



Crl.A.No.144 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.03.2023

Pronounced on : 10.03.2023

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.144 of 2020

Shanmuganandham @ Shanmuganand,
S/o.Subburayan.

... Appellant/Accused

/versus/

State by,
Inspector of Police,
AWPS East Police Station,
Coimbatore District.
(Crime No.08/2013).

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the judgment and conviction passed in S.C.No.75 of 2016 dated 05.02.2020 on the file of the Learned Sessions Judge Mahila Court, Mahalir Neethimandram Coimbatore and allowing the appeal throughout by acquitting the appellant.

For Appellant : Mr.B.M.Subash
Assisted by Mr.K.Govindan,
Legal Aid Counsel.

For Respondent : Mr.Kishore Kumar,
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal is directed against the judgement of the Learned Sessions Judge, Mahalir Neethimandram, Coimbatore passed in S.C.No.75 of 2016, dated 05/02/2020.

2. The appellant herein is the sole accused who faced trial for the charges under Section 498(A) I.P.C and 306 I.P.C. To prove the case, the prosecution has examined 12 witnesses and marked 22 exhibits. On the side of the defence, the accused has examined six witnesses and marked 19 exhibits. On appreciation of the evidence, the trial Court found the accused not guilty of offence under Section 498 (A) I.P.C and acquitted him. However, the trial Court found him guilty for the offence under section 306 I.P.C., convicted and sentenced him to undergo 10 years rigorous imprisonment and with fine of Rs.5,000/- in default, to undergo one year rigorous imprisonment. The period of sentence already undergone was ordered to be set off under section 482 Cr.P.C.



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3. The case of the prosecution briefly runs as under:-

On 24/10/2007, Mr. Shanmuganand (for convenience herein after to be referred as the appellant) married Sujatha (for convenience hereinafter to be referred as the deceased). At the time of marriage, they both were employed in two different Private Companies at Chennai, they settled their matrimonial home at Chennai. The marital relationship between them was never cordial. It was full of harassment and cruelty by the appellant and his family members. The deceased was subjected to torture physically and was not allowed to talk with her family members. Meanwhile, the deceased gave birth to a female child. However, the torture by the appellant continued and when this was informed to the family members of the deceased, they came to Chennai and tried to pacify the appellant. In course of the talk, the father of the deceased was physically manhandled by the appellant leading to a police complaint. During the month of February 2010, after lodging a complaint to the Commissioner of police at Chennai, the deceased was taken to Hyderabad by her parents. In July 2010, the deceased filed divorce petition in the Court at Chennai, on the ground of cruelty. In the month of October 2010, when the deceased and her mother came to Chennai to attend the Court and where at



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Central Railway Station on their return to Coimbatore, the appellant with intention to prevent them from returning back to Coimbatore came to the Railway Station and attacked them. In this connection, a complaint was registered by the Railway Police against the appellant and he was arrested and remanded to judicial custody.

4. Thereafter, the elders from both the families compromised them and settled the matter between them facilitating reunion. As a result, in April 2011, the family was shifted from Chennai to Coimbatore. They setup the family at Shinganallur with the parents of the appellant. Both husband and wife got transfer from Chennai to join job at Coimbatore. While so, the deceased got conceived but she was asked to abort since the appellant family felt that it could be a female baby. The deceased refused to abort the child, called her parents and went with them for the safety of herself and the child in the womb. The deceased was attending a office staying at her parents house in Ganapathy Nagar, Coimbatore along with her daughter. At the request of the appellant, the deceased used to take her daughter to her husband's house at Shinganallur during weekends, leave the daughter with him to spend the weekend and bring



5. On 26/04/2013, she went to the appellant's house along with the child, left the child with the appellant and returned. But, on that day, at about 9.45 p.m her mother Ranjitham received information over phone that her daughter Sujatha found unconscious near Nava India signal and taken to Government Hospital, Coimbatore. Sujatha, (since deceased) was first taken to Government Hospital, after First Aid, shifted to Kovai Medical Centre and Hospital Ltd by midnight. She did not recover, despite treatment and died on 02.05.2013 at 01:10 AM. Tmt.Ranjitham, the mother of the deceased give a statement to the police on 29/04/2013 without any iota of suspicion or allegation of cruelty/harassment against her son-in-law the appellant herein. On receiving intimation from the KMCH, the All Women Police Station, Puliyankulam registered case in Crime No:08/2013 under Section 174 Cr.P.C. Since the unnatural death of Sujatha occurred within 7 years of her marriage, inquest was conducted by the R.D.O and he, in his report concluded that, the death of Sujatha was not due to dowry harassment. Nearly a month later, Tmt.Ranjitham had come out with a detailed complaint dated 31/05/2013



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addressed to the Assistant Commissioner of police alleging cruelty and harassment as cause for her daughter's death. Thereafter, the course of investigation has changed and on 27/06/2013, the case was altered to Sections 498(A) I.P.C and 306 I.P.C against the appellant based on a letter recovered from the room of the deceased claim to have been written by her to her Advocate at Chennai narrating her plight at the hands of the accused and to arrange for filing a petition for divorce and based on a e-mail recovered from the computer of the deceased, which was purportedly sent to her friend at Dubai. The relatives of the deceased have also in the course of investigation has given statements lending credence to the allegation of dowry harassment, cruelty on various occasions and abetment by the appellant to his wife leading to the unnatural death within seven years of marriage.

6. Tmt.Ranjitham, the mother of Sujatha (since deceased) examined as P.W-1. Her first statement dated 29/04/2013 is marked as Exhibit P-1. The second complaint dated 31/05/2013 addressed to the Assistant Commissioner of Police is marked as Exhibit P-6. Based on the Death intimation (Ex.P-11) received from KMCH regarding the death of Sujatha. The respondent police



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has registered the First Information Report on 02/05/2013. The printed F.I.R is marked as Exhibit P-19. The alteration report dated 27/06/2013 is marked as Exhibit P-22. The letter of the deceased addressed to her Advocate produced by P.W.1 in the course of investigation is marked as Exhibit P-2 (with objection) and the E-mail downloaded from the computer of the deceased marked as Exhibit P-3 (With objection).

7. P.W.1 the mother of the deceased had deposed in detail about the cruelty her daughter met during her lifetime. P.W.2 the brother of the deceased, P.W.3 the sister of the deceased and P.W.4 the husband of P.W.3 had corroborated the evidence of P.W.1. To support their evidence Exhibit P.2 letter written by the deceased is relied by the prosecution. The genuineness of the said letter been proved through the opinion of experts at State Forensic Laboratory which is marked as Exhibit P.17 and also spoken through the handwriting Expert Mr.Thangadurai P.W-8. However, one of the prosecution witness Mr.Rajendra examined as P.W-6 who is the brother of P.W-1 did not support the case of the prosecution and hence, treated as hostile witness. The rest of the prosecution witnesses are the Doctor who admitted Sujatha in



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KMCH, the Doctor, who conducted autopsy and given the post mortem report with his opinion for the cause of death. The R.D.O, who conducted inquest and the Police Officials involved in the investigation.

8. The trial Court rejected Exhibit P-3 e-mail copy for want of certificate under Section 65 B of Indian Evidence Act. However, accepted Exhibit P-2, the letter addressed to Advocate at Chennai, written by the deceased to hold that there was sustained cruelty both physically and mentally forcing the deceased to commit suicide. Since the R.D.O enquiry conducted by P.W-9, did not disclosed any material to infer dowry harassment, the trial Court acquitted the accused from the charge of Section 498 (A) I.P.C.

9. Case of the appellant:-

Admitting the initial hiccup in the marital life, the appellant has contented that, pursuant to compromise all the differences were buried and they shifted from Chennai to Coimbatore. After shifting the house to Coimbatore, the deceased used to stay at her parent's home located in the Ganapathy



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Nagar area. He holding a job which requires travel across the State, used to stay along with his parents at Singhanallur. It was an arrangement between the spouse that the deceased shall stay at her maternal home and attend her office along with the daughter, who was studying in the School near the maternal home of the deceased. The daughter was attending the school and dance class. During the weekend, when the appellant come down to Coimbatore, he used to inform the deceased and she used to bring the child and leave the daughter with him to spend the weekend with his daughter. Likewise, on 26/05/2013, the deceased came to his house, left the child and went to her maternal home. He and his daughter went to a mall and spending their time. He heard the news that his wife has consumed cow dung powder and lying unconscious near Nava India signal. He immediately reached the spot and arranged for an ambulance. He took her to Government Hospital and thereafter, shifted her to KMCH. He met the medical expenses and took all care for recovery. P.W-1 and other members of the deceased family were also present in the Hospital. After the funeral ceremony, misunderstanding between him and his in-laws regarding the custody of the child cropped. He caused notice through lawyer regarding the child custody and also resorted to police complaint. This provoked P.W-1 and



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her family members to concoct evidence and give the complaint to the Assistant Commissioner of Police on 29/05/2013.

10. In support of his defence apart from responding to the incriminating evidence put to him under Section 313 of Cr.P.C., he has also marshalled 9 witnesses and marked 19 documents.

11. The above said defence propounded by the accused/appellant did not find favour with the Trial Court. Hence, the present appeal on the following grounds:

(i). The evidence of P.W.1 to P.W.4 are lying interested witnesses therefore they are liable discarded witness completely. The evidence of P.W.1 is falsified and discredited in view of the documents in Ex.D.1 to Ex.D.6 and Ex.D.15 to Ex.D.17. The documentary evidences on the part of the defence would demonstrate the prosecution witness P.W.1 would want to punish and keep away the appellant in order to get the exclusive custody of the child namely Deeksha. The interestedness of the witness shakes the credibility of the



witness in P.W.1 to P.W.4.

(ii). The evidences of Ex.P.2 to Ex.P.5 and Ex.P.7 are inadmissible documents and no evidentiary value can be attached to it to prove the allegations of harassment. Further more the documents in Ex.P.2 to Ex.P.5 and Ex.P.7 are related to the incidents that happened long before the occurrences and therefore, the same could not be treated as incriminating circumstances to make out a case under section 306 of I.P.C. Therefore, the trial Court was pleased to rule out the same to bring home the charges of cruelty under section 498A of IPC.

(iii). The evidence of P.W.1 to P.W.4 is stretched to the extent of harassment there is long interval between the alleged harassment and the incident. Therefore, the proximity link between the effect of cruelty or harassment is absent.

(iv). The evidence of P.W.1 to P.W.4 do not establish any positive act on the part of the appellant to commit suicide. It is not even the case of the



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prosecution that the separation of wife and child and ordering her to produce child to his whims and fancies stressed the deceased physically and mentally that drove her to commit suicide. The finding of the trial court is not supported by any of the prosecution witnesses.

(v). When the appellant is absolved of charge of cruelty to make out an offence under Section 498A of I.P.C the presumption under Section 113-A is not applicable. Therefore, there is no link or intention established by the prosecution to link the appellant for abetment of suicide as defined under Section 107 of I.P.C to make out a case under section 306 of I.P.C.

12. In support of his above submission, the Learned Counsel for the appellant rely upon following judgments as dictum to decide the appeal.

(i). ***Heera Lal and another -vs- State of Rajasthan*** reported in **2018**

(11) SCC 323, wherein it has held as below:-

“We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for



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application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide.

In the absence of this vital link, the mere fact that there is a finding of harassment would not lead to the conclusion that there is "abetment of suicide".

(ii). In ***Shabeer Hussain -vs- State of Madhya Pradesh*** reported in ***CDJ 2021 SC 635***, wherein it has held as below:-

“In order to bring a case within the provision of Section 306 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 instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which



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led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal(2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. (Chitresh Kumar Chopra v. State (Government of NCT of Delhi)(2009) 16 SCC 605).

In the instant case, the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. The High court did not commit any error in allowing the Criminal Revision.”

(iii). In Gurcharan Singh -vs- State of Punjab reported in **CDJ 2020**

SC 752, wherein it has held as below:-

“Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the appellant's side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The Trial Court and the High Court speculated on



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the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife.

In such circumstances, we have no hesitation in declaring that the Trial Court and the High Court erred in concluding that the deceased was driven to commit suicide, by the circumstances or atmosphere in the matrimonial home. This is nothing more than an inference, without any material support. Therefore, the same cannot be the basis for sustaining conviction of the appellant, under Section 306 of the IPC”

13. The Learned Government Advocate (Crl.Side) for the state submitted that the delay in giving the complaint to the Assistant Commissioner of Police regarding the harassment met by the deceased Sujatha is not detrimental to the case of the prosecution since the suffering met by Sujatha vividly recorded by herself in her letter addressed to her Advocate, which was came into the hands of P.W.1 only on 31.05.2013. Immediately, same was informed to the Assistant Commissioner of Police by P.W.1 and in the course of investigation, took the right direction. After the compromise through mediators arrived, the appellant along with the deceased settled at Coimbatore. Superficial, there was impression among the family members that the appellant



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has stopped harassing the deceased. However, only after discovery of the letter of the deceased Sujatha narrating her sufferings, the e-mail sent to her friend and the letter addressed to her Office which are marked as Ex.P.2, Ex.P.3 and Ex.P.4 respectively, which speaks volume about sustained cruelty faced by the deceased at the hands of the accused which has led to commit suicide. Hence, the prosecution has altered the charge and proceeded against the accused.

14. To attract Section 306 of I.P.C., the prosecution has proved that, Sujatha has committed suicide by consuming cow dung powder. The post-mortem report (Ex.P.13), Chemical analysis report (Ex.P.14) and final report (Ex.P.15) are scientific evidence which proves it is a suicide. The Dr.Kulanthaivelu, who was examined as P.W.7, conducted the autopsy of the deceased and given his opinion about the cause of death. Secondly, the prosecution has to prove that the suicide was committed due to abetment and not voluntarily. Under Section 107 of I.P.C. abetment is explained. The material evidence relied by the prosecution proved through witnesses that the sustained physical and mental torture caused by the appellant has forced the deceased to commit suicide.



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Point for consideration:- Whether the ocular evidence of P.W.1 (Ranjitham), P.W.2 (Prabhu), P.W.3 (Jayanthi) and P.W.4 (Senthil Kumar) and documentary evidences such as Ex.P.2 to Ex.P.4 are adequate to hold that the appellant abetted his wife Sujatha to commit suicide?

15. The trial Court referring the letter of the deceased (Ex.P.6) has held that, due to misunderstanding between the deceased and the accused, the deceased came to her parents house in the month of March 2013. During the R.D.O enquiry, the appellant was present and had informed the R.D.O that a month ago, differences of opinion between the appellant and his wife once again surfaced. Therefore, the appellant called parents of Tmt.Sujatha and asked them to take her back home. Accordingly, his wife along with daughter Deeksha went to her parents house, every weekend on Friday and Saturday, the child Deeksha used to be with him. On 26.04.2013 Friday, his wife (deceased) handed over the custody of the child with him and went back. At about 8.30 p.m, some one called him and informed that his wife found unconscious near



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Nava India bus stand, Avinashi Road, Coimbatore. After seeing her unconscious, the public shifted her to Government Hospital, Coimbatore through 108 ambulance. The R.D.O opined that, Sujatha has committed suicide not due to dowry harassment but due to misunderstanding between husband and wife, for causing mental stress. Even though Ex.P.2, Ex.P.3 and Ex.P.4 were prior to their reunion and relates to incident which occurred few years before, the continuous cruelty and mental stress caused by the appellant on the deceased cannot be wiped off just because the deceased and the appellant reunited eight months prior to the occurrence. The event which surfaced a month before the occurrence forcing the deceased to stay in her parents house has been considered by the trial Court to hold the accused guilty of offence under Section 306 of I.P.C.

16. On the cumulative assessment of the evidence before this Court, it is undoubtedly clear that the matrimonial bond between the appellant and the deceased went to the extent of filing a criminal complaint against the appellant, resulting in his arrest and filing a petition for divorce on the ground of cruelty. However, for good reason, eight months prior to the occurrence, the spouse



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have come together after a brief spell of separation and litigation, they decided to settle at Coimbatore, got transfer of their job to Coimbatore. The deceased was living with the appellant and her four years old daughter along with her in-laws in Shinganallur till a month before the occurrence.

17. The appellant while questioning under Section 313 of Cr.P.C., as well as in the enquiry before the R.D.O has admits that, eight months after reunion, again misunderstanding cropped up between them. His wife went to the parents house along with her daughter and staying with them. Every weekend, she used to come, leave the daughter with him on Friday and took their daughter back on Saturday. On the similar line, the mother and father of the deceased have given statement to R.D.O and it forms part of Ex.P.18 dated 02.05.2013. At that time, none of the witness had spoken about dowry harassment or any cruelty.

18. The investigation took diversion only after P.W.1 shoot up the complaint marked as Ex.P.6 on 31.05.2013. The appellant had come out with reason why this complaint after 29 days from the demise of Sujatha. On



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08.05.2013, the appellant, P.W.2 Ranjitham (mother of the deceased), P.W.3 Prabhu (brother of the deceased) together have entered into an agreement which is notarized by an Advocate and Public Notary by name S.M.Prabhakaran, wherein, Jayanthi (P.W.3) and Vinoth have signed as witnesses. As per the terms of this agreement (Ex.D.1), the appellant has agreed to allow P.W.1 and P.W.2 to take custody of the minor daughter Deeksha and the appellant will bear medical and educational expenses of the minor daughter Deeksha. Further, it has been agreed by the parties that, after the lifetime of P.W.1 (mother of the deceased) & (grand-mother of the minor child) and P.W.3 Jayanthi (the sister of deceased) will take custody of the minor child. The appellant two days after entering into the agreement touching upon custody of the minor daughter had caused notice through his lawyer to P.W.1 to P.W.4 and Inspector of Police, AWPS, Ramanathapuram, Coimbatore, alleging that, the agreement dated 08.05.2013 was obtained under threat and fear of prosecution. For the best interest of the child, the custody of the child Deeksha should be given back to him and he also have information that his wife Sujatha was forced to commit suicide because she was pressurised by her family members to give money and had warned them, if they try to remove the minor child from



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Coimbatore to elsewhere, he will be constraint to take action against them.

19. Only thereafter, Ex.P.2 to Ex.P.4 surfaced leading to the complaint Ex.P.6. It was admitted by P.W.1 and P.W.2 that, the deceased, though got separated from her husband and living with them for the past one month prior to the incident, every weekend, she used to meet the appellant, leave the daughter with him for a day and take her back to the parents home. Since, their daughter was studying in International Public School near Ganapathy Nagar, the appellant with intention not to disturb her studies had allow her daughter and wife to be at Ganapathy Nagar. This is a plausible explanation of the appellant for why his wife was staying with her parents. To show his bonafide that, he was taking care of his wife and daughter, he has also examined witnesses and marked documents relating to payment of medical expenses while Sujatha was in the hospital. Thus, it is clear as crystal though there was extreme discard between the husband and wife at one point of time but they have buried all their differences and started a new life eight months prior to the occurrence. On the date of occurrence, the deceased has come over to the place where the appellant staying, left her daughter with him and gone to



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Town Hall area purchased, cow dung powder consumed it near Nava India Signal in the Avinashi Road, Coimbatore and fell unconscious. Shinganallur where the appellant reside and Nava India signal are kilometres apart. What triggered the deceased to take a decision to end her life soon before she consumed cow dung powder is not spoken by any of the prosecution witnesses. Neither at the time of inquest nor in the hospital or till the appellant cause notice through Lawyer on 10.05.2013 nothing spoken about the appellant. Neither the parents of the deceased nor the appellant made any accusation against the other party. It is only after Ex.D.5 Legal notice dated 10.05.2013, reached P.W.1 to P.W.4. Documents Ex.P.2 to Ex.P.4 written few years prior to the occurrence made use by P.W.1 to project as if Sujatha died due to abetment by the appellant.

20. Abetment is not a fact for inference. The prosecution witnesses and the evidence relied speaks about incident several years ago and not immediate past. When the husband and wife had reunited after burring all their differences and when they were meeting every weekend cordially. The old incident could not have triggered Sujatha to commit suicide. Particularly, it is



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to be noted that, it was the deceased, who came to the house of the appellant and handed over the child to him and left his house. Merely based on surmises or by past conduct of the appellant, it cannot be inferred that the appellant abetted Sujatha to commit suicide. It is baseless to infer based on Ex.P.2 to Ex.P.4 that Sujatha was put to mental stress by the appellant in the absence of evidence soon before her death has been subjected to mental stress. If, Sujatha was really put to mental stress by the appellant, she might have not come to the appellant place, handed over the daughter to him and left as usual. If something had provoked her or abetted her to commit suicide on that day, that should have been probed by the prosecution and it should have been placed before the Court. In the absence of evidence, what transpired on the date of occurrence at the house of P.W.1 and at the place of appellant is a mystery, just because Sujatha has consumed cow dung powder and died, it cannot be inferred that, she was abetted to commit suicide and the said abetment emanated from the appellant.

21. Though, it is unclear whether Tmt.Sujatha committed suicide due



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to abetment of someone or on her own is not clear. But the accusation of abetment turned towards the appellant only after he refuted the agreement dated 08.05.2013 which is marked as Ex.D.1, through a Lawyer notice (Ex.D.5) dated 10.05.2013 marked as Ex.D.5 and the complaint (Ex.D.15), dated 15.05.2013 given by the appellant to the Inspector of Police attached to B-9 Police Station, Saravanampatti, Coimbatore, reporting that, his child Deeksha taken by P.W.1 and P.W.2 for 12th day ceremony of the deceased wife but not returned to him. P.W.1 had given a letter (Ex.D.17) to the Police, on 15.05.2013, alleging that, if the child is given to the appellant, there is no safety to the life of the child. Thereafter, the police has closed the complaint directing the parties to work out his remedy through competent Civil Court. These facts are reflected in Ex.D.16 and Ex.D.17. Therefore, the allegation of abetment which has been mounted against the appellant after his rebuttal of agreement dated 08.05.2013 marked as Ex.D.1 followed by legal notice dated 10.05.2013 (Ex.D.5) and police complaint dated 15.05.2013 (Ex.D.15) makes the prosecution case murky.

22. The judgment of the Hon'ble Supreme Court has laid parameters



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to attract Section 306 of I.P.C.

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(i). In ***Amalendu Paul @ Jhantu vs. State of West Bengal*** reported in ***(2010) 1 SCC 707***, wherein it has held as below:-

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. 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



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suicide of his wife.”

23. By applying the above ratio to the facts of the case in hand, when the prosecution could not establish any overt act or illegal omission on the part of the appellant in respect of taking care of his wife and in the absence of any evidence that the deceased was harassed by the appellant immediate before she committing suicide, merely an allegation of harassment without any action proximate to the time of occurrence, renders the conviction under Section 306 of I.P.C unsustainable.

24. This Court is of the opinion that the prosecution has failed to prove within a reasonable period before the deceased consumed cow dung powder, she was subjected to mental cruelty which abetted her to commit suicide and such abatement emanated from the appellant. Therefore, the appellant cannot be held guilty of offence under Section 306 of I.P.C.

25. The evidence placed by the prosecution does not satisfied the ingredient required for proof of an offence under Section 306 of I.P.C. The



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lack of proximity of event narrated in the letter (Ex.P.2), even if those events assumed to be correct, the date of the letter and the date of the suicide being remote and intervened by several other factors and incident, has wiped out all the adverse fact.

26. For the above said reason, this Court finds that the judgment of conviction and sentence passed by the Learned Sessions Judge, Mahila Court in S.C.No.75 of 2016 is hereby set aside. Accordingly, this ***Criminal Appeal is allowed.*** The accused is acquitted of charge under Section 306 of I.P.C. Fine amount paid if any, shall be refunded to the appellant herein. If the accused is confined in prison, he shall be set at liberty forthwith, if not required in any other case. Bail bond executed shall stand discharged.

10.03.2023

Index : Yes.
Internet : Yes.
bsm

To,
1. The Sessions Judge, Mahila Court, Mahalir Neethimandram, Coimbatore.
2. The Inspector of Police, AWPS East Police Station, Coimbatore District.



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3. The Public Prosecutor, High Court, Madras.

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Dr.G.JAYACHANDRAN, J

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Pre-Delivery judgment made in
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