

BAIL SLIP

The petitioners/Accused namely Saraswathi(A1), aged 45 years W/O.Dharmalingam and Selvi (A2) aged 33 years W/O.Shanmugasundaram. Were directed to be released on bail as per order dated 15/06/2015 made in CrI.MP.NO.1 of 2015 in CrI.A.No.350 of 2015 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

CrI.A.No.350 of 2015

1.Saraswarthi

2.Selvi

... Appellants/Accused

V.

The State, Rep. by
Inspector of Police,
Kothagiri Police Station,
Kothagiri, Nilgris District.
(Cr.470/2011)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment dated 18.05.2015 in S.C.No.13 of 2013 passed by the Learned Mahila Sessions, (Fast Track Court), Udhagamandalam.

For Appellants : Mr.D.J.Venkatesan

For Respondent : Mr.R.Ravichandran

Government Advocate (CrI.Side)

JUDGMENT

The Appellants/A1 and A2 have preferred the instant Criminal Appeal before this Court as against the Judgment dated 18.05.2015 in S.C.No.13 of 2013 passed by the Learned Sessions Judge, Mahila (Fast Track) Court, Udhagamandalam.

2.The Learned Sessions Judge, Mahila (Fast Track) Court, Udhagamandalam, while passing the impugned Judgment in S.C.No.13 of 2013 on 18.05.2015, at paragraph 23, had, inter alia, observed that '... Ex.P7 - Complaint was recorded in the presence of Kothagiri Government Hospital Doctor and that Dying Declaration - Ex.P5 was recorded by the Learned Judicial Magistrate at Coimbatore Government Hospital and based on these two documents, Loganayaki, who was studying in 12th standard, had loved Chandrasekar (P.W.10) and that the P.W.10's mother viz., the 1st Accused, Saraswathi (1st Appellant) and his Aunt, the 2nd Accused (2nd Appellant) had scolded Loganayaki (deceased) in harsh, unparliamentary words and also criminally intimidated

because of which Loganayaki took kerosene from her house poured on her body and set fire to herself and prior to her death, she was in a conscious state and for setting fire to herself, she had categorically stated that the Accused were responsible for that and the same was proved etc. and resultantly, found the Appellants/A1 & A2 guilty in respect of the offences under Section 294(b), 506(i) and Section 306 I.P.C.

3. In fact, the trial Court had imposed a fine of Rs.1,000/- each to the Appellants/A1 and A2 in respect of the offence under Section 294(b) I.P.C., in default of payment of the said fine amount, they were directed to undergo Simple Imprisonment of one month each and in respect of the offence under Section 506(i) I.P.C., they were imposed with a fine of Rs.1,000/- each, in default of payment of fine, they were directed to undergo Simple Imprisonment for one month each. In so far as the offence under Section 306 I.P.C. is concerned, the trial Court had awarded a sentence of one year Rigorous Imprisonment each to the Appellants/A1 and A2 and also imposed with a fine of Rs.1,000/- each, in default of payment of said fine amount, they were directed to undergo three months Simple Imprisonment each. Further, the period already undergone by the Appellants/A1 & A2 from 29.12.2011 to 07.01.2012 was directed to be set off by the trial Court under Section 428 Cr.P.C.

4. Challenging the correctness and the legality of the Judgment of Conviction dated 18.05.2015 in S.C.No.13 of 2013 passed by the Learned Sessions Judge, Mahila (Fast Track) Court, Udhagamandalam, the Appellants/A1 & A2 have filed the instant Appeal by taking a plea that the trial Court had failed to consider that there were no independent witnesses available to convict the Appellants is clearly unsustainable in the eye of Law.

5. According to the Learned Counsel for the Appellant, P.W.1 (mother of deceased Loganayaki) had scolded her daughter Loganayaki (deceased) for the love affair, she had with the 1st Appellant/A1's son and although there were enough evidence in this regard, the trial Court had materially ignored the same.

6. The Learned Counsel for the Appellants projects an argument that Ex.P5 - Dying Declaration does not fulfil the ingredients of Sections 306 and 107 I.P.C. However, the trial Court had not considered the same in a proper and real perspective.

7. The Learned Counsel for the Appellants takes a stand that the evidence of P.W.1 to P.W.4 were quite contrary to each other relating to the first occurrence.

8. The Learned Counsel for the Appellants strenuously

submits that Ex.P5 (Dying Declaration - marked through P.W.6) does not say about any inducement or cruelty or abetment to suicide, except saying they scolded her and further, the Accused names were not mentioned and as such, Ex.P5 was not a reliable one.

9.The Learned Counsel for the Appellants brings it to the notice of this Court that the trial Court had failed to appreciate the evidence of D.W.1 to D.W.3, which had resulted in serious miscarriage of Justice.

10.Lastly, while summing up, the Learned Counsel for the Appellants submits that the trial Court ought to have showered the benefit of doubt to and in favour of the Appellants/Accused because of the reason that the Respondent/Prosecuting Agency had not established its case beyond any reasonable doubt.

11.To lend support to the contention that the offence under Section 306 I.P.C. is not made out against the Appellants, the Learned Counsel for the Appellants seeks in aid of the Judgment of this Court dated 23.06.2016 in CrI.A.(MD).No.449 of 2016 (between Ayyappan V. State rep. By The Inspector of Police, Arupukottai Town Police Station, Virudhunagar District), whereby and whereunder, at paragraphs 25 to 27, it is observed as under:

"25.In Section 306 I.P.C., the word 'abetment' has not been defined or explained. In Concise Oxford English Dictionary (XI Edition 2004), 'Abetment (Abet, Abets, Abetting, Abetted, Abettor) has been explained as 'encourage or assist (someone) to do something wrong in particular to do crime.'

26.In Indian Penal Code, in Chapter V (Abetment), in Section 107 'abetment of a thing' has been explained. Though the word 'abetment' has not been defined in Section 306 I.P.C., to understand its meaning, we can refer to section 107 I.P.C.

27.Section 107 I.P.C. runs as under:
107.Abetment of a thing A person abets the doing of a thing, who -
First: Instigates any person to do that thing; or Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that

thing; or Thirdly: Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.' Explanation: Whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that thing."

12. The Learned Counsel for the Appellants also relies on the decision of the Hon'ble Supreme Court in Ramesh kumar V. State of Chhattisgarh, reported in AIR 2001 SC at 3837 wherein it is held as follows:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

13. Moreover, the Learned Counsel for the Appellants refers to paragraphs 34 and 40 of the Judgment in the aforesaid CrI.A. (Md). No.449 of 2016 dated 23.06.2016, wherein it is observed as under:

"34. The offence of abetment requires 'mens rea' (guilty mind). There must be intentional doing/aiding or goading the commission of suicide by another. Otherwise,

even a mere casual remark, something said in routine and usual conversation will be wrongly construed or misunderstood as 'abetment'.

35. In *Gangula Mohan Reddy v. State of A.P.* AIR 2010 SC 327 : (2010) 1 SCC 750 : (2010) 1 SCC (Cri.) 917 : LNIND 2010 SC 3 : (2010) 2 MLJ (CrI) 410, it was held that to attract [section 306](#) I.P.C., there must be clear 'mens rea' to commit offence.

36. In *M. Mohan v. State* by D.S.P., Karaikudi (supra) the Hon'ble Supreme Court observed as under:

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under [section 306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

37. Sometimes, the decision to commit suicide might be taken by the victim himself/herself, unaccompanied by any act or instigation etc. on the part of the accused. A person may die like a coward. On his failure in the examination, a student may commit suicide. They are weak minded. They are persons of frail mentality. For their foolish mentality/ decision, another person cannot be blamed.

38. Thus, for an offence under [Section 306](#) IPC., there must be two ingredients. One is there must be suicide. In this case, when Exs.P13 and P10 dying declarations are not relied on, its fallout would be that the deceased has committed suicide by self

immolation. So, the first part of the ingredient to [Section 306 IPC.](#), is established.

39. The next part is, whether by not providing the required money to the deceased to run the family, the accused has abetted her commission of suicide. Suicide is stated in [Section 306 IPC.](#) But what 'abetment' means is not stated in [Section 306 IPC.](#) Then necessarily one has to refer to the word, 'abetment' used elsewhere in the [Indian Penal Code.](#) So, we have to look at [Section 107 IPC.](#), where the word, 'abetment' has been employed and explained. As per the dictionary meaning, it means provoke, aid, instigate a person to do an act or omit to do an act, which he is legally entitled to do. If one read [Section 107 IPC.](#), there would be similar meaning for the very same word, 'abetment' used in [306 IPC.](#), we have to arrive at the same meaning.

40. There must be 'mens rea' for an overt act. Even for the allegation that a person has instigated, provoked another person to commit suicide, there must be intention on the part of the accused to do so. It is not the wish of the victim to commit suicide. The requirement of mens rea will be attributed only to the accused. There cannot be mens rea for a victim in criminal law. There must be intention or desire on the part of the accused that the victim should commit suicide, die."

14. The Learned Counsel for the Appellants invites the attention of this Court to the Judgment dated 31.07.2015 in CrI.A.No.56 of 2012 (between V.Venkatraman V. State, Represented by the Assistant Commissioner of Police, Ayanavaram Range, Chennai), whereby and whereunder, at paragraphs 44 to 46, it is held and observed as follows:

"44. Simple abuses are not sufficient to provoke the victim to commit suicide. It will not attract [section 306 I.P.C.](#) Simply because the lender has demanded repayment of his money, if the debtor commits suicide the creditor cannot be said to have abetted his suicide. [Section 306 I.P.C.](#) is not attracted towards him.

45. Mere reprimanding does not amount to

instigation. The words stated in a fit of anger will not amount to abetment. Casual remark of husband towards his wife in the ordinary course of life will not amount to abetment to commit suicide. Because they did not say so with any mens rea. (see SWAMY PRAHALDAS VS. STATE OF MADHYA PRADESH (1995 Suppl. (3) SCC 438).

46. In NARESH MAROTRAO VS. UNION OF INDIA (1995 CrL.L.J. (Bom), the deceased poured kerosene on her body and set fire to herself in the presence of the accused. But the accused did not do anything, he did not put off the fire and saved the deceased. It was held that the accused cannot be held liable under Section 306 I.P.C. read with 107 I.P.C. and he has not committed any offence at all."

15. Conversely, it is the submission of the Learned Government Advocate (CrL. Side) for the Respondent that in the main case, before the trial Court on behalf of the Respondent/Prosecution, witnesses P.W.1 to P.W.12 were examined and Exs.P1 to P17 were marked. Also, M.O.1 to M.O.4 were marked. On the side of the Appellants/Accused, witnesses D.W.1 to D.W.3 were marked. In this connection, it is represented on behalf of the Respondent/Prosecution that the trial Court had analysed the entire available oral and documentary evidence of witnesses adduced on the side of the prosecution and also looked into the evidence of D.W.1 to D.W.3 and after considering the entire gamut of the matter, came to the conclusion that the Appellants/A1 & A2 were guilty in respect of the offences under Sections 294(b), 506(i) and 306 I.P.C. and imposed the necessary punishments, which is free from any legal flaw.

16. On behalf of the Respondent/Prosecution, a reference is made to the decision of the Hon'ble Supreme Court in Ramesh and others V. State of Haryana, reported in (2017) 1 Supreme Court Cases 529, whereby and whereunder, it is observed and held that 'Dying declaration is substantive piece of evidence and may form sole basis of conviction if found reliable'.

17. The first charge levelled against the Appellants/A1 & A2 was that the deceased Loganayaki (daughter of Ramanathan) of Thavittumedu Kothagiri Police Station Limits at Aravenu was loved by one Dharmalingam's son Chandrasekar of the same village for the past four years and that on 28.12.2011 at about 8.30 a.m. in the morning, when Chandrasekar (P.W.10) was looking into the photo of Loganayaki (later deceased) in his house, at that time, the 1st Appellant/A1 (mother of P.W.10) and the 2nd Appellant/A2 (P.W.10's Aunt), both of them went to the house of

deceased Loganayaki and uttered "You prostitute, you won't be in good position, you will get spoiled, you would not beget a child through my son" and by so scolded, committed an offence under Section 294(b) of the Indian Penal Code.

18.The second charge levelled against the Appellants/A1 & A2 was that apart from scolding Loganayaki (deceased) in vulgar/indecent words, the Appellants 1 and 2/A1 & A2 had uttered 'if both of them get married to, both of them would be burnt' and by intimidating the deceased, they had committed an offence under Section 506(ii) I.P.C.

19.The third charge levelled against the Appellants/A1 & A2 was that after scolding Loganayaki (later deceased) in vulgar language and also after having intimidated her, on 28.12.2011 at about 10'o clock in the morning, Loganayaki, heart broken with an intention that 'to commit suicide than to live', took a kerosene from her house, poured on her body and set fire to herself, and she was admitted to the Kovai Government Hospital for further treatment and died on 03.01.2012, because of which they had committed an offence under Section 306 I.P.C.

20.To appreciate the factual aspect of the matter in issue, it is useful for this Court to refer to the evidence of relevant, concerned prosecution witnesses and the defence witnesses.

21.P.W.1 (mother of Loganayaki), in her evidence, had stated that her daughter Loganayaki was aged 19 years at the time of her death and that Dharmalingam's son Chandru and her daughter Loganayaki had acquaintance by means of 'Love' and that the 1st Appellant/A1 was the mother of P.W.10 and that P.W.2 is his Aunt and further that, her daughter was studying 12th standard. It is the further evidence of P.W.1 that she came to know that her daughter (Loganayaki) and P.W.10 were in love for the past six months and after finishing the studies she thought of imposing some conditions.

22.P.W.1 proceeds to add in her evidence that in the Cellphone of P.W.10 there was a photo of her daughter Loganayaki and that on 28.12.2011 about 8.30 a.m. in the morning, the Appellants/A1 & A2 brought the cellphone of P.W.10 and the Appellants/Accused on seeing her daughter's photo in the cellphone, uttered the words 'prostitute, you would not be allowed to live and even if she comes, she would be burnt' and by so scolding, they threatened and she informed that she would look after the same in the evening and went for the job.

23.Further, it is the evidence of P.W.1 that when she was in the forest work at about 10.30 a.m. she got an information and after herself coming to the work, the Accused because of

scolding in inducing words her daughter committed suicide by setting fire to herself and this was informed to her and she went to the Hospital where her daughter Loganayaki was admitted and at the Kothagiri Hospital her daughter gave statement in which she had affixed her thumb impression as a witness and later she was taken to the Coimbatore Government Hospital where she had treatment for six days and that on 03.01.2017 at about 11.00 a.m. she had expired.

24.The evidence of P.W.1 was to the effect that only because of the Appellants/A1 & A2 uttering the vulgar words unable to bear the same, her daughter poured kerosene and set fire to herself and further that, she was examined by the Police.

25.It is the evidence of P.W.2 that P.W.1 is his mother and that deceased Loganayaki was a sister who was studying 12th standard at Saint Marry's School and his nearby house, P.W.10 (Chandrasekar) and her sister Loganayaki were loving each other and he came to know about the said love affair only six months before and since his sister was studying 12th standard they had not asked her anything about that but there was opposition from the house of P.W.10.

26.Continuing further, P.W.2 had deposed in his evidence that on 28.12.2011 at about 8.00 a.m. in the morning the Appellants/Accused came with a cellphone photo of Chandrasekar and they scolded her sister as 'prostitute', if both of you get married to, they would be burnt alive and they so scolded in that fashion and that he went to the house of his uncle and his mother P.W.1 went to the job and at about 10'o clock in the morning when he looked, he noticed that there was a smoke coming out from his house and when he found that his sister was setting fire to herself and he got afraid and informed his uncle Ganesan and they poured water and doused the fire. Later, they phoned up to 108 Ambulance and admitted his sister at the Kothagiri Government Hospital.

27.P.W.2 also in his evidence in categorical term had stated that only because of the Appellants/A1 & A2 had scolded his sister (Loganayaki) in vulgar words, heart broken she committed suicide and that on 03.01.2012 at about 11'o clock in the morning his sister had died and at the time of conducting police inquest report, he was present and that in connection with the case, he was examined by the police.

28.P.W.3 in his evidence had deposed that on 28.12.2011 the Appellants/A1 & A2 scolded Loganayaki in vulgar/indecent words and that they brought the photo of Loganayaki taken in P.W.10's cellphone and they showed it to Loganayaki's house and scolded Loganayaki as 'prostitute' etc. and because of that, the said

Loganayaki heart broken at about 10.00 a.m. in the morning set fire to herself and that after dousing the fire, they took her body to the Kothagiri Government Hospital through the 108 Ambulance and further, she was taken to the Coimbatore Government Hospital (since at Kothagiri Government Hospital, they had informed that they could not see Loganayaki and that Loganayaki was treated at the Coimbatore Government Hospital where she died later and that he was examined by the police.

29.P.W.4 in his evidence had stated that the 1st Appellant/A1's son Chandrasekar loved Loganayaki and further, he also spoke about the scolding made by the Appellants/Accused against the said Loganayaki and that he effected compromise on them and on the same day at 10.30 Loganayaki set fire to herself. P.W.4 had signed Ex.P1 - Observation Mahazar [along with one Paramasivam] and even in Seizure Mahazar - Ex.P2, the kerosene cane, kerosene cap, match box and further he was examined by the police.

30.P.W.5 in his evidence had deposed that memory card from the cellphone was seized from P.W.10 and M.O.1 - Cellphone was seized and that he had affixed his signature in the Seizure Mahazar Ex.P3 together with one Sureshkumar.

31.P.W.6 (Judicial Magistrate) in his evidence had deposed that while he was serving as Judicial Magistrate No.8 at Coimbatore on 28.12.2011 based on the Information Memo from the Hospital, which he received at 4.45 p.m. Hours in the evening, he proceeded to the Hospital at 5.00 p.m. in the evening and he obtained a Fitness Certificate of Loganayaki and put questions as to her name, address where she was there and after satisfying himself about her mental state, he asked her to state as to how she had suffered the burnt injuries and since her two hands were burnt with fire injuries he obtained her right legs big fingers finger print and that Ex.P4 was the Medical Intimation and Ex.P5 was her Dying Declaration.

32.P.W.7 (Doctor) in his evidence had stated that 19 year old Loganayaki (who was receiving treatment at the Coimbatore Medical College Hospital) had 60%, 70% burn injuries and because of the viral inspection, her heart and lungs which were affected, she died at 10.40 a.m. in the morning and he sent an intimation to the Police - Ex.P6 and that he was examined by the Police.

33.P.W.8 (Sub Inspector of Police), in his evidence, had deposed that he obtained an information that 19 years Loganayaki was under treatment at the Hospital because of burn injuries and he went to the Hospital at 12.30 p.m. in the afternoon and after recorded her Statement - Ex.P7 and after coming to the Police Station, registered Ex.P8 - F.I.R. under Sections 294(b), 506

(ii) I.P.C. and that he sent a copy of the F.I.R. to the Judicial Magistrate and to the Inspector of Police for investigation and that he was examined by the Inspector of Police.

34.P.W.9 (Doctor) in his evidence had stated that on 28.12.2011 while he was in duty at about 10.40 a.m. Loganayaki, who had suffered 90% burn injuries, was brought for treatment and she was given the first aid treatment and sent to the Coimbatore Government Hospital for further treatment and Ex.P9 was the Accident Register and that he was examined by the Police.

35.P.W.10 in his evidence had stated that for his love with Loganayaki, there was opposition from both the houses and he and Loganayaki had an intention to run away after finishing their studies and that he had the photo of Loganayaki and his Aunt Rukmani (2nd Appellant/A2) gave the photo of Loganayaki to the Loganayaki's house and the 1st Appellant/A1 is his mother and that the 2nd Appellant/A2 is his Aunt and because of this problem, Loganayaki had committed suicide by setting fire to herself and that he took Loganayaki to the Kothagiri Government Hospital and from there she was taken to the Coimbatore Government Hospital for further treatment and later she had died at the Hospital and he handed over the memory card to the Police [where he and Loganayaki were jointly there] and that he was examined by the Police.

36.P.W.11 (Doctor), in his evidence, had stated that he conducted Post-mortem on the body of Loganayaki aged about 19 in Crime No.472/2011 based on the request made by the Inspector of Police and Ex.P10 was the Post-mortem Certificate and he had opined that the deceased Loganayaki would have died because of the burn injuries and after complications.

37.P.W.12, who took up the investigation from P.W.8, inspected the place of occurrence, prepared Observation Mahazar Ex.P1 and Rough Sketch - Ex.P11 and also seized 10 liters of Kerosene Can (M.O.2), Cap (M.O.3), Olympic Match Box (M.O.4) and obtained signatures in the Seizure Mahazar from the respective witnesses and transmitted the seized articles under Form 91 as per Ex.P12 and Ex.P13 to the Court.

38.P.W.12 had also examined Siranjeevi, Ganesh, Manivannan, Balakrishnan, Paramasivam separately and recorded their statements from the scene of occurrence and on the same day, he went to the Coimbatore Government Hospital and examined the inpatient Loganayaki and his mother Jayakodi separately and obtained their statements and Ex.P14 was the Statement of Loganayaki and that on 29.12.2011 arrested the Appellants/A1 & A2 approximately in the evening at about 3.00 p.m. at Kothagiri Bus Stand and brought them to the Police Station at 3.45 p.m.

and sent them to Judicial Custody. Later, after getting an information that Loganayaki had expired at the Coimbatore Government Medical Hospital at morning 10.40 a.m. on 03.01.2012, he altered the Sections from 294(b), 506(ii) I.P.C. to Sections 294(b), 506(ii) and 306 I.P.C. and the Alteration Report - Ex.P15 was sent to the Court. He also prepared Ex.P16 - Inquest Report at the Coimbatore Government College Hospital Mortuary in the presence of Panchayatdars and witnesses and gave a Requisition Letter - Ex.P17 to the Doctor for conducting Post-mortem and after examining witnesses Jayakodi, Siranjeevi, Ganesh and Manivannan and recording their statements. Also, he seized the memory card which contained the photo of the deceased Loganayaki in the presence of Sureshkumar and Chandrakumar through Seizure Mahazar and examined the witnesses Chandrakumar, Sureshkumar and Pushparani and obtained their statements. Further, on 29.01.2012 he examined the Doctors and recorded their statements and that apart, he examined the Learned Judicial Magistrate, Coimbatore viz., Thiru.Arunachalam, on 30.01.2011 (P.W.6) and recorded his statement and also he examined the Sub Inspector of Police, who recorded the F.I.R. and the Head Constable and recorded their statement and after completion of investigation on 16.05.2012 he laid a Final Report against the Appellants/A1 & A2 under Sections 294(b), 506(ii) and Section 306 I.P.C.

39.D.W.1 in his evidence had deposed that in his factory 50 persons are employed and the factory was inspected by the Inspector and in Ex.D1 it was not mentioned that Saraswathi (1st Appellant) was a casual worker and in Ex.D2 there was no stamp of the factory.

40.D.W.2 in his evidence had deposed that Selvi (2nd Appellant/A2) in their factory had worked from morning 9.00 a.m. till 7.00 a.m. in the next day on 28.12.2011 and Ex.D3 is the concerned Register and in Ex.D3 since there was no signature of Selvi (A2), the time was not mentioned and for the work turn out on 28.12.2011, she had received a sum of Rs.450/- and a sum of Rs.40/- towards bus charges.

41.D.W.3 in his evidence had deposed that the 1st Accused (Saraswathi) house is situated on the upper side of his house portion and on 28.12.2011 he was in his house at about 7.00 a.m. in the morning and thereafter, he went to his business and that on 28.12.2011 a quarrel erupted between P.W.1 and deceased Loganayaki and at that time, the Appellants/A1 & A2 were not there.

42.At this stage, it is to be pointed out that to prove a charge under Section 306 I.P.C., the Prosecution is to establish (i) that the victim of the offence committed suicide; (ii) that the Accused abetted the commission of the said offence and the

said abetment must be of one under Section 107 of the Indian Penal Code. Further, with a view to convict an individual under Section 306 I.P.C., there must be a clear 'guilty mind' to commit the offence. Moreover, an active/direct act is required which led the deceased to commit suicide finding no option and that the act ultimately should have meant to push the deceased to such an extent that he/she committed suicide. As a matter of fact, there must be some proximate link between the act of an Accused and the act of committing suicide.

43. In the instant case, it comes to light that the 1st Appellant/ A1's son viz., P.W.10 (Chandrasekar) and Loganayaki (later deceased) loved each other. As a matter of fact, at the time of occurrence, the deceased Loganayaki was studying 12th standard and their love was opposed by the Appellants/A1 & A2. In fact, on 28.12.2011, P.W.10 had a photo of Loganayaki in his mobile phone and that the Accused saw the said photo and scolded the deceased Loganayaki in vulgar language and threatened her life at about 8.30 a.m. in front of P.W.1 to P.W.3. Later, the said Loganayaki poured kerosene on herself and she was taken to Government Hospital, Kothagiri by P.W.2 and P.W.3. Indeed, P.W.9 (Doctor) had registered Ex.P9 - Accident Register. The deceased Loganayaki gave a Statement (Ex.P7) before P.W.8 (S.I. of Police) and F.I.R. was registered under Sections 294(b), 506(ii) I.P.C. Subsequently, the said Loganayaki was referred to the Coimbatore Medical College Hospital for further treatment by P.W.9 (Doctor). Thereafter, P.W.12 (Inspector, Special Cell) took up the case for investigation and after visiting the place of occurrence, prepared Ex.P11 - Rough Sketch in the presence of P.W.4 and recovered M.O.2 to M.O.4 in the presence of witnesses under Ex.P2. Further, he had examined P.W.2 to P.W.4 and other witnesses and recorded their statements and went to the Coimbatore Medical College Hospital on the same day and examined the deceased Loganayaki and recorded her statement Ex.P14 and also her mother P.W.1 and recorded her statement. Before P.W.6 (Judicial Magistrate), Loganayaki gave a Dying Declaration - Ex.P5 and she expired on 03.01.2012. Therefore, P.W.12 (Inspector of Police) had altered the Sections from 294(b), 506(ii) and 309 I.P.C. to under Sections 294(b), 506(ii) and 306 I.P.C. because of the reason that Loganayaki made an endeavour to commit suicide by pouring kerosene on her body. After examining Prosecution witnesses, P.W.1 to P.W.11, the Inspector of Police (P.W.12) laid a Final Report on 16.05.2016.

44. In so far as the present case is concerned, although a plea of 'Alibi' is taken on behalf of the Appellants/A1 & A2, yet, this Court is of the considered view that the same cannot hold good for the simple reason that P.W.1 to P.W.5 had categorically deposed in their evidence about the happening of occurrence and also the indecent/vulgar words employed by Appellants/A1 & A2, as a result of which, Loganayaki, (daughter of P.W.1) had poured kerosene on her body and set fire to

herself and thereby committed suicide. In this connection, one cannot over look a vital fact that both P.W.10 and Loganayaki (deceased) had loved each other and their love was in existence for nearly two years. Since the parents of both P.W.10 as well as the deceased Loganayaki had not approved the love affair of P.W.10 and deceased Loganayaki and added further, in view of the indecent/vulgar scolding of the deceased Loganayaki, she had committed suicide by pouring kerosene on her body. In fact, her Dying Declaration Ex.P5 was taken by P.W.6 (Judicial Magistrate, Rajapalayam) and in fact, P.W.6 had opined that he was of the considered view that Loganayaki was fit, conscious and in a control state of mind to give statement. Further, the Doctor (Meena) had also given a certificate in Ex.P5 to the effect that 'Patient was fully conscious and freely communicable throughout the recording of statement'. A mere running of the eye of Ex.P5 - Dying Declaration of Loganayaki, latently and patently, indicates that Loganayaki had given a statement by mentioning that P.W.10's house people had spoken about her harshly and because of that, she felt ashamed and therefore, she had poured kerosene on her body (by taking the same from her house) and set fire and she had also stated that nothing to state any further. This Ex.P5 - Dying Declaration of Loganayaki is undoubtedly a substantial piece of evidence and the said evidence is a natural, cogent and coherent one. Therefore, this Court accepts the same.

45.Per contra, this Court is not in a position to accept the plea of 'Alibi' taken on behalf of the Appellants/Accused and furthermore, this Court is in complete agreement with the view taken by the trial Court that the Appellants/A1 & A2 had committed the offences in respect of Sections 294(b), 506(ii) and 306 I.P.C. Since the fine amount of Rs.1000/- each paid by the Appellants in respect of the offences under Sections 294(b) and 506(ii) is not on the excessive side, this Court, in the interest of Justice, is not displacing them.

46.However, in regard to the offence under Section 306 I.P.C., the trial Court had imposed a punishment of one year Rigorous Imprisonment to the Appellants/A1 & A2 each and also imposed a fine of Rs.1000/- each and in default of payment of fine, it imposed a default sentence of three months Simple Imprisonment. In this regard, this Court is of the considered view that considering the facts and circumstances of the present case, the imposition of punishment of one year awarded to the Appellants/A1 & A2 each of them is marginally on the higher side. As such, to prevent an aberration of Justice and to promote the substantial cause of Justice, this Court interferes with the imposition of punishment of one year Rigorous Imprisonment awarded by the trial Court to the Appellants/A1 & A2 and reduces them to that of four months Rigorous Imprisonment each. However, the imposition of fine of Rs.1000/- each in this

regard is modified into that of Rs.500/- each. Consequently, the Criminal Appeal succeeds in part.

47. In fine, the Criminal Appeal is allowed in part. The Judgment of the trial Court in S.C.No.13 of 2013 dated 18.05.2015 is set aside by this Court for the reasons assigned in this Appeal. The Learned Sessions Judge, Mahila (Fast Track) Court, Udhagamandalam is directed to take necessary follow up action in securing the presence of the Appellants/A1 & A2 and to immure them in Prison for serving the remaining period of sentence. Liberty is granted to the Appellants/A1 & A2 to get the balance fine amount of Rs.500/- each from the trial Court by filing necessary payment out petition in accordance with Law.

Sgl

Sd/-
Assistant Registrar
/TRUE COPY/
Sub-Assistant Registrar

To

1. The Sessions Judge,
Mahila (Fast Track) Court,
Udhagamandalam.
2. The Inspector of Police,
Kothagiri Police Station,
Kothagiri, Nilgiris District.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Records Section,
High Court, Madras.
- 5 The Judicial Magistrate
Kotagiri.
- 6 -do-Thro The Chief Judicial Magistrate,
Nilgiris.
- 7 The Principal Sessions Judge,
Nilgiris.

8 The Superintendent of Police,
Udhagamandalam.

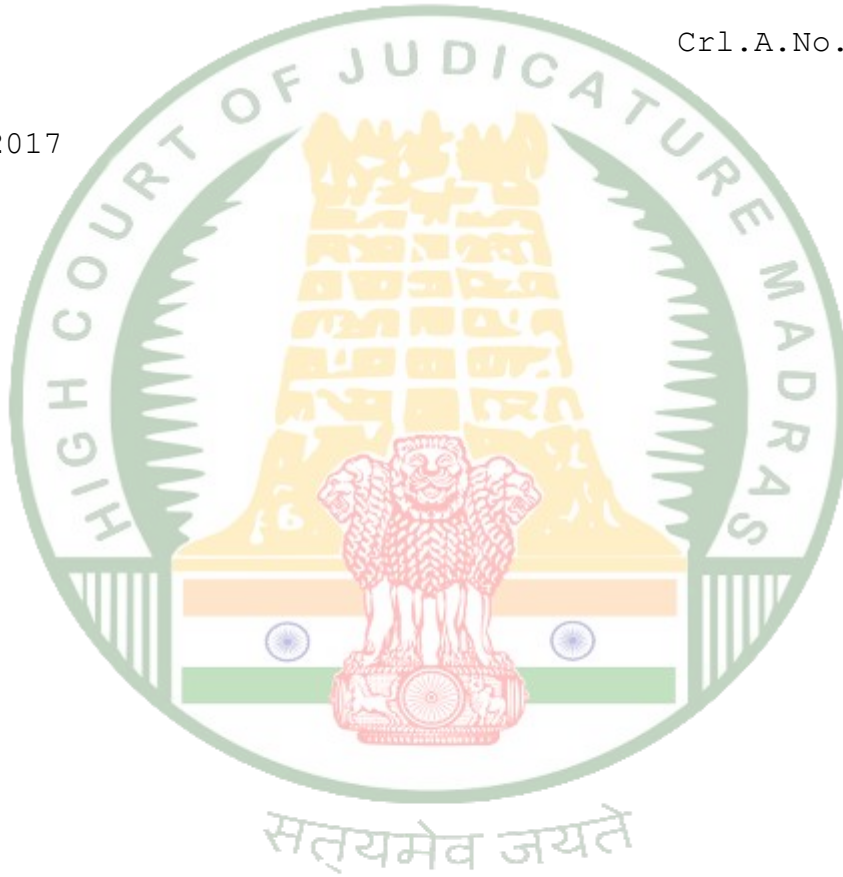
10 The District Collector,
Nilgiris.

11 The Director,
General of Police,
Mylapore, Chennai-4.

+1 CC to Mr.D.J.Venkatesan Advocate SR.NO.12478

Crl.A.No.350 of 2015

NMI [CO]
MK:22/03/2017



WEB COPY