

Crl.A.No.343 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 343 of 2016

G. Govindaraj

.. Appellant

Versus

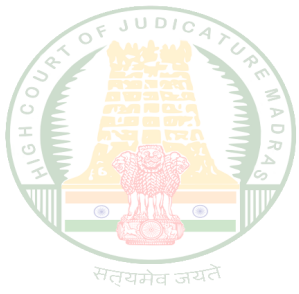
State represented by
The Inspector of Police,
Modakurichi Police Station,
Modakurichi, Erode District.
Crime No.211 of 2013

.. Respondent

Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, to set aside the judgment dated 18.03.2016 made in S.C. No. 171 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Erode.

For Appellant : Mr. V. Meenakshisundaram

For Respondent : Mr. V. Meganathan,
Government Advocate (Crl.Side)



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JUDGMENT

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The Appellant is the Sole Accused in S.C. No. 171 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Erode. The Appellant/Accused stood charged for the offences under Section 306 of IPC, convicted for the said offence and sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo two years of simple imprisonment.

2. Challenging the legality and correctness of the Judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Erode, in S.C.No.171 of 2015, dated 18.03.2016, the Appellant has filed this Criminal Appeal.

3. The Prosecution in this case came to be launched against the Appellant/Accused on the basis of the complaint given by the mother of the deceased. According to the Complainant, the Appellant/Accused was residing in a rented house which is adjacent to her house. She would further state that at that time, her daughter was studying higher secondary (+1) and she has not completed 18 years of age. While so, the Appellant/Accused and her daughter loved each other and subsequently, the Appellant/Accused eloped with her

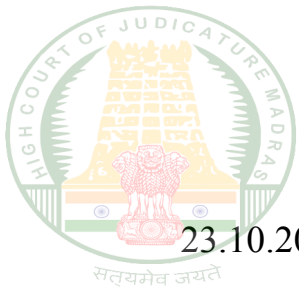


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daughter. Therefore, she has given a complaint before the Modakurichi Police Station based on which a case was registered and the deceased was secured and entrusted to her mother. It is stated by the Complainant that the deceased stayed with her for six months and again her daughter eloped with the Appellant/Accused and married her on the ground that she had attained majority. According to the Complainant, since her daughter married the Accused without her consent and wish, she did not meet the deceased thereafter. While so, the Complainant came to know from her mother-in-law that the Appellant/Accused under the influence of alcohol subjects the deceased to cruel treatment by demanding a sum of Rs.2 lakhs from the Complainant, which he had allegedly spent for meeting the litigation expenses. In such circumstances, on 22.10.2013 the Complainant came to know that the her daughter died by committing suicide by hanging. In this context, the Complainant has given a complaint at 23.00 hours based on which the case in Crime No. 211 of 2013 was registered for the offence under Section 174 of the Code of Criminal Procedure.

4. Since the death has occurred within seven years of marriage, an enquiry was conducted by Revenue Divisional Officer, P.W-8. According to P.W-8, on receipt of information, he went to the occurrence spot on

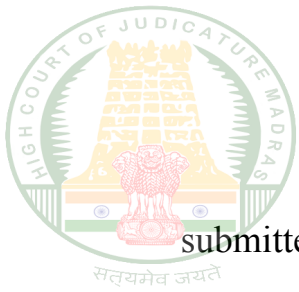


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23.10.2023 at about 12.00 noon and enquired the Appellant/Accused, mother of the deceased P.W-1, P.W-2 mother in law of P.W-1, P.W-3 cousin sister of the deceased, parents of the Appellant/Accused as also the neighbours. After such enquiry, he submitted a report to the Deputy Superintendent of Police P.W-12.

5. On receipt of the report from P.W-8, P.W-12 conducted an enquiry, proceeded to the scene of occurrence, prepared rough sketch under Ex.P-11 and also observation mahazar under Ex.P-2 duly signed by the witnesses. He also enquired Kalyani P.W-1, Sharmila Devi, Sindhamani P.W-2, Arpudhammal, Arumugam, Santhi P.W-3, Selvam P.W-4 and Kamala. According to P.W-12, as per the report of Revenue Divisional Officer P.W-8, the death has not occurred due to any demand for dowry and therefore, he concluded the investigation on the same day and forwarded the entire file to the Inspector of Police, Modakurichi for further investigation.

6. On receipt of the file relating to the case from P.W-12, P.W-13 commenced investigation and enquired Kalyani P.W-1, Sindhamani P.W-2, Arpudhammal, Arumugam, Santhi P.W-3, Selvam P.W-4, Kamala, Selvakumar and Thangavel and recorded their statement. Later, he has

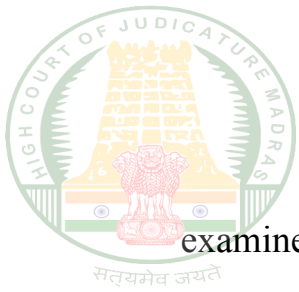


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submitted alteration report under Ex.P-12, altering the offence from Section 174 of the Code of Criminal Procedure to Section 306 of Indian Penal Code.

Thereafter, on 07.12.2013, he arrested the Appellant/Accused and remanded him to judicial custody. Since P.W-12 was transferred, P.W-13, his successor continued the investigation in this case and examined the postmortem Doctor and forensic experts. After concluding his investigation, P.W-13 filed the final report against the Appellant on 20.01.2015 before the Judicial Magistrate No.3, Erode and it was taken on file as P.R.C. No. 11 of 2015. On appearance of the Appellant/Accused, copies were been furnished to him. Since the offence alleged against the Appellant is triable by Court of Sessions, the case was made over to the learned Principal District Judge, Erode and the Accused was bound over to the said Court. Later, the case was transferred to the Court of Sessions Judge, Fast Track Mahila Court, Erode and taken on file as S.C. No. 171 of 2015, to which Court the Appellant/Accused was bound over.

7. On appearance of the Accused before the learned Sessions Judge, Fast Track Mahila Court, Erode, after hearing the arguments of the learned Public Prosecutor and the learned Counsel of the defense, charges were framed for the offences under 306 of IPC against the Accused. Since the Accused denied the charges, trial was ordered. During trial, the Prosecution had



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examined 14 witnesses as P.W-1 to P.W-14 and marked 12 documents as Ex.P-1 to Ex.P-12. On behalf of the Appellant/Accused, no witness was examined or any document produced.

8. The learned Sessions Judge, Fast Track Mahila Court, Erode, on appreciation of the oral and documentary evidence, passed the judgment dated 18.03.2016 convicting the Appellant for the offence under Section 306 of IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years with fine.

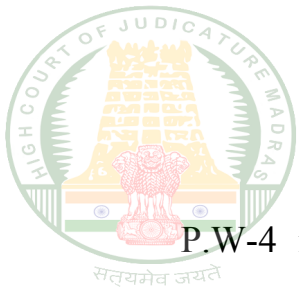
9. Challenging the Judgment dated 18.03.2016 passed in Sessions Case No. 171 of 2015, the Appellant/Accused has filed this Appeal.

10. It is the case of the Prosecution that to meet out the Court expenses to defend the case registered against the Accused at the behest of the mother of the deceased, the Accused alleged to have demanded Rs.2 lakhs from the deceased. Since the mother of the deceased was not in talking terms, the deceased pleaded that she could not mobilise such amount. In this context, the Accused/Appellant alleged to have repeatedly demanded money from his wife due to which it is alleged that the deceased committed suicide by



11. Learned Counsel for the Appellant invited the attention of this Court to the complaint under Ex.P-1, which was drafted by one Raja. The mother of the deceased was illiterate and the said Raja had written the complaint, but he was not cited as a witness. Further, the Trial Judge, instead of appreciating the evidence in entirety, had only discussed the ifs and buts in the evidence of the witness and convicted the Accused based on mere surmises and conjectures. It is his contention that there is no evidence before the Trial Court to show that the action of the Accused was the immediate cause for the deceased to end her life. The learned Counsel for the Appellant also invited the attention of this Court to the report of the Revenue Divisional Officer where it is observed that there is nothing to show that the deceased was subjected to harassment to bring dowry.

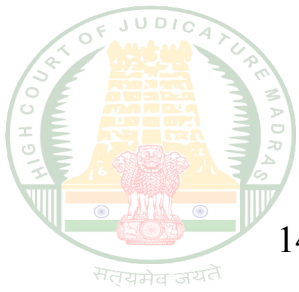
12. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Prosecution witnesses and submitted that except P.W-1 mother of the deceased, P.W-2 Mother-in-law of P.W-1 and P.W-3 cousin sister of the deceased, no one has attributed any motive against the Appellant/Accused. The learned Counsel for the Appellant also stated that



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P.W-4 is the neighbour of the house where the Appellant and deceased resided. P.W-4 has categorically stated that he is not aware of the reason why the deceased committed suicide. He has not even stated that there were frequent quarrel between the Appellant and the deceased. Similarly, P.W-5 is the owner of the house where the Appellant and the deceased resided as a tenant. P.W-5 also categorically stated that he has no idea as to why the deceased committed suicide. P.W-5 also feigned ignorance about the reason which prompted the deceased to commit suicide.

13. Learned Counsel for the Appellant invited the attention of this Court to the cross-examination, where the mother of the deceased, P.W-1, had clearly stated that after the marriage, she was not in speaking terms with her daughter and the Accused. Therefore, it is doubtful that the reasons mentioned by her in the complaint that the deceased committed suicide due to cruel treatment of the Appellant/Accused is not believable. P.W-1 also stated that she had never visited her daughter after the marriage till she ended her life. However, in her complaint, it is stated that she came to know about her daughter's marriage life only through her mother-in-law, P.W.3, who used to visit her often.



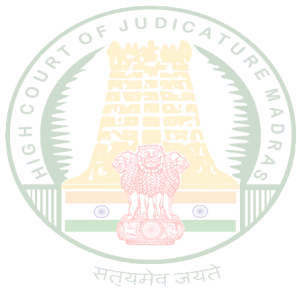
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14. Learned Counsel for the Appellant invited the attention of this Court to the cross-examination of the witnesses, P.W-1 to P.W-3. Except P.W-1 to P.W-3, no other evidence before the Trial Court have attributed any motive or ill-treatment of the deceased by the Appellant/Accused. However, the Trial Court held that the deceased committed suicide only due to the frequent demand made by the Accused to bring Rs.2 lakhs to meet out the litigation expenses made by him to defend the case registered at the behest of her mother P.W-1 prior to the marriage. Thus, there was no material available before the Trial Court to convict the Accused but the conviction and sentence was made on mere presumptions and assumptions.

15. In support of his contention, the learned Counsel for the Appellant invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in ***Kashibai & Ors. Vs. The State of Karnataka***, reported in ***2023 LiveLaw (SC) 149***, wherein the Honourable Supreme Court has issued guidelines as to how the ingredients of Section 107 of IPC has to be proved. In paragraphs 9, 14, 16 of the judgment, it was held as follows:-

“9. In M. Mohan Vs. State Represented by the Deputy Superintendent of Police, this Court has elaborately dealt with the provisions contained in [Section 306](#) read with [Section 107](#) IPC, and after discussing various earlier decisions has observed as under: -

“41. This Court in SCC para 20 of Ramesh Kumar



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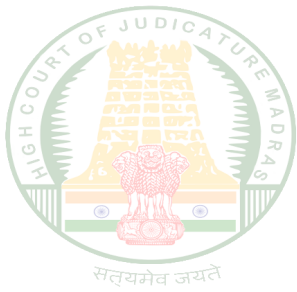


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[(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of “instigation”.

20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the Accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.” In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the Appellant/Accused having abetted commission of suicide by Seema (the Appellant's wife therein) may necessarily be drawn.

42. *In State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the Accused charged of



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abetting the offence of suicide should be found guilty.

43. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] 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 straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under *Section 306* IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

14. Though it is true that as per *Section 113A* of the Evidence Act, when the question arises as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and when it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court can presume, having regard to the other circumstances, that such suicide has been abetted by her husband or such relative of her husband. However, mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under *Section 113A* of the Evidence Act, and



to hold the Accused guilty of *Section 306* IPC.

*16. So far as the evidence adduced by the Prosecution in the instant case is concerned, in our opinion the Prosecution had failed to adduce any clinching evidence to enable the Court to conclude that the Appellants- Accused had abetted the deceased to commit suicide. In absence of any satisfactory evidence having been brought on record, in our opinion both the Courts below had committed grave error in holding the Appellants guilty of the offence under *Section 306* of IPC.”*

16. By placing reliance on the above decision, the learned Counsel for the Appellant submitted that there is no evidence made available by the Prosecution to prove that it was the Appellant who has driven the deceased to commit suicide or abetted her death in any manner. The trial Court, without proper assessment of the Prosecution evidence, has mechanically convicted the Appellant/Accused. Therefore, the learned Counsel for the Appellant/Accused seeks to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Erode, in S.C. No.171 of 2015, dated 18.03.2016 by allowing this Appeal.

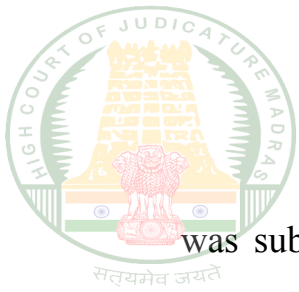
17. Per contra, the learned Government Advocate (Crl.Side) Mr.V.Meganathan, appearing for the State vehemently objected to the line of the argument of the learned Counsel for the Appellant. Learned Government Advocate (Crl.Side) stated that in the enquiry conducted by the Revenue



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Divisional Officer, the Accused himself had admitted that there had been frequent quarrels between him and the deceased. Therefore, it is the contention of the learned Government Advocate (Crl.Side) that the complaint of P.W-1, stating that the Accused had assaulted the deceased on the alleged occurrence day is sufficient to presume that due to such assault of the Appellant, the deceased committed suicide. Further, he would submit that there had been a suicide note written by her on the walls of the house, as per the report of the Revenue Divisional Officer. Therefore, presumption under Section 113 of IPC is to be invoked in this case. Even though P.W-1 was not in talking terms with the deceased after her marriage with the Appellant, she heard from her mother-in-law/P.W-2 that her daughter was subjected to cruel treatment by the Appellant/Accused. P.W-1 has also stated that when she went to her mother-in-law house, the deceased also was present there and she had shown to her the injuries she suffered in her body. Therefore, it is clear that the Appellant frequently assaulted the deceased and which had driven her to commit suicide by hanging. Even though there was no demand for dowry made by the Appellant/Accused, the Appellant often demanded the deceased to refund the amount he was made to spend to defend the criminal case registered against him at the instance of her mother. Thus, there was a demand for money by the Appellant/Accused and when it was not complied with by the deceased, she



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was subjected to ill-treatment. Therefore, the ingredients of Section 306 of IPC has been proved by the Prosecution. The learned Trial Judge, upon elaborate discussion of the Prosecution witnesses and the documents, rightly convicted the Appellant/Accused which warrants no interference. The learned Government Advocate (Crl. Side) therefore submitted that the Appeal lacks merit and has to be dismissed.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Erode, in S.C.No.171 of 2015, dated 18.03.2016 is to be set aside as perverse?

18. Heard the learned Counsel for the Appellant and the learned Government Advocate (Crl.Side) for the State.

19. Perused the depositions of Prosecution witnesses, P.W-1 to P.W-14 and Ex.P-1 to Ex.P-9 and the judgment of the learned Sessions Judge, Fast Track Mahila Court,, Erode.

20. On perusal of evidence of P.W-1 to P.W-3, it is found that the mother of the deceased had not visited her daughter (since deceased) after her



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marriage with the Accused. P.W-1 mother also gone on record by stating that she was not in talking terms with her daughter/deceased after her marriage with the Appellant. This piece of testimony assumes significance since the Appellant and the deceased married much to the chagrin of P.W-1. While so, on hearing the death of her daughter, P.W-1 has given a complaint under Ex.P-1 in which she hurled accusations against the Appellant for the death of her daughter. In the complaint under Ex.P-1, it was complained that the Accused caused mental torture on her daughter by demanding Rs.2 lakhs to meet the litigation expenses which he was made to spend because of the case given by P.W-1. To prove that, there was a demand made by the Appellant/Accused, demanding Rs.2 lakhs from the deceased, there was no scrap of evidence made available except the self-interested testimony of P.W-1 and P.W-2. When P.W-1 herself had stated that she had not gone to the residence of the deceased after the date of marriage till the date of her death, the contents of the complaint cannot be accepted as true. Further, P.W-1 stated in her evidence that the complaint was drafted by one Raja as she was illiterate. However, the said Raja was not examined as a witness before the Trial Court.

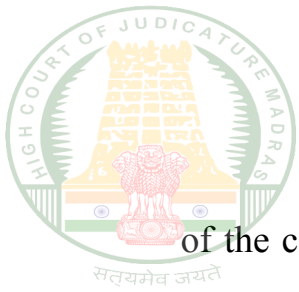
21. It is well settled that to attract the ingredients of Section 307 of Indian Penal Code, the Prosecution must produce clinching evidence to show



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that the physical assault or a provocation made due to verbal or physical attack had led to the suicide of the deceased. It must also be shown that such physical or verbal attack or provocation was made either before the suicide or sometime before, in the past. In this case, the Revenue Divisional Officer, who caused enquiry, has categorically observed that there was no demand for dowry in any form. Even the neighbour of the deceased or the owner of the house where she resided, have feigned ignorance about the reason which ignited the deceased to take the extreme step. As mentioned above, the testimony of the P.W-1 to P.W-3 are not only interested, but they are exaggerated given the fact that the deceased died at a young age by committing suicide by hanging. In this context, in the ruling relied on by the Counsel for the Appellant, in the case of ***Kashibai & Ors. Vs. The State of Karnataka*** reported in ***2023 LiveLaw (SC) 149***, the Hon'ble Supreme Court has held that mere fact of commission of suicide by itself would not be sufficient for the Court to raise the presumption under Section 113A of the Evidence Act and to hold the Accused guilty of Section 306 of IPC. To prove the offence under Section 306 of IPC, one of the factors required to be established is the *mens rea* to commit the offence, coupled with an active act or direct act which would have driven the deceased to commit suicide. The facts of the case before the Honourable Supreme Court are similar to the facts



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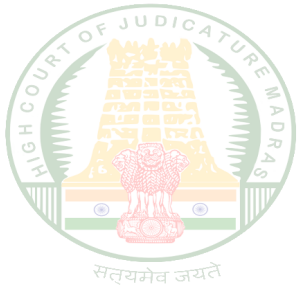
of the case before this Court. In this case, there is no evidence to show that

the Appellant had in any manner, triggered the deceased to commit suicide.

The Prosecution also failed to prove that there was *mens rea* on the part of the Appellant to cause the death of the deceased. There is no clinching evidence to show that the Appellant had in any manner abetted or contributed for the death of the deceased in this case.

22. The whole case of the Prosecution is that the Appellant tortured the deceased to pay him Rs.2 lakhs from her mother which had forced her to commit suicide. This is unbelievable in the light of evidence adduced by the Prosecution witnesses. P.W-1 herself states that her daughter had gone against her will, married the Accused and lived with him. From the evidence of P.W-1, P.W-2 and P.W-3, it cannot be presumed that the Appellant was instrumental for the death of the deceased.

23. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and as against the Prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Erode, in S.C.No.171 of 2015, dated 18.03.2016 is found perverse and the same is to be set aside.



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WEB COPY In the result, **this Criminal Appeal is allowed.** The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Erode, in S.C.No.171 of 2015 dated 18.03.2016, is hereby set aside. The Accused is acquitted from the charge under Section 306 of IPC. The bail bond, if any executed by the Accused, shall stand cancelled. The fine amount if any paid or deposited before the learned Sessions Judge, Fast Track Mahila Court,, Erode, is ordered to be refunded to the Appellant.

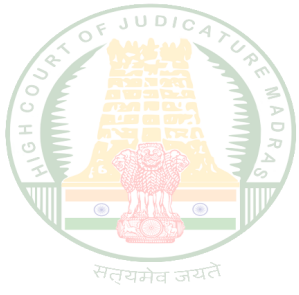
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Index : Yes/No

Internet : Yes / No

Speaking/Non-speaking order

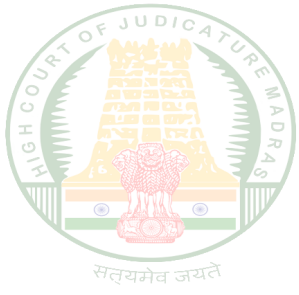


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To

- 1.The Sessions Judge,
Mahila Fast Track Court, Erode.
- 2.The Inspector of Police,
Modakurichi Police Station,
Modakurichi, Erode District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment in
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