

**BAIL SLIP**

Suresh, Appellant/Accused, M aged about 26 years, S/o Muthukumaraswamy is released on Bail vide the court order dated 25.01.2018, made in Crl MP(MD)No.493 of 2018 in Crl A(MD)No.500 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 07.01.2019

CORAM:

THE HONOURABLE Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.500 of 2017

Suresh

: Appellant/Sole Accused

Vs.

State rep. by

The Deputy Superintendent of Police

Thiruvidaimaruthur Sub Division

Thanjavur District.

(FIR in Crime No.126/2013,

Pandanallur Police Station)

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure to call for the records in S.S.C.No.66 of 2014 on the file of the learned I Additional District and Sessions Judge (P.C.R) Thanjavur, Thanjavur District, and to set aside the Judgment and conviction dated 06.10.2017 and acquit the appellant of the charges levelled against him.

For Appellant

: Mr.A.Thiruvadikumar

For Respondent

: Mr.K.K.Ramakrishnan

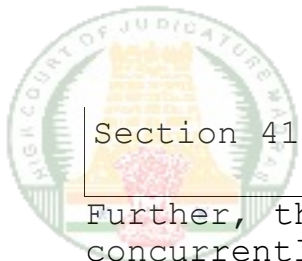
Additional Public Prosecutor

JUDGMENT

(Judgment of the court was delivered by
A.D.Jagadish Chandira.J)

This Criminal Appeal has been directed against the Judgment and conviction dated 06.10.2017 passed in S.S.C.No.66 of 2014 by the I Additional District and Sessions Judge (P.C.R) Thanjavur, Thanjavur District convicting and sentencing the appellant / accused as follows:-

Conviction	Sentence
Services courts govt employees r/w Section 3(2) (v) of SC/ST (POA) Act	Life imprisonment + Fine of Rs.5,000/- i/d 1 year S.I



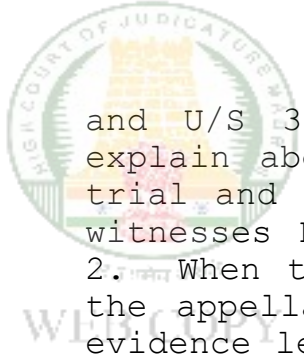
Section 417 IPC

6 month S.I + Fine of Rs.1000/-
i/d 1 month S.I

Further, the appellant/accused was directed to suffer both sentences concurrently. The bail bond executed by the appellant/accused was forfeited (Total fine Rs.6,000/-).

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2. The case of the prosecution in brief is that the appellant/accused belongs to a Backward Class Community and the deceased Seethalakshmi belongs to a Scheduled Caste Community. The appellant/accused and the deceased were in love with each other for two years prior to the date of occurrence. On 18.04.2013, the appellant/accused had taken the deceased to Coimbatore and stayed there for ten days and on 28.04.2013 returned from Coimbatore and reached Aduthurai. After reaching Aduthurai, the appellant/accused refused to marry the deceased on the ground she belongs to Scheduled Caste community and had under the threat of murdering her parents taken a letter from the deceased stating that there is no connection between them. Thereafter, the appellant/accused had dropped the deceased at Kuthalam and left away and thereby the appellant/accused had cheated the deceased on the promise of marriage and later refused to marry her on the ground of caste. The deceased had reached home on 28.04.2013 at 06.30 p.m and informed her parents about the appellant/accused taking a letter from her under threat and the refusal of the appellant/accused to marry her. On the next day, i.e., on 29.04.2013 at around 11.30 a.m, the deceased had gone to the house of her relative one Chinnayan and immolated herself when nobody was in the house. The deceased was taken to the Government Hospital, Kumbakonam and she died at 16.15 hours while under treatment. Further, as per the prosecution, a statement had been recorded from her by the respondent police based on which, a case in Cr.No.126/2013 was registered for the offences under Sections 417, 420, 309, 506(ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment to Women Act and under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. After the registration of the case, the respondent took up the case for investigation and after completion of investigation, filed the final report against the appellant/accused for the offences under Sections 417, 420, 306, 506 (ii) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment to Women Act and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 before the II Additional District Munsif - cum - Judicial Magistrate, Kumbakonam and he had after taking cognizance and after compliance of the procedure under Section 207 Cr.P.C, finding that the case was exclusively triable by the Special Court, committed it to the I Additional District and Sessions Judge (PCR), Thanjavur. The trial Court, after having satisfied that the appellant/accused was furnished with the copies of the documents, framed the charges against the appellant/accused for offences under Sections 417, 420, 506(ii), IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment to Women Act and under Section 3(2)(v) the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989

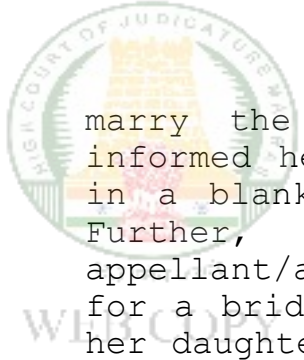


and U/S 306 IPC. When the appellant/accused had been asked to explain about the charges, he had denied the same and sought for trial and during the course of trial, the prosecution had examined witnesses P.W.1 to P.W.12 and marked Exs.P.1 to P.6 and M.Os.1 and 2. When the incriminating materials and circumstances were put to the appellant/accused under Section 313 Cr.P.C, he had denied the evidence let in by the prosecution, however, no oral or documentary evidence was adduced on the side of the defence. Thereafter, after hearing the both sides and perusing the oral and documentary evidence, the trial Court by Judgment dated 06.10.2017, acquitted the appellant/accused from the charges for offences U/S 420 IPC and 506(ii) IPC and found the appellant/accused guilty for offences U/S 417 IPC and U/S 306 IPC r/w Sec 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 and convicted the him as stated above.

The Crux of the Prosecution Evidence:

3. P.W.1 is the father of the deceased Seethalakshmi. In his evidence before the Court, he had deposed that he belongs to Hindu Scheduled Caste Community and that he has got two daughters and a son and that the deceased is his second daughter and that after completion of +2, she was undergoing computer classes at Mayavaram and she had fallen love with the appellant/accused who was employed as Driver in a minibus and that the appellant/accused had also come to their house. Further, he coming to know of their relationship, had reprimanded his daughter saying that they should not move together since both belong to different communities. During April 2013, the deceased had gone to Kuttalam and not come back home and that she was found missing. He along with his relatives had gone to the house of the appellant/accused and he was also found missing and he learnt that the appellant/accused and his daughter had gone to Coimbatore. After ten days, his wife had informed that his daughter had come back home. On the next day, he had gone to his work and he heard that his daughter immolated herself in his relative's house by pouring kerosine on herself. Thereafter, they had taken his daughter to the Kumbakonam Government Hospital in an Ambulance and that the Judicial Magistrate had taken a statement and that on the same day, at 04.30 p.m, she passed away. He had further deposed that the deceased had given a statement to the police which was marked as Ex.P.1. The kerosine can was marked as M.O.1 and the match box was marked as M.O.2. In his cross examination, he had stated that despite he reprimanding his daughter, she was adamant that she would marry the appellant/accused.

4.P.W.2 is the mother of the deceased. She had also deposed that she has two daughters and one son and that the deceased was love in with the appellant/accused and that she had reprimanded her daughter not move around with the appellant/accused. Thereafter, her daughter was found missing and that she had come back home after ten days. Even at that time, she had reprimanded her daughter saying that since there is an unmarried elder sister, she should not



marry the appellant/accused. At that time, the deceased had informed her that the appellant/accused had obtained her signature in a blank paper and threatened her that she should forget him. Further, P.W.2 had informed her daughter that since the appellant/accused belonged to a different caste, she would search for a bridegroom in their own community and that on the next day, her daughter committed suicide by self immolation in her relative's house. In her cross examination, she had deposed that her daughter viz; the deceased and the appellant/accused were in love with each other for the past two years and knowing that she and her family members had been reprimanding her for two years on the ground of difference in caste and that her daughter did not heed to their advice. She had further stated that the police examined her after ½ an hour of her daughter's death. Further, she had also in the cross examination, admitted that both the hands of her daughter were burnt. She had further stated that the statement was obtained by the Judicial Magistrate at 05.30 p.m and that when the Judicial Magistrate recorded the statement, her family members were around her daughter.

5.P.W.3 is the elder sister of the deceased and the daughter of P.W.1 and 2. She had deposed about her knowing about the love affair between her sister and the appellant/accused and that her sister had eloped with the appellant/accused and she came back on 28.04.2013 and she had further deposed that when her sister had come back, her parents had enquired her sister and that her sister was adamant and she had informed that she would marry the appellant/accused and when her parents had told her that she should wait till the elder sister gets married, she was crying the whole night and that she committed suicide on the next day. During her cross examination, she had admitted that the house of her relative where her sister immolated was entirely burnt.

6.P.W.4 is the brother of the P.W.3 who was a student staying in a hostel. He is a hearsay witness. P.W.5 is the relative of P.W.1 and P.W.2. He had deposed about having knowledge of the love affair between the deceased and the appellant/accused and that she was found missing on 18.04.2013 and having come back to home after ten days and also about having known the refusal of the appellant / accused to marry her. He had deposed that after the deceased came back home her parents and other persons in the village reprimanded her.

7.P.W.6 had spoken about the love affair between the deceased and the appellant/accused and about the deceased setting her ablaze and about police taking statement from her. P.W.7 is the relative of the P.Ws.1 to 3. Since he has not supported the prosecution case, he had been treated as hostile.

8.P.W.8 is the Doctor at the Government Hospital, Kumbakonam, who had admitted the deceased at 01.40 p.m at the Hospital. She had stated that at the time of admission, the deceased had sustained 100% burnt injuries throughout her body and that she had admitted her as inpatient. She had stated that the deceased was conscious at



the time of admission and at that time, she had entered the accident register, which was marked as Ex.P.2. However, she had not stated anything as if the statement was recorded from the deceased in her presence.

9.P.W.9 is the Doctor, who had conducted autopsy on the body of the deceased and he had issued the postmortem certificate that was marked as Ex.P.5, which reads as follows:-

"Regarding the body of a Female aged about 20 years Name Seethalakshi Requisition received at 11.20 AM on 30.04.13 From the Deputy Superintendent of Police, Thiruvidadaimarudhur with his letter No.126/13 dated 30.04.13 Body in charge of Police Constable No.HC-2934 named Mr.Rajaraja Cholan Identification and Cost Marks.

Could not be made out due to extensive burns.

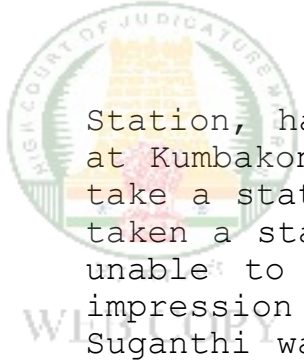
The body was first seen by the undersigned at 12.10 PM on 30.04.13. Its condition then was Rigor mortis present in all four limbs. Postmortem Commenced at 12.10 PM on 30.04.13. Appearances found at the postmortem A body of female lying on its back. Rigor mortis present in all four limbs. Eyes were closed and eye lids were burnt. Ears were burnt. Nostrils- No discharge mouth was partially opened. Tongue was lying within the mouth.

External Injuries:- Extensive variable degree burns seen all over the body from head to foot, sparing central part of foot (NC) 100% burns.

Internal Examination : On dissecting the neck, larynx, Glottis, Trachea and hyoid bones were intact. On opening the Thorax, Ribs were intact. Lungs (Rt Wt 450 gms (Lt) 400 gms. Both lungs as congested. Heart was weight 200 gms. Chambers were empty. On opening the abdomen, Stomach contained 100 ml of Amber Colored thick and mucosa was congested. Intestines were empty. Liver (Wt.) 1400 gms. C/s congested. Spleen Wt.100 gms. C/S- congested. Both kidneys weighted 150 gms each C/S congested. Bladder was empty. Vaginal Orifice admitted two fingers & hymen was not intact. Uterus size was normal. Cavity was empty. On opening the head, scalp, Skull & membranes were intact. Scalp was burnt as mentioned in injuries part. Brain wts.1400 gm. C/s pale. Postmortem conducted at 1.10. PM on 30.04.13. The death would have occurred about 16 to 20 hours prior to postmortem. The deceased would appear to (Torn) died of shock due to extensive burns injury. (Torn)"

10.P.W.10 is the Head Constable working at Thiruvidadaimaruthur Police Station. He had deposed that on 29.04.2013 at 22.00 hours, he had received the body of the deceased and kept it at mortuary and on the next day, he was there when the postmortem was conducted. He had stated that since the entire body was burnt along with clothes, they were unable to recover the clothes from the body of the deceased.

11.P.W.11 is the Sub-Inspector of Police. She had deposed that during 2012-13, she was working as Sub-Inspector of Police in Thiruvidadaimaruthur Police Station and that on 29.04.2013, P.W.12 Tmt.Kavitha, Sub-Inspector of Police working at Pandanallur Police



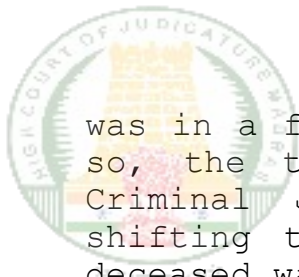
Station, had informed her about the deceased being under treatment at Kumbakonam Government Hospital and that P.W. 12 had asked her to take a statement from her and that she has gone to the Hospital and taken a statement from the deceased and that since the deceased was unable to affix her signature, she had obtained the left thumb impression of the deceased in the statement and that P.W.8 Doctor Suganthi was along with her during that time and she had taken the statement from P.W.8 and at 03.00 p.m she handed over the statement to P.W.12. In her cross examination, she had deposed that the combined Court premises was just opposite to the hospital. She had further deposed that the All Women Police Station was very near to the hospital and that every day the persons from the police station would be deputed to the Court and that her police station is about 10 k.m from the Government Hospital and that she had gone to the Government Hospital after receipt of information in her mobile phone. She had admitted to have recorded the statement of the deceased by her own handwriting and that the mother of the deceased was near by, when it was recorded.

12.P.W.12 is the Sub-Inspector of Police, who had, based on the statement recorded by the P.W.11, registered the case. She had deposed that after registration of the case in Crime No.126 of 2013, she had handed over the FIR to the Judicial Magistrate and handed over another copy to the Investigating Officer, viz., the Deputy Superintendent of Police, Thiruvidadimaruthur Circle. In her cross examination, she had admitted that there are corrections in the FIR with regard to the date and time and she had also admitted that the FIR had reached the Judicial Magistrate at 10.20 p.m at the night hours.

13.After completion of the evidence, when the above incriminating materials were put to the appellant/accused under Section 313 Cr.P.C, the appellant/accused denied the same as false, however, he did not choose to examine any witness on his side or marked any document. Having considered the oral and documentary evidence, the trial Court convicted the appellant/accused for the offences under the Sections as stated above.

14.Heard Mr.A.Thiruvadikumar, learned counsel appearing for the appellant/accused and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent and carefully perused the Judgment of the Court below as well as the materials placed on record.

15.The learned counsel for the appellant/accused would submit that the trial Court having disbelieved Ex.P.1 a crucial document, relied on by the prosecution, erred in convicting the appellant/accused by shifting the burden on the appellant/accused. He would submit that the trial Judge had given a categorical and clear cut finding that Ex.P.1 is a suspicious document and he had also stated that the prosecution has failed to prove that the finger print found in Ex.P.1 is that of the deceased and that the deceased

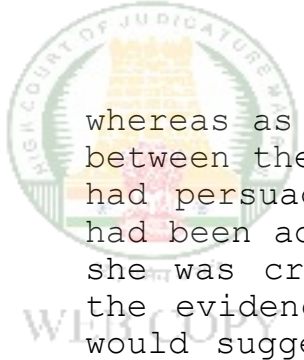


was in a fit state of mind to give a declaration. When such being so, the trial court had deviated from the known principles of Criminal Jurisprudence and foundations of law of evidence by shifting the burden on the accused rendering a finding that the deceased was with the accused from 18.04.2013 to 29.04.2013 and that thereby, the appellant/accused has exclusive knowledge about what transpired between them during the period 18.04.2013 to 28.04.2013 and further given a finding that the suicide committed by the deceased has direct nexus with her stay with the accused on the said ten days and taking into consideration, non-explanation of the said circumstances by the accused had come to a conclusion that the appellant/accused had abetted the deceased to commit suicide.

16.The learned counsel for the appellant/accused would further vehemently submit that absolutely no evidence had been let in by the prosecution to prove that the appellant/accused abetted the deceased to commit suicide. Further, he would submit that it is the admitted case of P.Ws.1 to 3 that the deceased and the appellant/accused were in a relationship for the past two years and that they have reprimanded the deceased and instructed her not to marry the appellant/accused that on the ground of difference in communities and that the deceased had got an elder sister, who was not married and thereby, he would submit that the reason for the victim to have committed suicide is that her entire family members were against her getting married to the appellant/accused. When such being so, the appellant/accused cannot be held responsible for the suicide committed by the deceased. He would further submit that strangely in this case, the Investigating Officer, the Deputy Superintendent of Police had not been examined by the prosecution and thereby, without any legal materials, the trial Court had erred in holding the appellant/accused guilty of the offences and wrongly convicted him on presumptions and surmises and also on wrong application of the known legal principles.

17.He would further submit that it is the specific case of the prosecution that the appellant/accused after coming back from Coimbatore threatened the deceased and obtained her signature in a blank paper under threat and refused to marry her on the ground of difference in caste. With regard to the above allegation, no recovery has been made to show that such a letter was obtained by the appellant/accused from the deceased and that too under threat and further when the trial judge having disbelieved the alleged statement EX P1 stated to have been recovered from the deceased and when no other legal evidence has been let in by the prosecution in this case to prove the same the judgment of the trial Court is erroneous.

18.The learned counsel for the appellant/accused would submit that as per the prosecution the appellant/accused and the deceased parted ways on 28.04.2013 and the deceased had reached home on the same day and she had committed suicide on the next day. In the intervening period, the appellant/accused had not contacted her



whereas as per the evidence of P.W.1 to P.W.3 there had been argument between them and the deceased and that the family members and others had persuaded her not to marry the appellant/accused and that she had been adamant that she would marry the appellant/accused and that she was crying the whole night. He would submit that this part of the evidence goes against the case of the prosecution and thereby would suggest that the appellant/accused was in no way responsible for the suicide committed by the deceased. Whereas, she had committed suicide since her family members and others were against the deceased getting married to the appellant/accused. He would reiterate, that to constitute abetment, intention and involvement of the accused to aid or instigate commission of suicide is imperative and that any severance or absence of any of the above constituents would militate against indicting the accused. He would further submit that the remoteness of culpable acts or omission rooted in the intention of the accused to actualize the suicide would fall short of offence of abetment which is essential to attract offence under Section 306 IPC. The necessary requirements of abetment are contiguity, continuity, culpability and complicity. In support of his arguments, he would rely on the judgment of the Hon'ble Apex Court reported in **(2017) 1 SCC 433 (Gurucharan Singh Vs State of Punjab)**

19. The learned Additional Public Prosecutor would submit that the trial Court had rightly convicted the accused. He would submit that the accused, who belongs to a caste Hindu Community, had cheated the deceased and taken her to Coimbatore stayed with her for 10 days and thereafter, intimidated her and had taken a letter from her stating that she has no relationship with him and refused to marry her on the ground of difference in caste and thereby abetting her suicide. He would further submit that the evidence let in by the prosecution is clear that the deceased committed suicide due to the abetment made by the appellant/accused.

20. Now what remains to be seen is 1) whether the prosecution has proved its case beyond reasonable doubt and 2) Whether the trial judge despite having rendered a categorical finding holding Ex.P.1 (the statement alleged to have been given by the deceased) as suspicious and doubtful and disbelieving it, is right in convicting the appellant/accused by shifting the burden of proof on the appellant/accused and holding him guilty stating that the deceased was with him for 10 days and that he alone has exclusive knowledge about what transpired between them during the 10 days and his non explanation as to why the deceased returned home without marrying him strengthened the case that the appellant/accused defrauded the deceased with false promise of marriage on the ground of her caste and thereby abetted her to commit suicide.

21. With regard to case of abetment to commit suicide, the Hon'ble Apex Court in **(2017) 1 SCC 433 (Gurucharan Singh Vs State of Punjab)**, in Paras 20 to 22 and Paras 27 and 29 has held as follows:
<https://hcservices.ecourts.gov.in/hcservices/>
 "20. [Section 306](#) of the Code prescribes the punishment for abetment

of suicide and is designed thus:

"306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of [Section 306 IPC](#). Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. [Section 306 IPC](#), thus criminalises the sustained incitement for suicide.

22. [Section 107 IPC](#) defines abetment and is extracted hereunder:

"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 doing.

Explanation 2 - 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 facilitate the commission thereof, is said to aid the doing of that act."

Not only the acts and omissions defining the offence of abetment singularly or in combination are enumerated therein, the explanations adequately encompass all conceivable facets of the culpable conduct of the offender relatable thereto."

27. The pith and purport of [Section 306 IPC](#) has since been enunciated by this Court in [Randhir Singh vs. State of Punjab](#) (2004) 13 SCC 129, and the relevant excerpts therefrom are set out hereunder.

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is



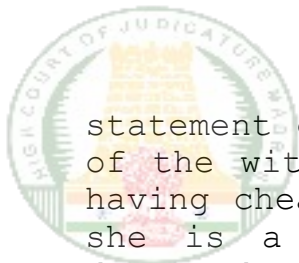
required before a person can be said to be abetting the commission of offence under [Section 306 IPC](#).

13. In *State of W.B. Vs. Orilal Jaiswal* (1994) 1 SCC 73, this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

28. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal* (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal @ Jhantu vs. State of West Bengal* (2010) 1 SCC 707.

29. That the intention of the legislature is that in order to convict a person under [Section 306 IPC](#), there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena vs. Vijay Kumar Mahajan* (2010) 12 SCC 190.

22. We have carefully and consciously gone through the evidence and the entire materials on record. Admittedly, it is a case of suicide of an unmarried woman by self immolation at her relatives' house in her village when no one else was in the house. As per the Wound Certificate Ex.P2, it had been stated that identification Marks could not be identified and that she had suffered 100% burn injuries all over the body except both foot, further in the original of Ex.P2 no reference had been made as if the patient was conscious and in the Postmortem Certificate Ex.P.5 with regard to External Injuries it had been stated as Extensive variable degree burns seen all over the body - 100% Burns. Further, it is the evidence of PW.2 the mother of the deceased that all the fingers in both the hands of the deceased were burnt and thereby, the trial court had rightly disbelieved Ex.P-1 the statement alleged to have been recorded from the deceased in which she was alleged to have affixed her Left Thumb Impression. Though the trial court disbelieved the alleged

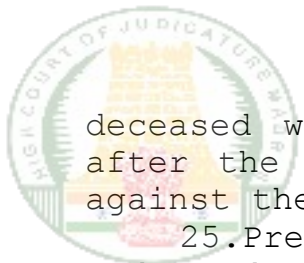


statement of the deceased (Ex.P.1), basing reliance on the evidence of the witnesses PW.1 to 3 has convicted the appellant/accused for having cheated and refused to marry the deceased on the ground that she is a member of a scheduled caste and thereby abetted the deceased to commit suicide.

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23. Now analyzing the evidence of PW 1 to 3 with regard to the finding of the trial court shifting the burden of proof on the accused, it is the admitted case of the witnesses PW.1 to PW.3 viz; Father, Mother and Elder Sister of the deceased that the appellant/accused and the deceased were having a relationship for two years and that they have reprimanded the deceased on the ground of difference in caste and had dissuaded the deceased from marrying the appellant/accused saying that she has an unmarried elder sister and that they will look for a bridegroom in their own community itself. Further, it is the specific case of PW.3 (the elder sister of the deceased) in her evidence in chief that her sister after going with the appellant/accused to Coimbatore came back home on the 28th and when her parents had enquired her the deceased was adamant that she would marry the appellant/accused only and that her parents had told her that she could marry after her elder sister gets married and that the deceased was crying the whole night. In her cross examination, she had stated that her parents and others were against her sister getting married to the appellant/accused. Further no other valuable evidence had been brought forth by the prosecution to prove the fact that the appellant/accused cheated the deceased and obtained a letter from the deceased under threat that she has no connection whatsoever with him and that he refused to marry her on the ground of difference in castes. Further Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 can be invoked against the accused only when the offence is committed by the accused against the person on the ground that such person is a member of the Scheduled Caste of Scheduled Tribe. Here in this case absolutely no legal evidence had been brought forth by the prosecution to prove that the appellant/accused cheated the deceased and refused to marry her on the ground of her being a member of the scheduled caste and thereby abetted her to commit suicide.

24. Though Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 imposes presumption as to the offences, in our opinion in the given facts of the case, presumption u/s 8 of the Act cannot be invoked against the appellant/accused. Even if presumption under Sec 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 Act is to be invoked it must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution and thereby a strict duty is cast upon the prosecution to prove the foundational facts in its case before shifting the burden on the accused. In this case, an initial burden is cast upon the prosecution to prove the foundational fact that the appellant/accused committed the offence on the ground that the



deceased was a member of the scheduled caste community and only after the initial burden is discharged presumption can be invoked against the appellant/accused.

25. Presumption of Innocence and Burden of Proof are important and Fundamental Principles in Criminal Law and key elements in a Criminal Trial. With regard to principles regarding Burden of Proof and Doctrine of Innocence, it would be beneficial to refer to the Judgment of the Hon'ble Apex Court in **Babu Vs. State of Kerala** reported in **(2010) 9 SCC 189**, wherein it has been held as under :

"27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like [Negotiable Instruments Act](#), 1881; [Prevention of Corruption Act](#), 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to herein above, that the burden on proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. (Vide: [Hiten P. Dalal v. Bratindranath Banerjee](#), (2001) 6 SCC 16; [Narendra Singh v. State of M.P.](#), AIR 2004 SC 3249; [Rajesh Ranjan Yadav v. CBI](#), AIR 2007 SC 451; [Noor Aga v. State of Punjab & Anr.](#), (2008) 16 SCC 417; and [Krishna Janardhan Bhat v. Dattatraya G. Hegde](#), AIR 2008 SC 1325)."

26. Further, in **Rajivi Singh Vs. State of Bihar** reported in **(2015) 16 SCC 369**, the Hon'ble Apex Court has held in para 72 as follows:-

72. Viewed from the moral and political perspectives, it has been observed that in liberal states, the rule about the burden of proof has been elevated to the status of fundamental human right encompassing the assurance of liberty, dignity and privacy of the individual and from this standpoint it is essential that the state should justify fully its invasion of the individual's interest by proving that he had committed an offence, thereby abusing the freedom of action accorded to him or her by the liberal state. The significance of such presumption finds insightful expression in the following extract of *State Vs. Coetzee* [1997] 2 L.R.C.593, South African Constitutional Court in the words of Sachs, J.:



"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."

The quintessence of the philosophy embedded in the above extract is that the presumption of innocence serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system.

27. Once again at the cost of repetition, after carefully appraising the entire evidence and materials on record we are of the considered opinion that the prosecution has failed to prove even the bare foundational facts regarding the allegations against the appellant/accused. When such being so, the trial Court miserably erred and deviated from the known principles of law regarding burden of proof and evidence in shifting the burden on the appellant/accused and holding him guilty stating that the deceased was with him for 10 days and that he alone has exclusive knowledge about what transpired between them during the 10 days and that there is no explanation on the side of the defence as to why the deceased returned home without marrying him and holding that the non explanation strengthened the case that the appellant/accused defrauded the deceased with false promise of marriage on the ground of her caste and thereby abetted her to commit suicide.

28. In the light of the decisions referred above, which are applicable to the case on hand and in view of the above discussions and reasons and on an overall analysis of the evidence placed on record, having regard to the probabilities of the case, we are of the considered view that the reasons assigned by the trial Court and

the conclusions drawn by it for convicting the accused Appellant are not tenable and that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Therefore, the conviction and sentence recorded against the appellant/accused are liable to be set aside and consequently, the appellant is entitled for acquittal.

29. In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence in S.S.C.No.66 of 2014 on the file of the learned I Additional District and Sessions Judge (P.C.R) Thanjavur, Thanjavur District is hereby set aside. The appellant is acquitted from all the charges he is convicted for. The bail bond, if any executed by the appellant, shall stand cancelled and the forfeited amount of Rs.6000/- is directed to be returned to the appellant/accused.

Sd/-

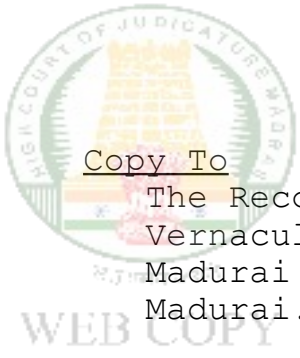
Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar

To

- 1.The I Additional District and Sessions Judge (P.C.R) Thanjavur, Thanjavur District,
- 2.The Deputy Superintendent of Police Thiruvaidaimaruthur Sub Division Thanjavur District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- 4 The superintendent, Central Prison, Tiruchirappalli.
- 5 The II Additional District Munsif Cum Judicial Magistrate, Kumbakonam.
- 6 Do through The Chief Judicial Magistrate, Thanjavur District at Kumbakonam.
- 7 The superintendent of Police, Thanjavur.
- 8 The District Collector, Thanjavur.
- 9 The Director General of Police, Mylapore. Chennai-4



Copy To

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Thiruvadikumar, Advocate, SR.No.40963

kk/14.03.2019/15p/12c

JUDGMENT MADE IN

CRL.A[MD].No.500 of 2017

Dated: 07.01.2019.