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Crl.A.No.420 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2023

PRONOUNCED ON : 20.12.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.420 of 2022

Mr.Santhosh @ Santhoshkumar .. Appellant / Accused

v.

State rep. by

1. Deputy Superintendent of Police,
Palladam Sub Division, Tiruppur.
(Cr.No.1204/2019)

.. Respondent/complainant

2. Sarathamani

.. Respondent/
Mother of the Victim

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with Spl.S.C.No.3 of 2020 on the file of the learned Principal Sessions Judge, Tiruppur and set aside the conviction and sentence imposed in judgment dated 02.12.2021.

For Appellant : Mr.Shanmugavelayutham, Sr.Counsel



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for Mr.T.Balachandran

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For Respondent : Mr.A.Gokulakrishnan (for R1)
Additional Public Prosecutor
No appearance (for R2)

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 02.12.2021 in Spl.S.C.No.3 of 2020 on the file of the learned Principal Sessions Judge, Tiruppur.

2 (i) It is the case of the prosecution that the appellant and the deceased knew each other and they were in a romantic love relationship for about four years before the occurrence; that the deceased was studying in Arts College and belonged to Hindu, Mathari, a Scheduled Caste; that the accused belonged to Hindu, Boyar, which falls under MBC category; that on 03.11.2019 at about 8.30 p.m, the deceased along with her mother, her uncle, sister and grandmother, were proceeding towards the house of the appellant to request him to marry the deceased; that the appellant came in the opposite



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direction and the deceased requested the appellant to speak to her mother regarding the marriage; that the appellant insulted and humiliated her by uttering her caste name in a public place; that unable to bear the humiliation and insult, the deceased ran to her house and committed suicide at about 8.45pm by pouring kerosene and setting herself ablaze; and that she sustained grievous injuries and succumbed to the said injuries on 08.11.2019, inspite of treatment.

(ii) It is the further case of the prosecution that PW1, PW2, and PW8, the mother, uncle, and sister of the deceased respectively saw the deceased rushing to her house and locking herself inside her room; that they banged on the door and requested the deceased to open the door; that when she refused to do so, they broke open the door and took the deceased to the hospital in an ambulance for treatment; that she died on 08.11.2019 i.e. five days after the occurrence.

(iii) On the request of PW13 Doctor, PW16-the learned Judicial Magistrate No.VII, Coimbatore, recorded the dying declaration of the



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deceased (Ex.P14), in his presence, who had certified that the deceased was in a conscious state. After her death, PW1 lodged a complaint (Ex.P1) on 08.11.2019, to the Sub Inspector of Police, who in turn registered the FIR (Ex.P16) for the offence under Section 306 IPC and Section 3(1)(r), 3(1)(s), and 3(2)(v) of the SC/ST (POA) Amendment Act, 2015.

(iv) PW20, the Deputy Superintendent of Police, Palladam Sub Division, took up the investigation, after he was nominated as the Investigating Officer by the Superintendent of Police, Tiruppur District on 08.11.2019. The nomination letter was marked as Ex.P19. PW20 visited the scene of occurrence and prepared the observation mahazar (Ex.P20) and Rough sketch (Ex.P21). He thereafter seized the kerosene can and match box, viz., M.O.1 and M.O.2, under the seizure mahazar (Ex.P3). He conducted the inquest in the presence of panchayatars and prepared the inquest report (Ex.P22). He thereafter arranged the conduct of the postmortem. PW19-Doctor conducted the postmortem and issued a post mortem certificate (Ex.P17) stating that the deceased died due to shock and burn injuries and its complications.



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(v). Thereafter, the Investigation officer obtained the community certificates of the deceased (Ex.P7) and the appellant (Ex.P8), the Accident Register (Ex.P9) and the Dying Declaration (Ex.P14) and altered the sections of law. After examining all the witnesses, he filed the final report for the offences under Sections 3(1)(r), 3(1)(s), 3(2)(v)(a) of the SC/ST (POA) Amendment Act, 2015, and 306 of the IPC against the appellant/accused.

(vi) On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with, and the case was taken on file as Spl.S.C.No.3 of 2020. The trial Court, viz., the Principal Sessions Judge, Tiruppur, framed four charges for the offences under Sections 306 of the IPC, 3(1)(r), 3(1)(s), and 3(2)(v) of the SC/ST (POA) Amendment Act, 2015, as against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 20 witnesses and marked 25 exhibits and 2 material objects. When the appellant was questioned



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u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case on the basis of the evidence that the appellant was guilty of all the four charges framed against him and sentenced him as follows:

Sl.No.	Offence	Sentence imposed
1	306 of IPC,	To undergo 10 years of RI and to pay a fine of Rs.1,000/- in default to undergo 1 month of SI
2	3(1)(r) of SC/ST (POA) Amendment Act,	To undergo 6 years of RI and to pay a fine of Rs.1,000/- in default to undergo 1 month of SI
3	3(1)(s) of SC/ST (POA) Amendment Act,	To undergo 6 years of RI and to pay a fine of Rs.1,000/- in default to undergo 1 month of SI
4	3(2)(v) of SC/ST (POA) Amendment Act,	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo 1 month of SI
The sentences imposed are directed to run concurrently.		

Hence, the accused has preferred the appeal challenging the said conviction



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and sentence.

3. Since, the appellant was charged and convicted for the offence under the SC/ST Act, we directed the issuance of notice to the victim, and it is seen that the notice sent to the PW1-mother of the deceased has been served by the 1st respondent on 13.10.2023. Though the name of PW1 is printed in the cause list, there is no representation on her behalf.

4. Heard, Mr.Shanmugavelayutham, learned senior counsel for the appellant/accused, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

5. (i) The learned senior counsel for the appellant submitted that the evidence discloses that the deceased and the appellant were in a romantic relationship; that since the appellant refused to marry the deceased, she committed suicide, and that this would not amount to the abetment of suicide. The learned senior counsel pointed to the dying declaration, the entries made



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by the Doctor, who treated the victim, and the depositions to show that the only allegation against the appellant is that he refused to marry the victim.

(ii) The learned senior counsel further pointed out that in none of the earlier versions there was any reference to the appellant humiliating the deceased due to her caste. Neither in the dying declaration nor in Ex.P1-complaint, is there any reference to the insult to the caste. The learned senior counsel further relied upon the following judgments of the Hon'ble Supreme Court in support of the submission that, in the facts, the offence under Section 306 of the IPC is not made out.

- (a) State of West Bengal Vs. Orilal Jaiswal and Another
[(1994) 1 SCC 73]
- (b) Amalendu Pal Alias Jhantu Vs. State of West Bengal
[(2010) 1 SCC 707]
- (c) Gangula Mohan Reddy Vs. State of Andhra Pradesh
[(2010) 1 SCC 750]
- (d) Kanchan Sharma Vs. State of Uttar Pradesh and Another
[(2023) 2 SCC (Cri.) 798]

(iii) The learned senior counsel also relied upon the judgment of the



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Hon'ble Supreme Court in *Marudanal Augusti Vs. State of Kerala*, reported in (1980) 4 SCC 425, in support of the submission that where an FIR is fabricated or brought into existence long after its occurrence, the entire fabric of the prosecution case would collapse. Therefore, the learned senior counsel submitted that the judgment of conviction is unsustainable and liable to be set aside.

6. The learned Additional Public Prosecutor *per contra* submitted that the prosecution had established the case beyond reasonable doubt. The evidence in PW1, PW2, and PW8, which corroborates the dying declaration of the deceased, would show that the appellant refused to marry the deceased because of her caste and therefore, the deceased had no other option except to commit suicide. The learned Additional Public Prosecutor pointed out the evidence of the witnesses and the dying declaration of the deceased in support of his submission and prayed for dismissal of the appeal.

7. We have carefully considered the submissions of the learned counsel on either side and perused the materials on record.



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8. Admittedly, it is a case of suicide by the deceased. The dying declaration of the deceased, the evidence of PW1, PW8, and PW9 besides the evidence of the Doctor, conclusively prove the said fact. The prosecution, therefore, has established the said fact. The question is whether the appellant, by his act, abetted the commission of suicide and had committed the other offences under the SC/ST (POA) Act, 2015.

9. The prosecution had examined 20 witnesses, as stated earlier. PW1 is the mother of the deceased, and PW2 is the uncle of the deceased. PW3 to PW5 are related to the deceased and have corroborated the evidence of PW1 and PW2 with regard to the relationship of the appellant with the deceased; PW6 was known to the deceased and had stated that the deceased introduced the appellant to PW6, as her friend; PW7 is the observation mahazar witness; PW8 is the sister of the deceased; PW9 is the police constable working in the computer division of the respondent police station, who had collected the call details between the appellant and the deceased.; and PW10 speaks about collecting the details of calls received in mobile numbers 9698088629 and



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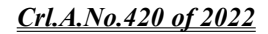
7639245889 in Ex.P4.

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10. PW11 had issued a community certificate to the appellant stating that he belonged to the Boyar community (MBC) and the deceased belonged to the Hindu Mathari community (SC); PW12 is the doctor who had issued Accident Register [Ex.P9]; PW13, is the doctor who had given an intimation to the police; PW14 is also a doctor who issued the Accident Register [Ex.P12]; PW16 is the learned Judicial Magistrate, who recorded the dying declaration [Ex.P14]; PW17 is the friend of the deceased, who introduced the appellant to her; PW18 is the Sub Inspector of Police; PW19 is the Doctor, who conducted the postmortem and issued the postmortem certificate [Ex.P17]; and PW20 is the investigating officer.

11. As stated earlier, the self immolation by the deceased on 03.11.2019 has been sufficiently established. We find that the deceased herself gave an earliest version, which is recorded by the Magistrate PW16 and reads as follows:

“நான் சந்தோஷகுமார் என்ற பையனை காதலித்தேன்.



12. PW12, the Doctor who first treated the deceased had stated that the deceased told him that she self immolated herself. PW13 doctor informed the Magistrate to record the dying declaration. If the Doctor had gone to the extent of requesting the learned Magistrate to record the dying declaration, we do not have any reason as to why the police were not informed about the occurrence on 03.11.2019. Strangely, we find that it is the prosecution case that the police did not receive any complaint or information with regard to the self immolation on 03.11.2019. The prosecution case that police came to know of the occurrence only on 08.11.2019, when the complaint was lodged, appears highly improbable and therefore, unbelievable. Be that as it may, in the complaint PW1 had referred to the refusal of the appellant to marry the deceased and about self immolation of the deceased.



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13. (i) Therefore, it is seen admittedly that the deceased committed suicide only because the accused refused to marry her. The question is whether this would amount to abetment of suicide. To answer the said question we have to analyse the ingredients of the offence under Section 306 IPC. Section 306 IPC reads as follows:

“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 extended to ten years and shall also be liable to fine.”

It speaks about the abetment of the commission of suicide. Abetment is defined under Section 107 IPC, which reads as follows:

“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.

Illustration



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A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.”

(iii) A reading of the above provision would show that abetment can be made in three ways. The first way is to instigate any person to do that thing. The second way is engaging with one or more other person in any conspiracy to do that thing. The third way is to intentionally aid by any act or illegal omission by doing of that thing. In a case of suicide very rarely we would come across a case where a person could engage in conspiracy and abetment is made out on the basis of engaging with another person in conspiracy. For instance, if two people jointly enter into a pact for committing suicide and in the process one person dies and the other person survives, then that case would be falling under the second part of Section 107 IPC. Again that would depend on facts and circumstances of the case. Similarly, intentional aiding is also a rare way of abetting an offence of commission of suicide which



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probably was used while prosecuting persons who had aided the unfortunate widow in the commission of Sati, which is since abolished. Therefore, intentional aiding also is a rare form of abetting a commission of suicide. What is commonly charged in a case of abetment of suicide is under the first clause mentioned in Section 107 IPC, which is instigating any person to do that thing. In normal circumstances, it would again be impossible for a person to directly instigate another person to commit suicide. The Hon'ble Supreme Court had held in several cases that instigation can be inferred if certain conditions are satisfied. Instigation has not been defined in the Indian Penal Code.

(a) In the case of *Ramesh Kumar v. State of Chhattisgarh*, reported in **(2001) 9 SCC 618**, the Hon'ble Supreme Court had held as under:

"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



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or emotion without intending the consequences to actually follow cannot be said to be instigation."

(b) Following the same, the Hon'ble Supreme Court in the case of ***Pawan Kumar v. State of H.P.***, reported in (2017) 7 SCC 780 had held as under:

"36. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word "urge forward" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

.....43 . Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a



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person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life."

(c) In ***Gangula Mohan Reddy Vs. State of Andhra Pradesh***, reported in **(2010) 1 SCC 750**, the Hon'ble Supreme Court held as follows:

"14. The Court in Ramesh Kumar v. State of Chhattisgarh [(2001)9 SC 618] came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn.

15. In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

16. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009 (11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.



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17. 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 is 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 committed suicide.”

(d) Similarly, in ***Amalendu Pal Alias Jhantu Vs. State of West Bengal*** reported in **(2010) 1 SCC 707**, the Hon'ble supreme Court had held as follows:

“16. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”.

(e) In ***Kanchan Sharma Vs. State of Uttar Pradesh and Another*** reported in **(2023) 2 SCC (Cri.) 798**, the Hon'ble Supreme Court had held as



follows:

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“9. ‘Abetment’ involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

10. There is nothing on record to show that appellant was maintaining relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of Section 306, IPC”

14. Thus, from the above observations, the following principles emerge for appreciating “instigation” in the context of the offence under Section 306 IPC:

(i) To satisfy the requirement of instigation, the act of the accused must be such that it must necessarily and specifically be suggestive of the consequence. In other words, if the accused by his act or omission or by a continuous course of conduct created such circumstances that the deceased was left with no option except to commit suicide, then instigation can be inferred.



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(ii) Instigation means to goad, urge forward, provoke, incite or encourage to do a thing.

(iii) The allegation against the accused that his acts led to the commission of suicide by the deceased must be a proximate in the time of occurrence and had led the deceased to commit suicide.

(iv) If it transpires to the Court that the victim who committed suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged, such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, then instigation cannot be inferred.

15. Further, the Hon'ble Supreme Court in a judgment in the case of ***Shamnsaheb M. Multtani v. State of Karnataka***, reported in (2001) 2 SCC 577 had observed as follows:

“29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A



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in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence.”

The above observations of the Hon'ble Supreme Court would show that this provision was practically of no use or a dead letter in the statute book till the introduction of Section 113A of the Evidence Act in the year 1983. Under Section 113A, a presumption can be made in the case of suicide committed by the wife within seven years of her marriage. From 1983, after the amendment it became a marriage related offence. As observed by the Hon'ble Apex Court till then it had no practical use. It is not ordinarily possible to abet suicide otherwise and hence not many cases were registered under Section 306 of the IPC till 1983. The prosecution under Section 306 of the IPC therefore cannot be instituted in a routine manner, merely because a person committed suicide since he/she was unhappy with another person's conduct or behaviour, unless it is a case of wife committing suicide within seven years of marriage.

16. In the instant case, we find that there is no evidence to suggest that the appellant intentionally aided the commission of suicide. We cannot infer such an intention on the part of the appellant merely because he refused to



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marry the deceased. The act of the accused by itself, which may be undesirable, would not amount to provoking, inciting or encouraging the deceased to commit suicide which are necessary to hold a person guilty of abetment of suicide. Therefore, we are of the view that the offence under Section 306 of IPC has not been made out against the appellant. Accordingly, the offence under Section 3(2)(v) of SC/ST (POA) Act, which is linked to the Section 306 of IPC is also not made out.

17. As regards the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Act, viz., the offences relating to insults and acts committed because the deceased belong to Scheduled Caste, we find that the deceased herself in the dying declaration has not stated that the appellant insulted her caste. PW1 in her complaint which was given 5 days after the occurrence also does not refer to the alleged insults made by the appellant due to her caste. PW8 is the sister of the accused who would state in her deposition that the appellant had refused to marry because the deceased belonged to a different caste. Though her version is belated one, even as per her evidence, we find that not agreeing to marriage because she belonged to a different caste is quite different from



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stating that the deceased belonged to the Scheduled Caste and therefore, he was not willing to marry her.

18. We also find another aspect of the case which is worth mentioning. In her complaint PW1 would state that the respondent had recorded a complaint from the victim herself and also had recorded the statement from PW1 immediately after the occurrence. However, we find strangely that the prosecution had suppressed the said complaint given by the deceased herself to the respondent. In this regard, we may refer to the observations of the Hon'ble Supreme Court in *Marundanal Augusti v. State of Kerala*, reported in (1980) 4 SCC 425, which reads as follows:

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.”

19. Besides the evidence of PW1 that the deceased gave a complaint, the prosecution case that they received the 1st complaint only on 8.11.19 is highly improbable and we find that the earliest version given by both PW1



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and the deceased has been suppressed by the prosecution.

20. For all the aforesaid reasons, we are of the view that the prosecution has not proved the case against the appellant beyond reasonable doubt and therefore, we are of the view that the judgment of conviction and sentence passed in Spl.S.C.No.3 of 2020, dated 02.12.2021 on the file of Principal Sessions Judge, Tiruppur, is liable to be set aside.

21. In the result, this Criminal Appeal is allowed and the appellant is acquitted of all the charges. The conviction and sentence passed in Spl.S.C.No.3 of 2020 on the file of the Principal Sessions Judge, Tiruppur, *vide* judgment dated 02.12.2021, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(S.S.S.R.,J.) (S.M.,J.)
20.12.2023

Index : yes/no
Neutral citation : yes/no



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Principal Sessions Judge,
Tiruppur.
2. Deputy Superintendent of Police,
Palladam Sub Division,
Tiruppur.
3. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
Crl.A.No.420 of 2022

20.12.2023