



Crl.A.No.131 of 2015

In the High Court of Judicature at Madras

Reserved on : 06.3.2023	Delivered on : 14.3.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Appeal No.131 of 2015

Mr.Saravanan

...Appellant

Vs

The State rep.by the Inspector
of Police, Nambiyur Taluk Police
Station, Erode District.

...Respondent

APPEAL under Section 374(3) of the Criminal Procedure Code
against the judgment and order dated 28.11.2014 passed in S.C.
No.83 of 2014 on the file of the learned Sessions Judge, Mahila
Court (FTMC) Erode, Erode District.

For Appellant :	Mr.G.Prabhakaran
For Respondent :	Mr.L.Baskaran, GA (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment and
order dated 28.11.2014 passed in S.C.No.83 of 2014 on the file of



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the learned Sessions Judge, Mahila Court (FTMC) Erode, convicting and sentencing the appellant in the following manner :

S. No	Offence for which convicted	Sentence imposed
1	Section 506(ii) of the IPC	7 years R.I., and to pay a fine of Rs.1,000/- and in default, to undergo 2 years S.I.
2	Section 509 of the IPC	3 years S.I., and to pay a fine of Rs.1,000/- and in default, to undergo 6 months S.I.
3	Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002	10 years R.I., and to pay a fine of Rs.50,000/- and in default, to undergo two years S.I.
Out of the total fine amount of Rs.52,000/-, the Trial Court directed the same to be paid as compensation to the parents of the deceased and each should receive Rs.26,000/- under Section 357(1)(b) of the Cr.P.C. The above sentences were directed to run concurrently and the period already undergone by the appellant was directed to be set off under Section 428 of the Cr.P.C.		

2. The case of the prosecution is as hereunder :

(i) On 27.6.2013 at about 7 PM, one Naveena, aged about 18 years, was standing outside her house to buy milk. While so, the appellant was said to have harassed her stating that she must come to him and do what he would say. The appellant also threatened Naveena with dire consequences if she did not listen to him. That apart, the appellant was said to have made calls to her cellphone and sent messages and as a result, Naveena was subjected to mental agony and she set herself on fire after pouring kerosene at



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about 8.30 PM.

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(ii) Naveena was taken to the Government Hospital at Gobichetipalayam around 9.40 PM by 108 ambulance. P.W.7 was the doctor, to whom Naveena was brought for treatment by her father - P.W.1. P.W.7 found that Naveena had suffered nearly 80% burns. He prepared the accident register, which was marked as Ex.P.4 and through Ex.P.5, the information was sent to the Sub-Inspector of Police, Gobi Police Station. He advised Naveena to be taken to Coimbatore Medical College and Hospital, Coimbatore for further treatment.

(iii) Naveena was taken to the Coimbatore Medical College and Hospital, Coimbatore at about 1.40 AM on 28.6.2013 where P.W.8 - the doctor, who attended Naveena, found that she suffered 80-85% burn injuries. Hence, P.W.8 sent an information to the Judicial Magistrate concerned on 28.6.2013 at 6.30 AM for recording dying declaration. The note that was sent by P.W.8 was marked as Ex.P.6.

(iv) On receipt of the information from P.W.8, the Judicial Magistrate No.7, Coimbatore - P.W.6 reached the Government Hospital at about 6.40 AM. P.W.8 took the Magistrate to Naveena



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and around 6.45 AM, P.W.6 started recording the dying declaration of Naveena. Before the dying declaration was recorded by P.W.6, P.W.8 certified that Naveena was in a fit state of mind to give a statement and this certificate was marked as Ex.P.7.

(v) The dying declaration recorded by P.W.6 was marked as Ex.P.3 wherein the relevant portion reads as hereunder :

"Nfs;tp: cq;fSf;F ,e;j fhaq;fs; vg;NghJ>
vt;thW Vw;gl;IJ?
gjpy; : New;W ,uT 8.30 kzpf;F tPl;by;
ehd; rPk vz;iz Cj;jpf;fpl;Nld;.
Nfs;tp: vjw;f;fhf?
gjpy;: fhuzk; vJTk; ,y;iy. Rk;kh
tpisah;L Nghy; Cj;jpf;fpl;Nld;.
Nfs;tp: tPl;by; mg;NghJ ahh;
,Ue;jhh;?
gjpy;: vy;NyhUk; ,Ue;jhh;fs;. mth;fs;
tPl;bw;f;;Fs; ,Ue;jhh;. ehd; ntspNa te;J
Cj;jpf;fpl;Nld;.
Nfs;tp: NtW VNjDk; nrhy;y Ntz;Lkh?
gjpy;: ,y;iy."

(vi) P.W.8 further certified that Naveena was conscious and oriented through out the period of recording the dying declaration.



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This certification was marked as Ex.P.8.

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(vii) Based on Ex.P.5 - information, the Special Sub-Inspector of Police viz. P.W.12 arrived at the Coimbatore Medical College and Hospital, Coimbatore at about 1.30 PM on 28.6.2013. He recorded the statement of Naveena and the same was marked as Ex.P.12. Based on this statement, a first information report - Ex.P.13 came to be registered in Cr.No.183 of 2013 on the file of the respondent Police at about 5.30 PM on 28.6.2013.

(viii) P.W.12 took up the investigation, went to the scene of crime and prepared the observation mahazar marked as Ex.P.1 and the rough sketch marked as Ex.P.14. He also recorded the statements of witnesses under Section 161(3) of the Criminal Procedure Code (for short, the Cr.P.C.). Once again, P.W.12 went to the Coimbatore Medical College and Hospital, Coimbatore and recorded the statement of Naveena. On 29.6.2013 at about 10 AM, the appellant was arrested, produced before the Court concerned and remanded to judicial custody. He received an information on 01.7.2013 to the effect that Naveena died at about 8.10 PM.

(ix) Ex.P.15 is the death intimation marked through P.W.13, who subsequently took up the investigation from P.W.12.



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(x) P.W.13, after taking up the investigation, prepared the alteration report marked as Ex.P.16 and altered the offence by adding Section 306 of the Indian Penal Code (for brevity, the Code). Thereafter, P.W.13 went to the Coimbatore Government College and Hospital and conducted inquest over the body of the deceased in the presence of panchayatdhars. The inquest report was marked as Ex.P.17. He also recorded the statements of witnesses under Section 161(3) of the Cr.P.C. Thereafter, the dead body was forwarded for post mortem.

(xi) The post mortem was conducted by P.W.10. The post mortem certificate was marked through P.W.10 as Ex.P.10, in which, the following ante mortem injuries were noted all over the body of the deceased :

"-Dermo-epidermal burns involving neck, entire chest, both palms, both lower limbs, back of chest and abdomen.

-Partial singeing noted over axillary hairs.

-Degloving of skin noted over both palms.

-The base of burnt area is reddish in colour. Infected areas covered with yellow



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colour slough material."

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(xii) P.W.10 gave a final opinion to the effect that the deceased would appear to have died of burns and its complications.

(xiii) P.W.13 completed the investigation and filed a final report on 27.10.2013 before the Judicial Magistrate No.2, Gobichettipalayam. The learned Magistrate served copies on the appellant under Section 207 of the Cr.P.C., and the matter was committed and made over to the Sessions Judge, Mahila Court (FTMC), Erode.

(xiv) The Trial Court framed charges against the appellant for the offences (i) under Section 12 of the Protection of Children from Sexual Offences Act, 2012; (ii) under Sections 506(ii) and 509 of the Code; and (iii) Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The prosecution examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.18 and identified and marked M.O.1 and M.O.2.

(xv) The incriminating evidence collected during the course of trial was put to the appellant when he was questioned under Section 313(1)(b) of the Cr.P.C., and he denied the same as false. The Trial Court, on considering the facts and circumstances of the



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case and after appreciating the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and consequently convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the above criminal appeal has been filed before this Court.

3. I have heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the State.

4. The learned counsel appearing for the appellant submitted that there were two divergent dying declarations that were available in this case. In the dying declaration recorded by the learned Judicial Magistrate, the deceased did not make any complaint against anyone whereas in the alleged statement given to P.W.12, she had given a graphic description with all minute facts by making an allegation against the appellant.



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5. In view of the same, the learned counsel for the appellant submitted that the inconsistent multiple dying declarations cannot be acted upon and that this Court has to necessarily look for corroboration. He further submitted that the so called dying declaration that was recorded by P.W.12 did not contain any indication with regard to the mental status of the deceased when it was recorded at about 1.30 PM on 28.6.2013. According to him, if really P.W.12 had recorded the statement, P.W.8 - the doctor, who was present in the hospital, would have stated something about the same whereas P.W.8 did not say anything about the arrival of the Police and recording of the statement. Hence, he questioned the authenticity of the very statement recorded by P.W.12.

6. The learned counsel appearing for the appellant also brought to the notice of this Court the evidence of P.W.1 to P.W.3 and submitted that it is quite unnatural that the parents of the deceased did not lodge any complaint with the Police even though they claimed to have knowledge on 28.6.2013 at about 7 AM about the harassment made by the appellant. According to him, the materials available on record had also shown that the intimation



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had been sent to the Police through Ex.P.5 on 27.6.2013 itself whereas the Police came to the hospital only on 28.6.2013 at 1.30 PM and the manner, in which, the law was set in motion, weakens the case of the prosecution.

7. The learned counsel for the appellant also submitted that the first information report reached the Court only on 29.6.2013 at about 4.30 PM, which was nearly 1 1/2 days after P.W.12 had recorded the statement of the deceased and that this delay has also been not explained by the prosecution. According to him, it was clear from the evidence of P.W.1 that the parents and others were present when P.W.12 was said to have recorded the statement of the deceased and hence, interference while recording the statement cannot be ruled out.

8. The learned counsel for the appellant pointed out to the evidence of P.W.2 and submitted that P.W.2 saw the deceased having a conversation with the appellant and found it to be a natural conversation, which did not create any doubt in the mind of P.W.2. That apart, the evidence of P.W.3 was also pointed out.



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According to him, P.W.3, who is the brother of the deceased stated that he knew about the harassment made by the appellant to the deceased even before the deceased committed self immolation. He would submit that if that was so, P.W.3 ought to have informed his parents (P.W.1 and P.W.2) about the same and taken steps to give a complaint before the Police. He would also submit that the deceased, while giving the statement also, did not say that she informed P.W.3 about the harassment made by the appellant.

9. The learned counsel for the appellant submitted that the third charge against the appellant for the offence under Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 has not been proved since it was based on the telephonic conversation and messages said to have been sent by the appellant to the deceased and Ex.P.18, which is the Call Details Record, was not accompanied with a certificate under Section 65B(4) of the Indian Evidence Act (for brevity, the IEA). The learned counsel for the appellant also pointed out to various discrepancies in the evidence of P.W.12. Ultimately, he sought for the acquittal of the appellant from all the charges.



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10. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State, submitted that the prosecution had clearly made out a case against the appellant for harassing the deceased, which forced her to take the extreme step of committing suicide by self immolation. He further submitted that the presence of the appellant near the house of the deceased has been spoken to by P.W.1 to P.W.3 and the incident had taken place immediately thereafter.

11. It was also submitted by the learned Government Advocate (Criminal Side) that the deposition of P.W.1 to P.W.3 in the chief examination, has not been discredited in the cross examination. In the overall facts and circumstances of the case and in the light of the available evidence, it was contended that the prosecution had proved all the charges beyond reasonable doubts, that the same had been properly appreciated by the Trial Court and that there is no ground to interfere with the same. Ultimately, he submitted that the criminal appeal is liable to be dismissed by this Court.



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12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. In the present case, immediately after the incident, the deceased was taken to the Government Hospital at Gobi by P.W.1 - the father of the deceased. P.W.7 - the doctor was the first person, who saw the deceased suffering with 80% burns. P.W.7 saw the deceased at about 9.40 PM on 27.6.2013. P.W.7 also stated that the deceased was in a conscious state. Hence, an accident register was prepared and the injuries were noted and it was marked as Ex.P.4.

14. The most crucial aspect that comes out of the evidence of P.W.7, is that he immediately informed the Police about the incident, which is evident from Ex.P.5. It is quite shocking that in spite of receipt of this intimation, no one turned up from the Police Station. P.W.7 also referred the deceased for further treatment to the Coimbatore Medical College and Hospital, Coimbatore.



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15. The deceased was taken to the Coimbatore Medical College and Hospital, Coimbatore at about 1.40 AM on 28.6.2013. P.W.8 - the doctor, who was present in the hospital at that time, found that the deceased was suffering with 80-85% burns. Considering the status of the deceased, P.W.8 immediately sent a note to the Magistrate for recording a dying declaration, which is evident from Ex.P.6. P.W.6 - the Magistrate arrived at the Coimbatore Medical College and Hospital, Coimbatore at about 6.40 AM. P.W.8 certified that the deceased was in a fit state of mind to give the dying declaration. Hence, P.W.6 started recording the dying declaration from 6.45 AM. After the recording of the dying declaration by P.W.6, P.W.8 once again certified that the deceased stayed conscious and oriented throughout the recording of the dying declaration.

16. What was stated by the deceased to P.W.6 has already been extracted supra. It is quite apparent that the deceased did not make any allegation against any one. In the dying declaration given to P.W.6, she only stated that she playfully poured kerosene on herself and that she did the said act outside the house. Therefore,



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nothing turns out of the dying declaration marked as Ex.P.3 recorded by P.W.6.

17. P.W.1 and P.W.2, who are the parents of the deceased, stated in their evidence that on 28.6.2013 at about 7 AM when they were there in the hospital, the deceased informed them about the harassment and threat meted out to her by the appellant. If the deceased informed her parents about the harassment meted out to her by the appellant, it is quite unnatural that P.W.1 and P.W.2 never gave a complaint to the Police. This is apart from the fact that the Police were intimated by P.W.7 on 27.6.2013 itself. However, no steps were taken by the Police to act upon the intimation received by them until P.W.12 came to the Coimbatore Medical College and Hospital, Coimbatore on 28.6.2013 at about 1.30 PM.

18. P.W.3, who is the brother of the deceased, stated in his evidence that the deceased informed him about the harassment and threat made by the appellant even before the deceased committed self immolation. But, P.W.3 did not inform the same to P.W.1 and P.W.2. Similarly, the deceased did not anywhere state that she



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informed P.W.3 about the harassment and threat made by the appellant.

19. P.W.12 was said to have recorded the statement of the deceased at about 1.30 PM on 28.6.2013. Even police can record a dying declaration and there is no restriction or prohibition. Admittedly, the statement was recorded by P.W.12 in the hospital. It was P.W.8, who was treating the deceased. P.W.8 nowhere stated that the Police came to the hospital and recorded the statement. That apart, there is absolutely no evidence to show that the deceased was in a fit state of mind at 1.30 PM on 28.6.2013 when the statement was allegedly recorded.

20. On carefully going through Ex.P.12, it is seen that it has been recorded with so much of precision and with a lot of minute details including the mobile number. It is quite doubtful as to whether the deceased, who had suffered 80-85% burns, would have given the details with such graphic description. There is a clear indication that the parents of the deceased were present when P.W.12 came to the hospital and their intervention by providing



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information cannot be ruled out. Hence, Ex.P.12 cannot be relied upon as such and this Court has to necessarily look for corroboration.

21. This is more so since there are multiple dying declarations, which are contradicting each other and it is now too well settled that such multiple dying declarations can be acted upon only if the statements made therein are consistent throughout.

22. Useful reference can be made to the judgments of the Apex Court in the cases of

(i) ***Jagbir Singh Vs. State (N.C.T. of Delhi) [reported in 2019 (4) MLJ (Crl.) 95]***; and

(ii) ***Purshottam Chopra Vs. State (Government of N.C.T. of Delhi) [reported in 2020 (1) MWN (Crl.) 95]***.

23. The presence of the appellant near the house of the deceased on 27.6.2013 between 7 and 7.30 PM had been spoken to by P.W.1. Immediately thereafter, the deceased had committed self immolation at about 8.30 PM. The appellant, while he was



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questioned under Section 313(1)(b) of the Cr.P.C., on the incriminating evidence available against him, denied the same as false and he did not say anything with regard to the nature of conversation with the deceased.

24. What was discussed by the appellant with the deceased is something, about which, even P.W.1 cannot say. P.W.1 stated that the appellant was known to his family and he never suspected that he was harassing and threatening the deceased. The incident took place hardly within one hour after the appellant and the deceased were seen conversing.

25. In the light of the above evidence, the meeting of the appellant with the deceased on the fateful day has a lot of significance to relate it to the extreme step taken by the deceased, who committed self immolation and ultimately died.

26. The statements of P.W.1 to P.W.3 were recorded by P.W.12 on 28.6.2013 under Section 161(3) of the Cr.P.C. Thereafter, once again P.W.13 recorded their statements on



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02.7.2013. These statements reached the Court concerned on 29.8.2013. The deposition of P.W.1 to P.W.3 in the chief examination was in line with these statements. There is absolutely no explanation as to why the statements reached the Court concerned with such an enormous delay. The evidence of P.W.1 to P.W.3 assumes a lot of significance in this case. If their evidence, when they were examined in chief, was in line with the statements recorded from them by P.W.12 and P.W.13, those statements must reach the Court concerned at the earliest point of time. This is insisted to avoid any deliberation and building up a case in order to fix the accused persons.

27. This Court, time and again, has held that important documents should be despatched without delay to the Magistrates. Useful reference can be made to the judgments of

(i) a Division Bench of this Court in the case of ***Karunakaran, In re [reported in 1975 (XIX) MLJ (Crl.) 106]*** wherein the relevant portion is extracted as hereunder:

"5. In some instances we were not able to find out at what precise point of time on a particular



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day the complaint was made to the police, and the relevant first information report were received by the Sub-Magistrate, for they contained only the initials of the Sub-Magistrate, and the date. The importance of noting the exact time cannot be over-stated or over-emphasised. We have also come across instances where we could not be sure whether the inquest report and the statements of witnesses recorded during the inquest accompanying the inquest report had been sent to the Sub-Magistrate on the day when they purported to have been sent, since they did not contain the initials of the Sub-Magistrate with the date of the receipt of the same. In our note dated 28th March, 1974 we had stressed the importance of noting the time at which and the date on which these documents were received by the Sub-Magistrate, since the guilt of the accused or his innocence could be gauged, measured and determined unmistakably from certain documents received by the Courts in good time and we find that a Circular, R.O.C.No.2272-A/74-F1 dated 20th June, 1974 was sent to all the Magistrates. In the instant case we had grave doubts whether the inquest report and the statements of witnesses recorded during the inquest and said to have accompanied the inquest report were received by the Sub-Magistrate on a particular day, for the Magistrate had initialled the inquest report, but in the date seal which was affixed to the inquest report the date was written in ink. The statements of the witnesses recorded during the inquest, however, did not contain the initials of the Sub-Magistrate at all. There was a lurking and



gnawing suspicion in our minds whether they were smuggled into the Court of the Sub-Magistrate belatedly and far later. We are therefore of the opinion that it is imperative that the following documents should be despatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station House Officer should record the time of the actual despatch of the various documents in the various registers, particularly, the statement recorded under [Section 154](#) of the Code of Criminal Procedure. On receipt of the said documents, the Magistrate should initial the same, noting therein the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes Therefore, as the Manual of Instructions for the Guidance of Magistrates in the Madras State does not contain any instructions to the Magistrates in this regard, we suggest that the same may be brought up-to-date by incorporating in it the circulars which had been issued from time to time for the guidance of the Magistrates. The following are documents of special importance which, in our opinion, should be despatched by the investigating officers without any delay to the Magistrates, and they should bear the initials of the Magistrate with reference to both the time and date of their receipt.

- 1. The original report or complaint under [Section 154](#) of the Code of Criminal Procedure.*
- 2. The printed form of the first information report prepared on the basis of the said report or*



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complaint.

3. Inquest reports and statements of witnesses recorded during the inquest.

4. Memo, sent by the Station House Officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case treatment.

5. Memo, sent by the doctor to the police when a person with injuries is brought to the hospital, or the death memo, sent by the doctor to the police on the death of the person admitted into the hospital with injuries.

6. Observation mahazars for the recovery of material objects, search lists and the statements given by the accused admissible under [Section 27](#) of the Evidence Act, etc. prepared in the course of the investigation.

7. The statements of witnesses recorded under [Section 161 \(3\) of the Code of Criminal Procedure](#).

8. Form No. 91 accompanied by material objects."

and

(ii) another Division Bench of the Madurai Bench of this Court in the case of **Manickaraj Vs. State [reported in 2019 (2) MWN (Crl.) 487]**, in which, the judgment in the case of **Karunakaran, In re** was relied upon and this Court reiterated that the initial statements of the witnesses



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recorded must reach the Court immediately without delay, failing which, there will be a scope and chance for interpolation and story telling and it will affect the credibility and quality of the evidence of the prosecution witnesses, more particularly, the key witnesses in the case.

28. It is quite uncomprehendable as to why the deceased informed the learned Magistrate, who recorded the dying declaration that she poured kerosene on herself playfully. Such a conduct is quite unnatural for a girl, who was aged about 18 years at the time of incident. Both the dying declarations viz. Ex.P.3 and Ex.P.12 cannot be completely relied upon and they can only be taken note of along with attendant circumstances and other evidence available on record.

29. The case of the prosecution that there were telephone calls and messages sent by the appellant to the deceased has not been proved. Ex.P.18, which is the call details record is inadmissible by virtue of the same not being accompanied with the certificate under Section 65B(4) of the IEA.



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30. The charge under Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 can be sustained only if the charge under Section 509 of the Code is proved.

31. To constitute an offence under Section 509 of the Code, the prosecution must establish that the accused, by uttering any word or making sound or gesture or by exhibiting any object, intending to insult the modesty of any woman, shall be punished for the offence. In the present case, except for the fact that the appellant was talking with the deceased before the incident, there is nothing to show that he had done any act insulting the modesty of the deceased.

32. When the Legislature used the word 'modesty' in the above provision, it had in its mind the object of protecting an attribute, which is peculiar to women. The question of infringing the modesty of women would, of course, depend upon the customs and habits of the people. As a general standard, acts, which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for



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measuring the amplitude of modesty of women, as it keeps varying from society to society.

33. Mere insult or false allegation will not attract a prosecution under Section 509 of the Code. The prosecution must come up with a definite allegation of insult to the modesty of a woman to sustain the charge under Section 509 of the Code. The burden is on the prosecution to prove the same. For the purposes of the present case, the prosecution, to sustain the charge under Section 509 of the Code, is mainly relying on the evidence of P.W.1, P.W.3 and P.W.12. However, the evidence of P.W.1 does not even indicate that the appellant was seen indulging in acts insulting the modesty of his daughter.

34. The evidence of P.W.3 in this regard is not completely reliable since he has not spoken to about the deceased informing him with regard to the harassment either to his parents or to the Police by way of giving a complaint. Even the deceased, in the dying declarations, did not state that she informed P.W.3 about the harassment made by the appellant. In view of the same, it becomes



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very difficult to sustain the charge under Section 509 of the Code. If this charge cannot be sustained, the charge under Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 must also fall.

35. When the charge was framed for the offence under Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act, the only material that was relied upon to establish this charge was the so-called telephonic conversation and messages sent by the appellant. This aspect of the case was not proved by the prosecution and this Court has already held supra that Ex.P.18 cannot be relied upon in this regard. This is yet another reason as to why the charge under Section 4B(2) of the Tamil Nadu Prohibition of Harassment of Women Act cannot be sustained.

36. The deceased was a girl, aged about 18 years. She took the extreme step of committing suicide within a short time after she met the appellant. There is a charge against the appellant for the offence under Section 506(ii) of the Code. The same requires criminal intimidation to be proved by the prosecution. P.W.1, in his



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evidence, stated that he found the deceased having conversation with the appellant to be natural and he did not find anything abnormal. Hence, there is no strong material to show that the deceased was subjected to any criminal intimidation. The act of the deceased in taking the extreme step of committing self immolation within a short time after meeting the appellant, at the best, raises a strong suspicion. However, how so ever strong the suspicion is, the same cannot replace the test of proving the case beyond reasonable doubts by the prosecution. Hence, the prosecution has to prove the ingredients of the offence beyond reasonable doubts and in the absence of the same, the Court cannot proceed further and convict the person on mere assumptions.

37. This Court has rendered a finding that the appellant did not give any explanation when he was questioned under Section 313(1)(b) of the Cr.P.C. That, by itself, cannot be a ground to convict the appellant since such an explanation on the part of the appellant will become relevant only if the prosecution has proved the foundational facts.



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38. In other words, the duty of the prosecution to prove the offence beyond reasonable doubts cannot be given a go-by. Only when the prosecution proves the foundational facts, in order to make out the offence, the non explanation on the part of the appellant will become a connecting link to sustain the conviction and the consequential sentence.

39. The Trial Court has proceeded further to convict and sentence the appellant by placing a lot of reliance upon Ex.P.12. This Court has already held that Ex.P.12 cannot be completely relied upon and the reasons for the same have also been given in detail. The Trial Court was swayed by emotions and hence, the vital findings rendered by the Trial Court are in the nature of strong suspicion and are not based on strong evidence.

40. It is quite unfortunate that a young girl has chosen to take away her life and that, by itself, should not translate into conviction and sentence of the appellant, unless the prosecution proves the case beyond reasonable doubts. In other words, Courts are expected to act based on evidence and not on mere



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assumptions swayed by emotions.

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41. In the light of the above discussions, this Court holds that the prosecution has not proved the case beyond reasonable doubts, that the charges levelled against the appellant are not sustainable, that the appellant is entitled for the benefit of doubt and that he is acquitted from all the charges.

42. Accordingly, the judgment and order dated 28.11.2014 rendered in S.C.No.83 of 2014 on the file of the Sessions Judge, Mahila Court (FTMC), Erode is hereby set aside and the criminal appeal is allowed. The appellant was enlarged on bail by this Court, by order dated 13.4.2015 in M.P.No.1 of 2015. Since the appellant is acquitted from all charges, the bail bonds executed shall stand cancelled. It is seen that the fine amounts, which were directed to be paid to the parents of the deceased as compensation, were not at all paid to them by the appellant. In view of the total acquittal, this Court holds that no further orders are necessary in that regard.

14.3.2023



WEB COPY



Crl.A.No.131 of 2015

N.ANAND VENKATESH,J

RS

Index : Yes
Neutral Citation : Yes

To

- 1.The Sessions Court, Mahila Court (FTMC) Erode.
- 2.The Inspector of Police, Nambiyur Taluk Police Station, Erode District.
- 3.The Judicial Magistrate No.2, Gobichettipalayam.
- 4.The Public Prosecutor, High Court, Madras.

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