of the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Srivilliputhur, dated 27.03.2023 has filed this appeal, challenging the conviction and sentence imposed against him on 27.03.2023 wherein, he was convicted as follows:

<i>Sl. No</i>	<i>Offences under Sections</i>	<i>Punishment</i>	<i>Fine</i>
1	363 of IPC	Three Years of Rigorous Imprisonment	Rs.5,000/- in default to undergo simple imprisonment of three months
2	6 of POCSO Act	Rigorous Imprisonment for the remainder of natural life	Rs.5,000/- in default to undergo 1 years of rigorous imprisonment

2. The brief facts of the case:

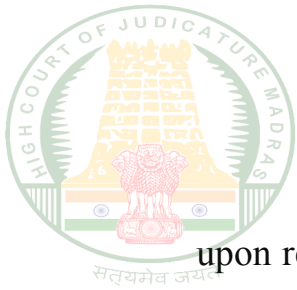
The sole accused in Special Sessions Case No. 23 of 2021, on the file of the learned Special Judge for Exclusive Trial of Cases under the POCSO Act, Srivilliputhur, Virudhunagar District, has preferred the present appeal challenging the conviction and sentence imposed by judgment dated 27.03.2023.



WEB COPY

2.1.The prosecution case, in brief, is that the victim girl, aged about 17 years at the relevant time, developed friendship with the accused through mobile communication. It is alleged that the accused lured her to a secluded place and committed penetrative sexual assault. During the occurrence, the accused clandestinely recorded the act without the knowledge or consent of the victim and subsequently transmitted the same to her, and also criminally intimidated her, Unable to bear the alleged acts and threats, the victim girl attempted self-immolation, sustaining severe burn injuries. Upon admission in the hospital, intimation was sent both to the jurisdictional police and to the Judicial Magistrate for recording her statement. At about 3:45 p.m., the Judicial Magistrate commenced recording the dying declaration of the victim. Prior thereto, the Sub-Inspector of Police, attached to the jurisdictional police station, who had received the intimation from the hospital, recorded her statement. After completion of the Magistrate's dying declaration, the Sub-Inspector returned to the police station and registered a case in Crime No.66 of 2021.

2.2.The investigation was thereafter taken up by the Inspector of Police, who visited the scene of occurrence, prepared the observation mahazar and rough sketch, and examined witnesses. At about 7:45 p.m.,

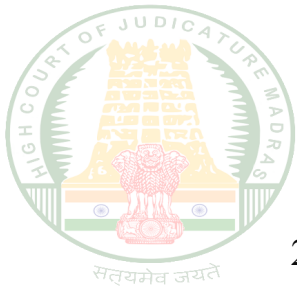


CrI.A.(MD) No.698 of 2023

upon receipt of intimation regarding the death of the victim, the offence was altered to graver charges. Subsequently, the accused was arrested on 06.02.2021. Pursuant to his voluntary confession, a mobile phone was recovered, and the place of occurrence was identified in the presence of the Village Administrative Officer.

2.3.The Investigating Officer completed the investigation by collecting medical records, forensic reports relating to the mobile devices, and opinion regarding the potency of the accused, and thereafter filed the final report before the Special Court.

2.4.The learned trial Court, after complying with the requirement under Section 207 Cr.P.C., framed charges against the accused. The accused pleaded not guilty and claimed trial. The prosecution examined PWs 1 to 13, marked Exhibits P1 to P23, and produced Material Objects 1 to 6. Court Exhibits C1 and C2 were also marked. The accused was examined under Section 313 Cr.P.C., wherein he denied the incriminating circumstances. No evidence was adduced on the defence side.



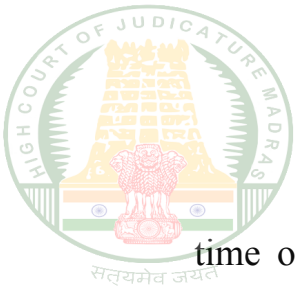
2.5. Upon appreciation of the evidence, the trial Court convicted the accused for offences under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012, and Section 363 IPC, and sentenced him to undergo imprisonment for the remainder of his natural life under Section 6 of the POCSO Act, along with other sentences. However, the accused was acquitted of the charges under Sections 66E and 67B of the Information Technology Act, 2000.

Aggrieved by the said conviction and sentence, the present appeal has been filed.

3.Submission of the learned counsel appearing for the appellant:

Learned Senior Counsel appearing for the appellant would submit that the prosecution case rests substantially on the dying declaration recorded by the learned Judicial Magistrate. It is contended that the said dying declaration was recorded when the victim had sustained extensive burn injuries, stated to be of second-degree severity, and therefore she was not in a fit state of mind to make a voluntary and reliable statement.

3.1. It is further submitted that, in the absence of cogent evidence establishing that the victim was in a conscious and fit mental condition at the



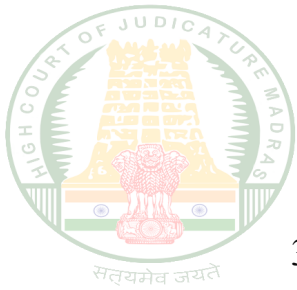
CrI.A.(MD) No.698 of 2023

time of recording the dying declaration, the same cannot be relied upon.

According to the learned Senior Counsel, the dying declaration is shrouded by suspicious circumstances and is liable to be rejected on the ground of possible tutoring.

3.2.Elaborating further, it is submitted that the occurrence allegedly took place around 2:00 p.m., and the victim succumbed to injuries at about 6:00 p.m. The dying declaration came to be recorded at about 3:45 p.m. In the interregnum, prior to the arrival of the Judicial Magistrate, the Sub-Inspector of Police had already recorded a statement from the victim. This, according to the learned Senior Counsel, creates a reasonable possibility of tutoring, thereby rendering both the statement recorded by the police and the subsequent dying declaration unreliable.

3.3.It is also contended that the medical evidence does not support the prosecution case, as the doctor, during cross-examination, has stated that a person with such burn injuries would generally not be in a position to give a coherent statement. Therefore, the victim cannot be said to have been in a fit state of mind at the relevant point of time.



3.4. On the above premises, it is argued that the conviction of the appellant for grave offences, based solely on the dying declaration, is not legally sustainable.

3.5. The learned Senior Counsel further submitted that the trial Court, having acquitted the accused of the charges under Sections 66E and 67B of the Information Technology Act, cannot, on the same set of evidence, record conviction under the remaining provisions. It is particularly contended that the charge relating to abetment of suicide is not made out in the absence of reliable and admissible evidence.

3.6. It is also argued that reliance on selective portions of the dying declaration to record conviction is impermissible, especially when the declaration itself is doubtful and lacks credibility.

4. Submissions of the learned Additional Public Prosecutor:

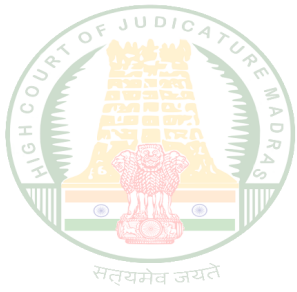
Per contra, the learned counsel appearing for the State would submit that there is no legal bar to base a conviction solely on a dying declaration, if it inspires confidence and is found to be voluntary and truthful. It is contended that, in the present case, there is no material to show that the



victim was subjected to tutoring prior to the recording of the dying declaration.

4.1. According to the learned Additional Public Prosecutor, the sequence of events clearly establishes that the dying declaration was recorded in a transparent manner, and therefore there is no reason to disbelieve the same. It is further submitted that the acquittal of the accused under certain provisions of the Information Technology Act does not preclude the Court convicting the accused under other offences, if the evidence on record so justifies.

4.2. Anent the finding of the trial Court on the inadmissibility of electronic evidence for want of a certificate under Section 65B of the Indian Evidence Act, it is submitted that the said finding is erroneous. Placing reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court, it is contended that where the original electronic device itself is seized and produced, the requirement of a Section 65B certificate may not arise. However, in the absence of an appeal by the State against acquittal on those counts, the said finding need not be interfered with, except to the limited extent of appreciating corroborative circumstances.



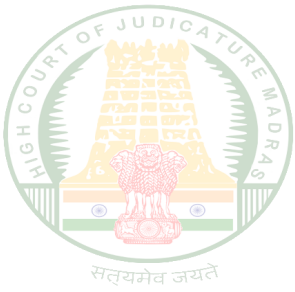
WEB COPY

4.3.Finally, the learned Additional Public Prosecutor would submit that the victim was subjected to penetrative sexual assault, criminal intimidation, and circulation of objectionable material, which cumulatively drove her to commit self-immolation. The circumstances disclose grave cruelty and a direct nexus between the acts of the accused and the death of the victim. Hence, the learned Additional Public Prosecutor prayed that the conviction and sentence imposed by the trial Court be confirmed.

5.This Court considered the rival submissions made by the learned Senior Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record and the relevant precedents governing the issues raised in the present appeal.

6.Points for determination:

- (i) whether the prosecution has proved the charges framed against the accused beyond reasonable doubt?
- (ii) whether the sentence of life imprisonment till the natural death imposed by the trial Court is justified in law?

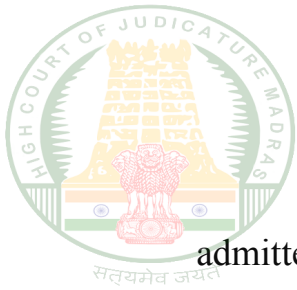


WEB COPY 7.Principles relating to the dying declaration:

Under Section 32(1) of the Evidence Act, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence and Section 32(1) of the Evidence Act is an exception to the general rule contained Section 60 of the Indian Evidence Act that hearsay evidence is inadmissible and evidence should be direct and is validated through the cross examination. The Hon'ble Supreme Court in the case of Nallapati Sivaiah vs. SDO reported in 2007(15) SCC 465 placed reliance on the following portion of the **Woodroffe and Amir Ali**, in their Treatise on Evidence Act state:

“when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with”.

7.1.One of the cardinal principle is that a dying declaration, being a statement as to the cause of death or the circumstances leading thereto, is

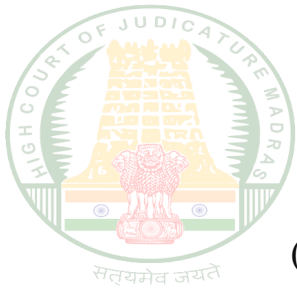


admitted on the settled premise that a person at the brink of death is unlikely to speak lies and the same was considered by the Hon'ble Supreme Court in the following cases:

<i>Nallapati Sivaiah v. SDO, (2007) 15 SCC 465</i>	<i>Kamal Khudal v. State of Assam, (2022) 20 SCC 654</i>
There is a historical and a literary basis for recognition of dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of Shakespearian origin. In <i>The Life and Death of King John</i> , Shakespeare had made Lord Melun utter “Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, ... lose the use of all deceit” and asked, “ <i>Why should I then be false, since it is true that I must die here and live hence by truth?</i> ” William Shakespeare, <i>The Life and Death of King John</i> , Act 5, Scene 4, lines 22-29	24. “ <i>Truth sits upon the lips of a dying man.</i> ” — Matthew Arnold The whole idea of accepting a statement in the name of dying declaration comes from a maxim “ <i>nemo moriturus praesumitur mentire</i> ” which means that a man will not meet his maker with a lie in his mouth. It is believed that when a man is at the point of death and when every expectation of this world is gone, it hushes away every motive of lie.

7.2. Therefore, A dying declaration, as contemplated under Section 32(1) of the Indian Evidence Act, constitutes a statement made by a person as to the cause of his death or the circumstances resulting in his death. The underlying jurisprudential basis rests on the maxim *nemo moriturus praesumitur mentiri*—a person on the verge of death is not presumed to lie and to rely the same, this Court recapitulate the following governing principles laid down by the Honourable Supreme Court:

(i) In the case of ***Khushal Rao vs. State of Bombay*** reported in ***AIR 1958 SC 22***



(ii) In the case of ***Gopalsingh vs. State of M.P.***, reported in **(1972) 3**

WEB COPY **SCC 268**

(iii) In the case of ***Nallapati Sivaiah vs. SDO*** reported in **2007 15 SCC**

465

(iv) In the case of ***Panneerselvam vs. State of T.N.***, reported in **2008**

17 SCC 190

(v) In the case of ***Atbir v Govt (NCT of Delhi)*** reported in **(2010) 9**

SCC 1

(vi) In the case of ***Kamal Khudal vs. State of Assam*** reported in

(2022) 20 SCC 654

(vii) In the case of ***Kundula Bala Subrahmanyam vs. State of A.P.***,

reported in **(1993) 2 SCC 684**

(viii) In the case of ***Jagbir Singh vs. State (NCT of Delhi)*** reported in

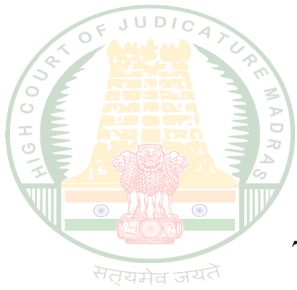
2019 8 SCC 779

(ix) In the case of ***Uttam vs. State of Maharashtra*** reported in **(2022)**

8 SCC 576

(x) In the case of ***Lakhan vs. State of M.P.***, reported in **(2010) 8 SCC**

514



WEB COPY

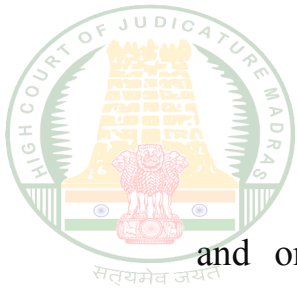
7.3.To render the conviction on the basis of the dying declaration, this court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures.

(i)The evidentiary value of a dying declaration, whether oral or written, is to be assessed by the Court in the light of the facts and circumstances of each case. A truthful and voluntary dying declaration can form the sole basis for conviction without the necessity of corroboration.

(ii)Where the Court entertains any doubt as to the voluntariness, truthfulness, or mental fitness of the declarant, or where the declaration suffers from infirmities, it is prudent to seek corroboration.

(iii)A dying declaration recorded by a Judicial Magistrate stands on a higher evidentiary footing, owing to the presumption of procedural sanctity and absence of external influence.

(iv)There is no legal prohibition against a dying declaration being recorded by a police officer; however, such a declaration requires careful scrutiny, particularly with respect to the absence of tutoring or prompting,



and ordinarily necessitates proof of the declarant's fit state of mind, preferably through medical certification.

(v) Minor inconsistencies or absence of elaborate details do not render a dying declaration unreliable, so long as the substratum of the prosecution case is clearly reflected.

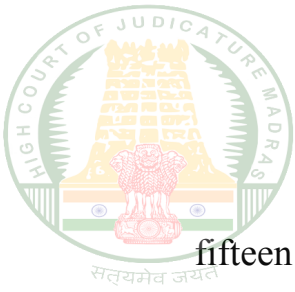
(vi) A brief statement, if it unambiguously attributes the cause of death to the role played by the accused, is sufficient in law.

(vii) In cases involving multiple dying declarations, the Court must examine whether they are consistent and trustworthy; even in cases of variance, the declaration that inspires confidence and appears to be voluntary and truthful can be relied upon.

7.4. Applying the above settled principles, this Court now proceeds to examine the evidentiary worth of the dying declarations in the factual matrix of the present case.

7.5. Applying these settled principles, this Court proceeds to examine the case on hand.

8. On a careful scrutiny of the prosecution case, it emerges that, about



Crl.A.(MD) No.698 of 2023

fifteen days prior to 05.02.2021, the victim received messages and video images from the appellant through his mobile phone bearing No. 63694860480, while the victim was using mobile phone No. 6383272905. The appellant thereafter developed acquaintance with the victim, made promises to her, and persuaded her to meet him.

9. On several occasions, the appellant engaged the victim in conversation at secluded places. Ultimately, he is said to have taken the victim to a lonely place situated on the southern side of Garuman Temple near Sindusaapram, in the vicinity of Sivakasi. At the said place, despite resistance from the victim girl, the appellant removed her clothes and, under the pretext of marrying her, committed penetrative sexual assault upon the victim and, thereafter, without her knowledge or consent, recorded the incident. The said material was subsequently transmitted through social media and also sent to the victim. The appellant thereafter refused to marry the victim and subjected her to criminal intimidation, threatening to further circulate the said material. He is also instigated the victim to end her life.

10. On account of such continuous harassment, humiliation, intimidation and instigation to end her life, the victim, in a state of extreme



distress, committed self-immolation in her house during the absence of her parents. The incident was noticed by the neighbours, and she was immediately admitted to the hospital.

11.Upon her admission at about 2:30 p.m., the attending doctor intimated both the jurisdictional police and the learned Judicial Magistrate. The Sub-Inspector of Police (P.W.12) reached the hospital and commenced recording the statement of the victim at about 3:15 p.m. In the meantime, the learned Judicial Magistrate arrived to record the dying declaration. Consequently, the police officer discontinued the recording. After the learned Judicial Magistrate started the recording at 03.40 pm., and completed recording the dying declaration at 4:05 p.m., the Sub-Inspector resumed the recording and completed the recording of the victim's statement at about 4:15 p.m., and thereafter registered a case in Crime No. 66 of 2021. Subsequently, the Inspector of Police (P.W.13) took up the investigation and, upon receipt of death intimation at about 7:40 p.m., altered the sections of law under Ex.P24.

12.In the present case, the prosecution primarily rests upon the dying declaration recorded by the learned Judicial Magistrate, marked as Ex.P19.

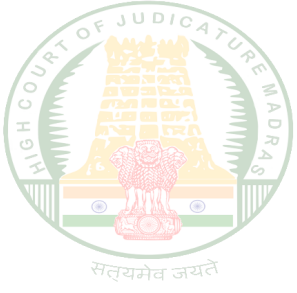


The learned Judicial Magistrate was examined as P.W.11, who has clearly deposited regarding the manner in which the dying declaration was recorded and has specifically stated that the victim was conscious, oriented, and in a fit state of mind at the time of making the statement.

13.This Court has perused the dying declaration Ex.P.19 and the same contained the following:

<i>Certificate of the Doctor</i>	<i>Certificate of the Judicial Magistrate</i>
I certify that the patient Karpagavalli is conscious and in a fit state of mind to give dying declaration.	I have asked the patient, Karpagavalli, D/o.Balasubramanian, the above questions and recorded the answers as above, the duty medical officer, Tr.Tirumurugananth, is present with me. I am fully satisfy with the answer of the patient and satisfied that the patient is in a fit state of mind and conscious to give dying declaration on the basis of mu own statement and as certified by doctors. I have asked the staff and attenders of the patient to get out from the born ward

It is evident therefrom that the learned Judicial Magistrate had recorded his satisfaction regarding the mental fitness of the victim prior to recording the statement. Apart from this, the Magistrate had also obtained a medical opinion from the attending doctor certifying that the victim was in a fit condition to give the statement, and the same is reflected in the dying declaration itself.



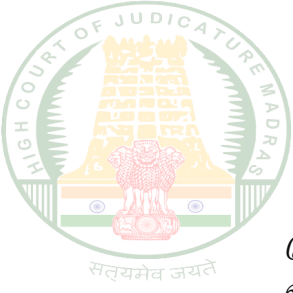
WEB COPY

14.From the sequence of events, it is clear that:

- (i) the learned Judicial Magistrate first ascertained the fitness of the victim;
- (ii) the dying declaration was recorded in the presence of the doctor;
- and
- (iii) the statement of the victim is coherent, consistent, and natural.

15.This Court for better appreciation, extracts the contents of the dying declaration marked under Ex.P19:

ஒரு நாள் என் வாட்ஸ்அப்ல Hi என்று மெசேஜ் வந்துச்சு. யாருனு கேட்டேன். சொல்லல. கொஞ்ச நேரம் கழிச்சு மெசேஜ் வந்துச்சு. நான் விக்கினு சொன்னான். என்னோட போட்டோவ பேஸ்புக், இன்ஸ்டாகிராம், டிக்டாக்ல போட்டுறுவேன்னு சொன்னான். என்னைய பாக்கனும்னு சொன்னான். நான் வேண்டாம்னு சொன்னேன். எதுக்கு என்னைய பாக்கனும்னு சொல்லுறனு கேட்டேன். என்னைய பாக்கனும்னு மட்டும்தான் சொன்னான். கொஞ்ச நாளுக்கு முன்னாடி வீடியோ கால் பண்ண சொன்னான். வீடியோ கால்ல தப்பு பண்ண சொன்னான். அத ரெக்கார்டு பண்ணிட்டான். அதுக்கப்புறம் என்னைய பிளாக்மெயில் பன்னுனான். 2 வாரத்திற்கு முன்னாடி சித்திராஜபுரம் போற வழியில என்ன கெடுத்துட்டான். தப்பு பண்ணினான். அவர் ரெக்கார்டு பண்ணுனதை குருப்பல போட்டுட்டான். என்னைய போன் போட்டு மிரட்டுறான். டெலிட் பண்ண சொன்னேன். கேக்கமாட்டேனுட்டான். எனக்கு போன் போட்டு எங்க அப்பாவ செருப்பால அடிப்பேன்னு சொன்னான். அவனுக்கு வீடியோ கால் பண்ணனும், என்னோட வீட்ல புல்லா காட்டனும். அத அவன் ரெக்கார்டு பண்ணனும், அதான் அவன் ஆசை. அதுக்கு தான் மிரட்டுனான். நான் பயத்துல இப்படி பாத்தும்ல வச்சு மண்ணெண்ணெய ஊத்திக்கிட்டேன். என் போன்ல அவன் பேர V



Crl.A.(MD) No.698 of 2023

WEB COPY

போட்டு பொம்ம படம் போட்டு சேவ பண்ணிருக்கேன். இனியும் என்ன மாதிரி நடக்கக்கூடாது. பெரியவீட்டு பையன்னு சொன்னங்க. கொஞ்சம் தான் ரெக்கார்டு இருக்கு. வீட்டுல பாத்துருவாங்கன்னு இன்னைக்கு டெலிட் பண்ணிட்டேன்.

15.1.It is clear from the above contents of the dying declaration, victim not only narrates the incident cogently but also reflects her mental state arising out of the acts of the appellant. The statement appears to be voluntary and free from any embellishment or artificial implication. She cogently narrated about the penetrative sexual assault, publication of offending material into social media, intimidation to end her life and finally she committed suicide by self immolation. She not only gave dying declaration to the learned Judicial Magistrate and, sub Inspector of Police also recorded the statement of the victim under Ex.P1, which is also cogent and trustworthy.

16.The learned Senior Counsel for the appellant contended that neither the learned Judicial Magistrate nor P.W.12, the Sub-Inspector of Police, had recorded their satisfaction regarding the fitness of the victim to make a statement, particularly in light of the alleged 100% burn injuries sustained by her. It is therefore argued that the dying declaration is unreliable and



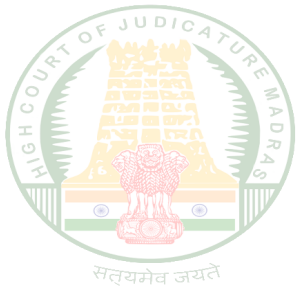
inadmissible.

WEB COPY

17.The Hon'ble Supreme Court reiterated the principle in the following cases that a dying declaration recorded by a competent Magistrate would stand on a higher footing than the declaration recorded by the officer of the lower rank:

<i>Lakhan v. State of M.P., (2010) 8 SCC 514</i>	A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim, however, <i>circumstances showing anything to the contrary should not be there in the facts of the case.</i>
<i>Uttam v. State of Maharashtra, (2022) 8 SCC 576</i>	The credibility of a dying declaration recorded by the Magistrate has also come up for consideration in several cases and it has been held that a Magistrate being an uninterested witness and a respected officer and there being no circumstances or material to suspect that he would have any animus against the accused or would in any way be interested for fabricating a dying declaration, such a declaration recorded by the Magistrate, ought not be doubted.

18.The Hon'ble Supreme Court long back in the year 1988 in the case of ***Nanhau Ram v. State of M.P., 1988 Supp SCC 152*** has held that when the witness who recorded has said that the deceased was in fit state of mind and conscious to make dying declaration, the medical opinion will not prevail and the relevant portion of the judgment is as follows:



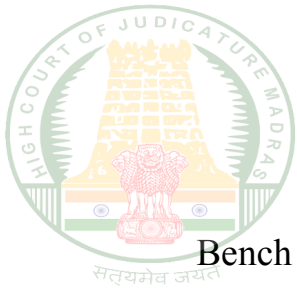
WEB COPY

“Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.”

19.The said view was also reiterated by the Hon'ble Supreme Court in the latest decision in the case of ***Dharmendra Kumar v. State of M.P., (2024) 8 SCC 60*** :

66.As regards the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence.

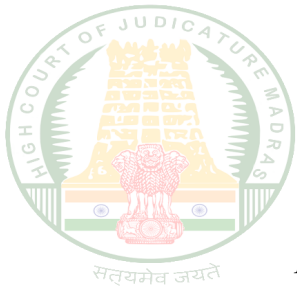
20.Further the issue relating to the requirement of medical certification that injured was in a fit state of mind at the time of making dying declaration by the learned Judicial Magistrate is settled by the Hon'ble Constitution



Bench of Supreme Court negatively in the case of ***Laxman v. State of Maharashtra*** reported in **(2002) 6 SCC 710** and the Hon'ble Constitution

Bench held that there is no requirement of law that there should be always a medical certification that the injured was in a fit state of mind at the time of making a declaration and such certification by the doctor is essentially a rule of caution and even in the absence of such a certification the voluntary and truthful nature of the declaration can be established otherwise and the relevant paragraph of the judgment is as follows:

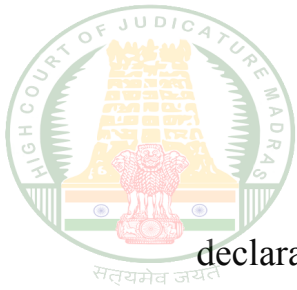
“3. ... The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify 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. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is



WEB COPY

positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

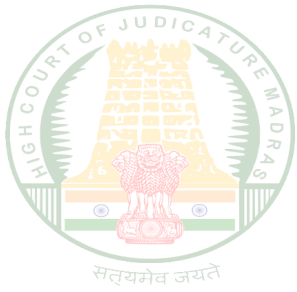
21. On facts, the evidence of the learned Judicial Magistrate (P.W.11) clearly establishes that, before commencing the recording of the dying



declaration, he satisfied himself that the victim was conscious, oriented, and in a fit state of mind to give the statement. The said satisfaction is also recorded in the dying declaration itself. Further, after completion of the recording also the learned Judicial Magistrate has certified that the victim remained conscious and oriented throughout the process.

22. There is no bar to record the dying declaration by the police officers and there is no legal impediment to place reliance on the same to convict the accused without any corroborative material and the said principle was reiterated by the Hon'ble Supreme Court in various judgements including in the case of ***Dharmendra Kumar v. State of M.P.***, reported in **(2024) 8 SCC 60** and the relevant paragraph reads as follows:

“65. Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1)CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an



WEB COPY



exception to sub-section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon. There are a catena of decisions of this Court which lend support to the interplay between the provisions of CrPC and the Evidence Act, as explained above [See : (i) Mukeshbhai Gopalbhai Barot v. State of Gujarat, (2010) 12 SCC 224 : (2011) 1 SCC (Cri) 318; (ii) Sri Bhagwan v. State of U.P., (2013) 12 SCC 137 : (2012) 4 SCC (Cri) 197; (iii) Pradeep Bisoi v. State of Odisha, (2019) 11 SCC 500 : (2019) 4 SCC (Cri) 249] ”

23.P.W.12, the Sub-Inspector of Police, has categorically deposed that the victim was conscious and capable of giving a statement at the time when

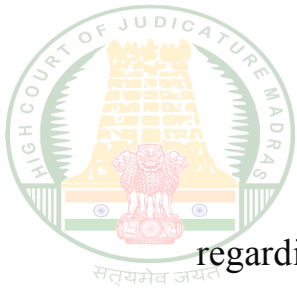


Crl.A.(MD) No.698 of 2023

he initially commenced recording her statement and the statement, namely, complaint was marked as Ex.P1. The medical evidence also lends support to this position. P.W.6, the doctor who attended on the victim, has clearly deposed that the victim was conscious and in a fit condition at the time of giving her statement as well as the dying declaration.

24. Significantly, no contra evidence has been adduced by the defence to establish that the victim was not in a position to make a statement. In the absence of any such material, this Court finds no reason to accept the contention of the learned Senior Counsel. On the legal aspect, the issue is no longer res integra. The Constitution Bench of the Hon'ble Supreme Court in the case of *Laxman v. State of Maharashtra* reported in *[(2002) 6 SCC 710]* has categorically held that a dying declaration recorded by a Judicial Magistrate, upon being satisfied about the mental fitness of the declarant, does not become invalid merely because a separate medical certificate was not obtained. What is essential is that the person recording the declaration must be satisfied about the fitness of the declarant.

25. Therefore, contention that neither the learned Judicial Magistrate nor P.W.12, the Sub-Inspector of Police, had recorded their satisfaction



Crl.A.(MD) No.698 of 2023

regarding the fitness of the victim to make a statement, particularly in light of the alleged 100% burn injuries sustained by her is unreliable and inadmissible, in the considered view of this Court, is liable to be rejected on both factual and legal grounds and this Court holds that the dying declaration in the present case cannot be discarded merely on the ground urged by the appellant. Accordingly, the said contention is rejected.

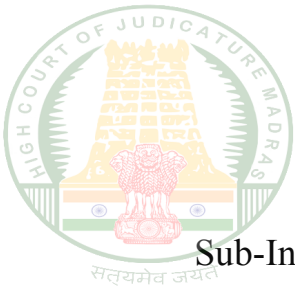
26.The submission of the learned Senior Counsel that, owing to 100% burn injuries, the deceased could not have made a dying declaration without tutoring or without full consciousness is liable to be rejected at the outset. The Honourable Supreme Court has consistently held that the percentage of burn injuries is not determinative of the admissibility or reliability of a dying declaration. Even in cases of extensive, including 100%, burns, a declaration may be accepted if it is established that the declarant was in a conscious and fit state of mind at the time of making the statement. The decisive test is not the extent of the injuries, but whether there is reliable evidence to show that the deceased was mentally fit and capable of making the declaration. Only where there is evidence that the declarant was unconscious or otherwise incapable of making a statement, the dying declaration is liable for rejection. It is further reiterated that, where the record discloses that the declaration



was made in a fit state of mind and is free from infirmities, the mere fact of severe burn injuries does not, by itself, justify its exclusion and the similar submission has been declined by the Hon'ble Supreme Court in the following cases:

<i>Mafabhai Nagarbhai Raval v.State of Gujarat</i> (1992) 4 SCC 69	wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.
<i>State of M.P. v. Dal Singh</i> (2013) 14 SCC 159	Apex court placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.
<i>Vijay Pal v. State (Govt. of NCT of Delhi)</i> , (2015) 4 SCC 749	It is worthy to note that there cannot be an absolute rule that a person who has suffered 80% burn injuries cannot give a dying declaration
<i>Mafabhai Nagarbhai Raval v. State of Gujarat</i> , (1992) 4 SCC 69	wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.”

27.This Court, therefore, finds that the dying declaration inspires confidence. There are no circumstances brought on record by the defence to indicate that the same was the result of tutoring or external influence. On the contrary, the defence has failed to establish any material infirmity or improbability in the said declaration. Further, the evidence of P.W.12, the



Crl.A.(MD) No.698 of 2023

Sub-Inspector of Police, establishes that he initially commenced recording the statement of the victim and, upon arrival of the learned Judicial Magistrate, discontinued the same, and resumed it only after completion of the dying declaration. The statement recorded by P.W.12 also qualifies as a dying declaration in law and substantially corroborates the statement recorded by the learned Judicial Magistrate. There are no material contradictions between the two statements. In both statements, the victim has consistently spoken about the acts of exploitation, intimidation, and harassment at the hands of the appellant. The officers who recorded the statements have no motive to falsely implicate the accused.

28.In such circumstances, this Court finds no reason to disbelieve the dying declarations. The same clearly establish the offences for which the appellant has been convicted. Accordingly, the learned trial Judge was justified in placing reliance on the dying declarations, and this Court finds no reason to interfere with the said finding.

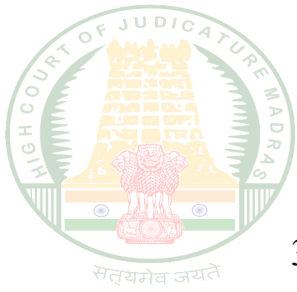
29.The learned Senior Counsel further contended that the registration of the FIR is shrouded in suspicion, inasmuch as P.W.12, who commenced recording the statement of the victim, had discontinued the same upon the



arrival of the learned Judicial Magistrate and thereafter resumed the recording after completion of the dying declaration by the learned Magistrate.

30.This contention also does not merit acceptance. The sequence of events, as borne out by the record, is clear and cogent. The victim was admitted to the hospital on 05.02.2021 at about 2:30 p.m., and intimation was given both to the police and the learned Judicial Magistrate. P.W.12 reached the hospital at about 3:15 p.m. and commenced recording the statement. At about 3:30 p.m., the learned Judicial Magistrate arrived to record the dying declaration. In deference to the Magistrate's authority, P.W. 12 discontinued the recording and stepped aside.

31.The learned Judicial Magistrate completed the recording of the dying declaration at about 4:05 p.m. Thereafter, P.W.12 resumed the recording of the statement and completed it, which formed the basis for registration of the complaint (Ex.P1). Throughout this period, the victim was, as per the consistent evidence of P.W.6 (doctor), conscious and in a fit state of mind.



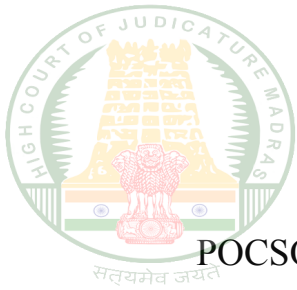
WEB COPY

32.The explanation offered by P.W.12 for the discontinuation and resumption of recording is natural, reasonable, and in accordance with established procedure. Such conduct, far from suspicion, lends assurance to the fairness of the process.

33.Therefore, this Court holds that the manner in which the statement was recorded and the FIR was registered does not in any way affect the credibility of the prosecution case. The contention of the learned Senior Counsel is accordingly rejected.

34.In view of the above circumstances, this Court is satisfied that the prosecution has proved the case beyond reasonable doubt. Consequently, the statutory presumption under the relevant provisions of the Protection of Children from Sexual Offences Act comes into operation. Once such presumption arises, the burden shifts to the accused to rebut the same.

35.In the present case, the accused has not adduced any evidence, either with regard to the recovery of the mobile phone or explained the incriminating circumstances put to him under Section 313 Cr.P.C. No material has been placed to rebut the statutory presumption under the



POCSO Act. Accordingly, this Court finds no reason to interfere with the findings of the learned trial Judge holding the appellant guilty.

36.Insofar as the acquittal of the accused under Sections 66E and 67B of the Information Technology Act on the ground of non-production of a certificate under Section 65B of the Indian Evidence Act is concerned, this Court is of the view that the said finding is not legally sustainable. The learned trial Judge, having referred to the judgment of the Hon'ble Supreme Court, failed to properly appreciate the legal position.

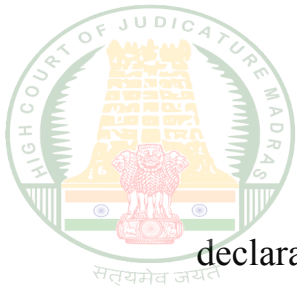
37.In the present case, the accused's mobile phone/M.O.6 was recovered on the basis of his disclosure statement under Section 27 of the Indian Evidence Act, in the presence of the Village Administrative Officer (P.W.6), and the said recovered original mobile phone was sent for forensic examination and the officer conducted the test by downloading the contents and sent the report and the same was marked as Ex.P34. P.W.6 clearly deposed about the recovery and his evidence is cogent and trustworthy. The accused has not offered any explanation with regard to the recovery of mobile phone and the offending materials in the recovered mobile phone. He does not deny the possession of the said cell phone with the offending



Crl.A.(MD) No.698 of 2023

materials. But, the learned trial Judge discarded the electronic evidence for want of a certificate under Section 65B(4) of the Indian Evidence Act, without properly appreciating the legal principle laid down in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* reported in **2020 (5) CTC 200**, wherein, the Hon'ble Supreme Court has clarified that where the original electronic device itself is produced and forms the primary evidence, the requirement of a certificate under Section 65B(4) may not arise. In such circumstances, the requirement of a certificate under Section 65B may not arise. Therefore, the trial Court erred in discarding the electronic evidence.

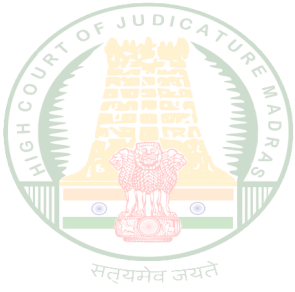
38. In the present case, as discussed above, the original mobile phone of the accused was recovered and sent for forensic examination. It is not a case where secondary electronic evidence alone was relied upon. Therefore, this Court places reliance on the forensic report marked as Ex.B34, which establishes that the accused had recorded the act of penetrative sexual assault, transmitted the same to many persons, sent it to the victim, and criminally intimidated her upon her refusal to marry him. For the limited purpose of corroborating the dying declaration, this Court considered the admissibility and reliability of the electronic evidence and finds the dying



declaration has been accepted as proved independently as well as with the supporting corroborating evidence.

39.Insofar as the sentence is concerned, the learned trial Judge has imposed the maximum punishment of imprisonment for the remainder of the natural life of the accused, as contemplated under the amended provisions of the Act. This Court, upon an overall consideration of the facts and circumstances, is of the view that the case is indeed grave in nature. However, in the absence of any appeal by the State or the victim seeking enhancement of sentence, this Court refrains from considering the question of imposition of a higher punishment. The aggravating circumstances are manifest. The accused not only committed penetrative sexual assault upon a minor but also recorded the act, disseminated the material, subjected the victim to sustained intimidation, and ultimately drove her to commit self-immolation. The victim unable to bear the physical and mental agony, ended her life.

40.In such circumstances, this Court finds no mitigating factor warranting interference with the sentence imposed by the trial Court. The punishment awarded is proportionate to the gravity of the offence.



WEB COPY

41.In the result, the Criminal Appeal is dismissed on the following terms:

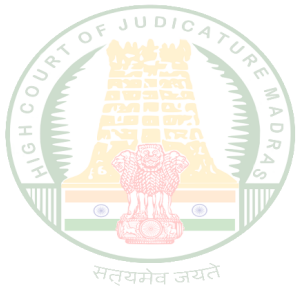
(i)The conviction and sentence imposed by the learned trial Judge in Spl.S.C.No.23 of 2021 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Srivilliputhur, dated 27.03.2023 is hereby confirmed.

[N.A.V.J.] & [K.K.R.K.J.,]
01.06.2026

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbm

To

1. Sessions Judge,
Special Court for exclusive trial of cases under POCSO Act,
Srivilliputhur, Virudhunagar District.
- 2.The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A.(MD) No.698 of 2023

K.K.RAMAKRISHNAN, J.

sbn

Pre-delivery judgment made in
Crl.A.(MD).No.698 of 2023

01.06.2026