



Criminal Appeal No.203 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 17.04.2025

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 203 of 2016

M. Karthick

.. Appellant

Versus

State Rep. By
The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri Taluk & District.
(Crime No.1028 of 2010)

.. Respondent

Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the Judgment dated 27.01.2016 made in S.C. No.72 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri

For Appellant	:	Mr. C. Gunasekaran, Legal Aid Counsel
For Respondent	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed to set aside the Judgment dated 27.01.2016 made in S.C. No. 72 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

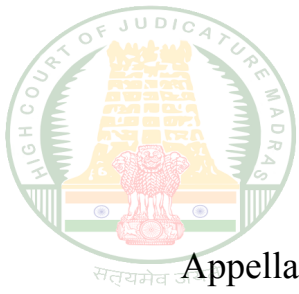
2. The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri



by judgment dated 27.01.2016, convicted the Appellant for the offence under Section 306 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of five years together with fine of Rs.2,000/- failing which to undergo two rigorous imprisonment.

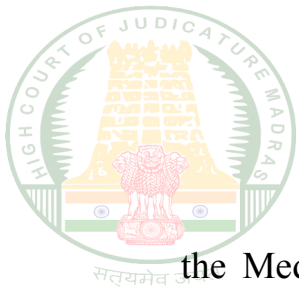
3. The brief facts, which are necessary for disposal of this Criminal Appeal, are as follows:-

3.1. The case of the Prosecution is that the deceased Mehala after completing her schooling, was waiting for her XII Standard result. During the school holidays, she had gone to Malaichandhu Village to visit her grandmother, who had undergone a surgery in her eye. The deceased stayed in her grandmother's house for about two weeks. During such stay, she met the Accused and they become friendly. In the course of their interaction, they came to know that the Accused is none other than her cousin. After two weeks the deceased returned to Dharmapuri Town and even thereafter, the Appellant used to contact her and interacted with her in the mobile phone. During such conversation, the Appellant-Accused expressed that he is in love with her. The deceased did not agree with the same and stated that the Accused is her brother and she is her sister by relationship. She also stated that as they are in a prohibited relationship, they cannot marry. Notwithstanding the same, the



Appellant continued to contact her on mobile phone. Unable to bear the same, the deceased informed it to her parents. Subsequently, the Appellant is alleged to have gone to the residence of the deceased, met her family members and requested them to give the deceased in marriage to him. Even at that time, the deceased protested by stating that he is her elder brother and not in a marriageable relationship. On 01.07.2010, when the deceased had gone to a shop near Dharmapuri Co-optex to recharge her mobile phone, the Accused came there and reiterated his demand to marry him. The Accused also stated that if she raise any protest, with the help of his friends he will forcibly take her and marry her. Enraged by such a statement, the deceased rushed to her house, poured kerosene on herself and set herself ablaze. Hearing her cries, her cousin Suresh and neighbour took the injured to Government Medical College Hospital.

3.2. P.W-10-Dr.Gnanasekaran, the Duty Doctor attended the injured by 11.50 p.m., in the burns ward. He issued Accident Register under Ex.P-5 stating that the victim suffered 60 to 80% burns. On hearing about the news of the fire accident, the parents of the deceased viz., P.W-1-Krishnan and P.W-2-Sala rushed to the Hospital. From the Hospital intimation was given to the Dharmapuri Town Police Station through the Head Constable in the outpost in



the Medical College Hospital. P.W-11 on receipt of intimation went to the ward on 02.07.2010 by around 7 pm., and recorded the oral statement of the injured Mehala and submitted the same to the Inspector of Police, Dharmapuri Town Police Station. P.W-9-Perumal, the Sub Inspector of Police attached to the Dharmapuri Town Police Station registered the First Information Report in Cr. No. 1028 of 2010 based on the oral statement of the deceased, which was reduced in to writing by P.W-11. Ex.P-4 is the First Information Report which was registered for the offence under Sections 3 and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2012 which was forwarded to the Court of the learned Judicial Magistrate, Dharmapuri and the copy of the same was sent to higher Officials including the Inspector of Police, Dharmapuri Town Police Station.

3.3. In the meantime, upon intimation, the learned Judicial Magistrate-II, Dharmapuri proceeded to the hospital and recorded the dying declaration of the deceased under Ex.P8 in the presence of the Doctor.

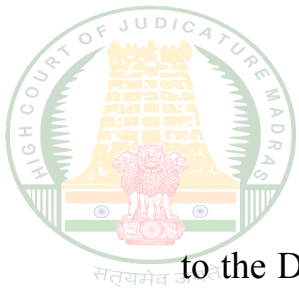
3.4. P.W-13-Rathinakumar, Inspector of Police, Dharmapuri Town Police Station visited the place of residence of the injured Mehala and prepared a Rough Sketch under Ex.P-9 and Observation Mahazar under Ex.P-1 in the



presence of the witnesses. After three days from the date of admission, the injured Mehala succumbed to injuries without responding to the treatment. Therefore, P.W-13 sent an alteration report under Ex.P-13, altering the offence into one under Section 306 of the Indian Penal Code.

3.5. After receiving the death intimation from the Hospital from the Duty Medical Officer, P.W-13-Rathnakumar proceeded to the Hospital and conducted inquest on the body of the deceased in the presence of relatives of the deceased girl. The inquest report is Ex.P-3. He also gave a requisition letter to Duty Medical Officer to conduct postmortem on the body of the deceased. P.W-7-Dr.Arun Prabhu had on receipt of the requisition letter conducted post mortem on the body of the deceased on 06.07.2010. After completion of autopsy, he issued postmortem certificate under Ex.P-3 wherein the cause of death was mentioned as burn injury and infection due to burn injury.

3.6. P.W-13 recorded the statement of the parents of the deceased P.W-1 and P.W-2, neighbours and relatives of the victim. He also recorded the statement of P.W-10-Doctor who had admitted the injured in the Dharmapuri Medical College Hospital. The statement of P.W-11-Head Constable attached



to the Dharmapuri Town Police Station was also recorded by P.W-13. Further, the statement of the learned Judicial Magistrate, Dharmapuri-P.W-12 was also recorded by P.W-13. After Completion of investigation and recording statement of all the witnesses, P.W-13-Inspector of Police laid the final report before the learned Judicial Magistrate, Dharmapuri against the Appellant for the offence under Section 306 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

3.7. The learned Judicial Magistrate, Dharmapuri had taken cognizance of the final report filed against the Appellant by P.W-13 and numbered the case as PRC.No. 13 of 2011. He had issued summons to the Accused. On appearance of the Accused, he had furnished copies of the final report under Section 207 of Cr.P.C., and committed the case to the Court of the learned Principal District Judge as the offence under Section 306 of IPC is exclusively triable by the Courts of Sessions and bound over the Accused to the learned Principal Sessions Judge, Dharmapuri.

3.8. On appearance of the Accused and after receipt of the records in PRC No.13 of 2011, the learned Principal District Judge numbered the case as S.C.No.72 of 204 and made over the same to the Court of the learned Sessions



Judge, Fast Track Mahila Court, Dharmapuri since the alleged offence is committed against women.

3.9. On receipt of records in S.C.No.72 of 2014 from the Court of the learned Principal District Judge, Dharmapuri, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, after hearing the learned Special Public Prosecutor and the learned Counsel for the Accused, framed charges under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 306 of IPC. The charges were read over and explained to the Accused. The Accused denied the charges and claimed to be tried. Therefore, trial commenced during which the Prosecution examined 13 witnesses as PW1 to 13 and marked 13 documents as Exs. P1 to P13.

3.10. On closing of Prosecution Witnesses, the incriminating evidence available against the Accused were put to him and he was examined under Section 313 Cr.P.C., The Accused denied the incriminating evidence against him, however, no witness was examined on the side of Accused. After hearing the arguments of Counsel for both sides and on perusal of the oral and documentary evidence, the learned Sessions Judge, Fast Track Mahila Court passed the Judgment dated 27.01.2016 in S.C.No.72 of 2014 convicting the



Accused for the offence under Section 306 of IPC, as mentioned above.

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3.11. Aggrieved by the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, this Criminal Appeal had been filed.

4. The learned Counsel for the Appellant/Accused invited the attention of this Court to the contents of First Information Report, Ex.P-4. Ex.P-4 was recorded based on the oral statement of the deceased, recorded by the Head Constable, P.W-11 attached to the Police outpost within the Dharmapuri Medical College Compound. As per the Prosecution case, the Head Constable visited the burns ward on 02.07.2010 and recorded the statement of the deceased and submitted the same to the Sub Inspector of Police. It is the contention of the Counsel for the Appellant that the FIR itself is belated as it was registered only on 04.07.2010 whereas the injured victim was admitted in the Hospital on 01.07.2010. As per the evidence of P.W-11, he had gone to the Hospital on the next day by 7.00 a.m., and recorded the statement given by the injured victim and after her death, it was treated as dying declaration by the learned Sessions Judge. The Doctor also recorded the statement of the injured victim at the time of admission at 11.50 p.m., on 01.07.2010. P.W-10-Dr. Gnanasekaran who had seen the injured victim at the



earliest point of time on 01.07.2010 at 11.50 p.m., recorded under Ex.P-5-

Accident Register that the injured suffered injuries due to accidental fire. As per the statement given by the injured herself on 01.07.2010 by around 11.30 p.m., when she attempted to light the gas stove, kerosene fell on her and she suffered burn injuries due to the gas stove. This was recorded as such by the Duty Doctor in the emergency casualty ward which is available under Ex.P-5. Whereas the oral statement recorded by P.W-11, Head Constable attached to the Police outpost attached to the Government Medical College Hospital is totally different. In the report of P.W-11, it was stated that the deceased was harassed by Accused to marry her even though she resisted it by stating that it is voidable and prohibited relationship as the Accused is her brother through her paternal cousin. The contents contained in the FIR under Ex.P-4 and the oral statement recorded by P.W-11 under Ex.P-6, were treated as dying declaration.

5. The learned Counsel for the Appellant also invited the attention of this Court to the evidence of the learned Judicial Magistrate who had visited the Hospital on receiving intimation from the Hospital for recording dying declaration. He had given a report under Ex.P-7 in which he had stated that the injured victim was not in a fit state of mind and unable to open her mouth



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whereas in Ex.P-8, he had recorded the dying declaration in which it is stated that the Accused harassed her by stating that if she did not concede to marry him, he will be forced to kidnap her with the help of his friends and forcibly marry her. He had threatened her on 01.07.2010 in the evening by around 8.30 p.m., when she had gone to recharge her mobile phone near the coopetex store. Also, she had stated that in the morning on the same day, the Accused misbehaved with her which made her to feel insecure as he had stated that he will kidnap her on the evening. To avoid such shameful circumstances she had set her on fire. It is the contention of the learned Counsel for the Appellant that there are three versions available. The oral statement of the victim recorded by P.W-11 under Ex.P-6, the oral statement of the victim recorded by the Duty Doctor on 01.07.2010 at 11.50 p.m., wherein she stated that kerosene fell on her. Therefore, it is an accidental fire and Ex.P-6 statement recorded by P.W-11-Head Constable and the learned Judicial Magistrate who recorded on 02.07.2010 by around 2.45 a.m., when she was unable to speak as she had suffered burns in the lips and tongue are unreliable. Whereas on 02.07.2010 at 6. 15 p.m., the Judicial Magistrate had recorded dying declaration in which she spoken about the acts of the Accused. Ex.P-5, Ex.P-6 and Ex.P-8 are three different versions. FIR itself was registered on 04.07.2010 belatedly which shows that it was registered after discussion with the parents of the victim



accusing the Accused. The entire Prosecution case is reflected on Ex.P-4. Ex.P-4, FIR was received by the Court on 06.10.2010, whereas, the occurrence alleged to have taken place within the local limits of Dharmapuri Town Police Station on 01.07.2010 at 11.30 p.m., and on the same night, the victim was admitted in the Hospital as per Ex.P-5. In the Accident Register under Ex.P-5, it was recorded that the brother of the victim/Vasanth had brought her to Hospital. However, the brother of the deceased by name Mr. Vasanth was not at all examined as Witness by the Prosecution as well as Investigation Officer. Mr. Vasanth was the person who brought the injured victim to the Hospital as per the Accident Register under Ex.P-5. Mr. Vasanth is a material witness, but he was not at all examined.

6. The learned Counsel for the Appellant submitted that on 06.07.2010, the injured succumbed to the injuries and only after the death of the injured, FIR was altered and it reached the Magistrate Court within the Dharmapuri Town. Since the FIR was belated and reached the Court only on 06.07.2010 by 4.30 p.m., the entire case of the prosecution has to be rejected as unbelievable. Therefore, Ex.P-4, FIR had lost its validity in the eyes of law.

7. The statement of the victim was recorded by the Police under



Ex.P-6 only on the next day of admission by 7.00 p.m., whereas the learned Judicial Magistrate in his report under Ex.P-7 stated that the victim was unable to open her mouth. Therefore, in view of the report of the learned Magistrate, the report of Head Constable, P.W-11 is unbelievable. The learned Judicial Magistrate, Dharmapuri had recorded the statement by 02.07.2010 around 2.45 p.m., and at that time, the victim was unable to open her mouth.

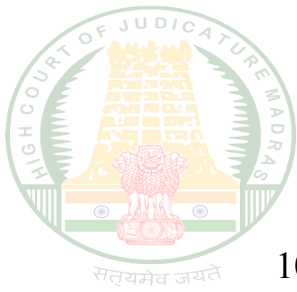
8. The learned Counsel for the Appellant further submitted that the witnesses who adduced evidence before the learned Judicial Magistrate are all related to the deceased girl and the same story is narrated by all the witnesses. They are interested witnesses and therefore, their testimony has to be discarded. The injured victim died on 07.07.2010 and the FIR was sent to the learned Judicial Magistrate only on 06.01.2010. The cellphone of the deceased was not seized by the Police. The evidence of the mother of the victim itself is hearsay. P.W-4 and P.W-5 are also hearsay witness. P.W-6 is the witness to the Rough Sketch and Observation Mahazar. P.W-7-Doctor had conducted postmortem and issued postmortem certificate under Ex.P-11. P.W-8 is the Head Constable who accompanied the body of the deceased and identified the same to the Duty Doctor/P.W-7 to conduct the autopsy. Ex.P-9 is the Sub Inspector of Police who received the oral statement of the victim recorded by



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P.W-11 from the burns ward of the Government Medical College Hospital, Dharmapuri, based on which FIR under Ex.P-4 was registered by P.W-9. P.W-10 is the Doctor who had seen the injured at the earliest point of time in the casualty ward of the Government Medical College Hospital, Dharmapuri and prepared the Accident Register under Ex.P-5. P.W-11 is the Head Constable, who recorded the oral statement from the victim. P.W-12 is the learned Judicial Magistrate who had recorded the dying declaration and also filed the report for recording dying declaration on 01.07.2010 by early morning 2.15 a.m., and subsequently recorded the dying declaration on 02.07.2010 by 6.30 p.m., under Ex.P-8. P.W-13 is the Inspector of Police who had recorded the statement of parents of the victim and neighbours and the Officials witnesses P.W-8, P.W-9 and P.W-11 and the Doctor-P.W-7 who conduct postmortem and P.W-10, the Doctor, who had admitted the victim in the burns ward.

9. The learned Counsel for the Appellant invited the attention of this Court to the Judgment of the learned Sessions Judge regarding three dying declaration and there was no *mens rea* on the part of the Accused to drive the victim to end her life. He had met her elders and requested to give their daughter in marriage so that they can live happily.



10. In support of his contention, the learned Counsel for the Appellant cited the following reported ruling of the Hon'ble Supreme Court:-

10.1. In the case of ***Sonti Rama Krishna Vs. Sonti Shanti Sree and Anr. (2009) 1 SCC 554*** it is held as under:-

“Criminal Procedure Code, 1973 – Ss.482, 154 (3) and 174 – High Court quashing Complaint case for offence under S.306 IPC by appreciating material facts – Permissibility – Complaint case against wife (Respondent 1) as newly wedded husband committed suicide due to harsh and abusive language of wife uttered in a fit of anger – No suicide note – Though husband committed suicide in his native village, different/doubtful version as to whether wife, after the marriage, had accompanied the husband to his native village or not – Moreover, Appellant (father) filed Complaint before the SP after about two-and-a-half months of the alleged incident – Though, normally threshold interference should not be made under S.482 Cr.P.C, the quashing of complaint case, on facts held, was just – Therefore, was not interfered with.

B.Penal Code, 1860 – Ss.306 and 107 – Abatement of suicide – Held, words uttered in a fit of anger or emotion without any intention cannot be termed as instigation – Words and Phrases - “instigate” and “abetment” meaning.”

10.2. In the case of ***Ganguly Mohana Reddy Vs. State of Andhra Pradesh*** reported in ***(2010) 1 SCC 750*** it is observed as follows:-

“12. The learned Counsel also placed reliance on another judgment of this court in [Ramesh Kumar v. State of Chhattisgarh](#) (2001) 9 SCC 618. A three-Judge bench of this court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the Appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the Appellant Ramesh Kumar committed suicide. The Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads 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



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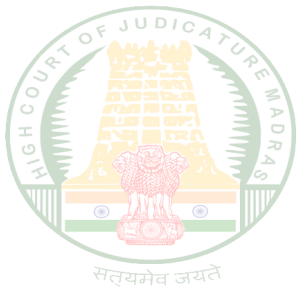
necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the Accused had by 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."

13. In *State of West Bengal v. Orilal Jaiswal & Another*. (1994) 1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trail for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it 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 abetting the offence of suicide should be found guilty."

10.3. In the case of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 371** it has been held as follows:-

"A. Penal Code, 1860 – S.107 Firstly – Ingredients -Instigating a person to do a thing – Held, "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite – Presence of mens rea is the necessary concomitant for instigation – Words uttered in a quarrel or on the spur of moment, such as "to go and die", cannot be taken to be uttered with mens rea.

B. Penal Code, 1860 – S.306 r/w. 107 – Abetment of suicide – Quarrel taking place between Appellant and deceased in which Appellant was said to have told the deceased "to go and die" Deceased found dead two days later – Held, suicide was not proximate to the quarrel though the deceased was named in the suicide note – Hence suicide was not the direct result of the quarrel when the Appellant used abusive language and told the deceased to go and die.



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C. Penal Code, 1860 – S.306 – Suicide note – Appellant specifically named in suicide note which was otherwise not coherent and reflected disturbed state of mind – There was also evidence on record that the deceased always indulged in drinking and was not doing any work – Suicide note, taken with other circumstances, held, deserved no credence.

D.Criminal Procedure Code, 1973 – S.482 – Prosecution under S.306 IPC quashed.”

10.4. In the case of ***M. Mohan Vs. State of Tamil Nadu*** reported in ***(2011) 3 SCC 626*** it has been observed as under:-

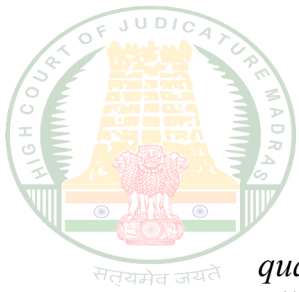
“41. This Court in paragraph 20 has examined different shades of the meaning of 'instigation'. Para 20 reads as under:

"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 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 Accused-Appellant having abetted commission of suicide by Seema (Appellant's wife therein) may necessarily be drawn.

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.

47. In a recent judgment of this Court in the case of [Madan Mohan Singh v. State of Gujarat and Anr.](#) (2010) 8 SCC 628, this Court



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quashed the conviction under [Section 306 IPC](#) on the ground that the allegations were irrelevant and baseless and observed that the High Court was in error in not quashing the proceedings.”

10.5. In the case of ***M. Arjunan Vs. State of Tamil Nadu*** reported in ***(2019) 3 SCC 315*** it has been observed as follows:-

“7. The essential ingredients of the offence under [Section 306 I.P.C.](#) are: (i) the abetment; (ii) the intention of the Accused to aid or instigate or abet the deceased to commit suicide. The act of the Accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the Accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, Accused cannot be convicted under [Section 306 I.P.C.](#)

8. In our considered view, in the case at hand, M.O.1-letter and the oral evidence of PW-1 to PW-5, would not be sufficient to establish that the suicide by the deceased was directly linked to the instigation or abetment by the Appellant- deceased. Having advanced the money to the deceased, the Appellant-Accused might have uttered some abusive words; but that by itself is not sufficient to constitute the offence under [Section 306 I.P.C.](#) From the evidence brought on record and in the facts and circumstances of the case, in our view the ingredients of [Section 306 I.P.C.](#) are not established and the conviction of the Appellant-Accused under [Section 306 I.P.C.](#) cannot be sustained.”

10.6. In the case of ***State of Kerala and others Vs. S. Unnikrishnan Nair and others*** reported in ***(2015) 9 SCC 639*** it has been held as under:-

“A. Penal Code, 1860 – Ss.306, 107, 182, 194, 195 and 195-A- Abetment of suicide alleged against respondents based on suicide note of deceased officer heading CBI investigating team – Suicide note except saying that respondents compelled deceased to do everything in investigating team and cheated him and put him in deep trouble, contains nothing else – Respondents were inferior in rank and it is surprising that such a thing could happen – No prima facie case of abetment made out against Accused -High Court completely justified in quashing the proceeding under S.482 Cr.P.C.,”



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11. In this case, even though the victim was admitted in Hospital on 01.07.2010 by 11.50 p.m., the oral statement of the victim was recorded on 02.07.2010 by 6.30 p.m., The FIR, Ex.P-4 registered only on 04.07.2010 and it reached the Court of the learned Judicial Magistrate on 06.07.2010, after the death of the injured. Therefore, it is clear that the FIR was registered after much discussion with the parents of the deceased. Therefore, the Prosecution theory that the Accused had instigated the victim to commit self-immolation has to be rejected. The learned Sessions Judge, while convicting the Accused ignored the well-settled principle laid down by the Hon'ble Supreme Court and erroneously convicted the Accused for the offence under Section 306 of IPC. He therefore prayed to set aside the Judgment of conviction and to allow this appeal.

12. Per contra, the learned Additional Public Prosecutor vehemently objected to the line of the argument of the learned Counsel for the Appellant and argued that the case of the Prosecution was duly proved through witnesses who happened to be the *bona fide* witness available in the place of occurrence. There may be technical flaws, but the witnesses had spoken cogently. The learned Judicial Magistrate had recorded the statement of victim under Ex.P-7



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wherein he had stated that at the earliest point of time, when he visited the Hospital on 02.07.2010 on the intervening night and early morning by 2.15 a.m., the victim was unable to open her mouth due to burn injury. The learned Judicial Magistrate had again gone to the Hospital at 6.15 p.m., on 02.07.2010, when the deceased was in a stable mental condition and could talk. The learned Judicial Magistrate himself had deposed as P.W-12 before the learned Sessions Judge. The learned Judicial Magistrate is a credible witness in this case and his deposition is more important and validity in the course of trial. What was spoken to by the victim to the learned Judicial Magistrate is available before the Court. Therefore, the learned Sessions Judge had on proper appreciation of evidence recorded the finding of guilt against the Accused and convicted him for the offence under Section 306 of IPC. It is to be noted that on the same day on 01.07.2010 by 8.30 p.m., the Accused met the elders in the family with *Thali* and requested them to give their daughter in marriage to her. On the same day evening, he was standing in front of the victim's parents' tiffin shop at 8.30 p.m., When the victim had gone to the mobile store to top up the mobile near the Co-optex store, the Accused went behind her, created a scene in public by stating that if she does not concede his request, he will kidnap her and marry her. This has caused a reasonable apprehension, shame and confusion in the mind of the deceased. Therefore, the deceased felt that before the Accused



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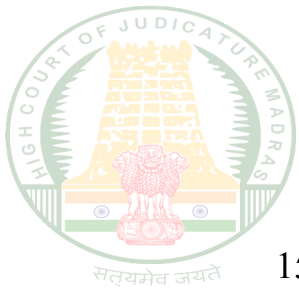
succeeded in his attempt, to kidnap her, she ended her life when nobody was at home. The parents of the deceased were in tiffin shop and at that time she set herself ablaze. The deceased was in a sound and good state of mind at the time when she gave the dying declaration and it was recorded by the learned Judicial Magistrate. Ex.P-5 recorded by P.W-10 Dr.Gnanasekaran is not based on the statement of the deceased, but it is based on the statement of the person who accompanied her. Therefore, it does not have more weightage. When the same Doctor had recorded that she had suffered burns in her lips and tongue, the statement that she informed him about kerosene fell on her and set fire is not acceptable. The statement given by the deceased to the learned Judicial Magistrate has more weightage and credibility.

13. The learned Additional Public Prosecutor further stated that non-examination of Vasanth, the person who is alleged to have accompanied the victim, is not fatal to the Accused. The learned Sessions Judge had on proper appreciation of evidence, based on the statement recorded from the victim on 02.07.2010 by 7 p.m., by P.W-11-Head Constable and the dying declaration recorded by the learned Judicial Magistrate under Ex.P-8 had found that the Accused herein is the immediate cause and who had provoked the deceased to end her life. The deceased was aged 18 and was expecting to get the 12th result



published. She was desirous to join the Arts College for pursuing B.Sc., Computer Science. As per her statement before the Head Constable who had recorded it, she was awaiting counselling before committed suicide. However, the threat unleashed by the Accused had made her to take the extreme decision. It is to be noted that the Accused and victim are brother and sister as per the statement of the parents and victim. It is a prohibited and voidable relationship as per the Hindu Customs observed by Hindus. Therefore, the action of the Accused/Appellant herein had caused the death of a teenage girl when she was forced to marry the Accused.

14. The rulings relied on by the Counsel for the Appellant does not help the case of the Appellant. In this case, as per the statement given by the injured victim to P.W-11 on 0107.2010 by 8.30 p.m., the Accused threatened that he will forcibly take her away and marry her on the next day morning. Apprehending that the Appellant would do so, she committed self-immolation at 11.30 p.m., It is also stated that between 9 and 11.30 p.m., she herself had stated that she heard the people outside her home whispering among themselves against her. All these have resulted in the young girl to end her life by self-immolation for which the Accused is responsible.



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15. The learned Additional Public Prosecutor had relied on the ruling of the Hon'ble Supreme Court in the case of **Ramesh Kumar vs. State of Chattisgarh** reported in **(2001) 9 SCC 618** wherein it has been observed as follows:-

"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."

16. According to the learned Additional Public Prosecutor appearing for the Respondent, the observations made in the said judgment are applicable to this case. As per the evidence of P.W-1 and P.W-2 and the dying declaration recorded by the learned Judicial Magistrate which under Ex.P-8 the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court is on strong reasoning and it does not warrant any interference of this Court. The continues harassment caused by the Accused had caused fear in the mind of the young girl aged about 18 years and it is reflected undre Ex.P-5 to Ex.P-8. Thus, the Prosecution had proved the charge against the Accused. The appeal lacks merits and it has to be dismissed.

Point for consideration:



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***Whether the Judgment of the learned Sessions Judge,
Fast Track Mahila Court, Dharmapuri in S.C. No. 72 of
2014, dated 27.01.2016 is to be set aside as perverse?***

17. Heard the learned Legal Aid Counsel Mr.C.Gunasekaran for the Appellant and the learned Additional Public Prosecutor Mrs.G.V.Kasthuri for the Respondent. Perused the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri and the evidence of the Prosecution Witnesses P.W-1 to P.W-13 and the documents under Ex.P-1 to Ex.P-13.

18. As pointed out by the learned Counsel for the Appellant, the Prosecution Witnesses are from the place of residence of the victim. The witnesses examined on the side of prosecution are the parents of the victim, the neighbours of the victim etc., The Accused is from Malaisandy Village which is far away from Dharmapuri Town. Only one of the witness was from that place who had deposed that the Accused had made harassment by stating that he is in love with the victim but she refused to accept it on the ground that they are under prohibited relationship as cousins and she treated him as brother and not as a lover. Also as pointed out by the learned Counsel for the Appellant, there are three dying declaration, first one was recorded by the duty Doctor P.W-10 under Ex.P-5-Accident Register stating that it was an accidental fire and kerosene fell on her when she attempted to switch on the gas stove. The person who ac-



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accompanied the victim to the Government Medical College Hospital, Dharmapuri, by name Vasanth, who claimed to be brother of the victim, was not examined as a witness on the side of the Prosecution. The victim was admitted on 01.07.2010 by 11.50 p.m., P.W-11- Head Constable attached to the Dharmapuri Town Police Station who had visited the Hospital on receipt of intimation from the Doctor at Casualty ward had recorded the statement of the victim only on 02.07.2010. P.W-11 in his cross-examination admitted that on the previous day, the victim was admitted. The Head Constable on duty was a different person and he had received intimation from the Medical College Hospital and immediately he visited the Hospital. At that time, the duty Doctor informed the Head Constable on duty that the victim was not in a fit state of mind to speak. Therefore, he returned without recording the statement of the victim. Only on 02.07.2010 on receipt of intimation from the Government Medical College Hospital that the victim is conscious and able to speak, he had gone to the Medical College Hospital and recorded the statement of the victim. At that time, the nurse alone was available. He also admitted that the mother of the victim is also available in the ward. Therefore, the defence Counsel put a suggestion that the victim had not given statement and what was recorded by the Head Constable/P.W-11 was on the information furnished by the mother of the victim who was available in the burns ward beside the victim who was un-



dergoing treatment. That was denied by P.W-11 in his cross-examination.

Since the statement recorded by P.W-11 did not contain the certificate of the duty Medical Officer which is mandatory it cannot be considered as dying declaration in the eyes of law. Still, it is taken in the process of the Police investigation based on which FIR in Cr.No.1028 of 2010 was registered on 04.07.2010 for the offence under Sections 3 and 4 of Tamil Nadu Prohibition of Harassment of Women Act. After the death of the victim on 05.07.2010, the offence was altered under Section 306 of IPC by the Dharmapuri Town Police Station. The report regarding alteration of the offence was sent to the learned Judicial Magistrate, Dharmapuri by P.W-13-Rathnakumar under Ex.P-13.

19. As pointed out by the learned Counsel for the Appellant, the learned Judicial Magistrate, Dharmapuri visited the Government Medical College Hospital, Dharmapuri after receiving intimation on early hours on 02.07.2010 at 2.25 am., wherein he found that the deceased was unable to open her mouth and talk. The Medical Officer on duty informed the learned Judicial Magistrate that the victim is not in a fit state of mind. Therefore, he sent a report under Ex.P-7. Again he visited the Hospital on the same day ie., 02.07.2010 by evening 7 p.m., on receiving intimation that the victim is alert and conscious-oriented. This time he had recorded the Dying Declaration as



narrated by the victim. Since the victim suffered burns in her hand and unable to sign the statement recorded by the learned Judicial Magistrate, the learned Judicial Magistrate obtained impression of toe. The fact stated by the victim, as narrated to the learned Judicial Magistrate P.W-12 is the same as in Ex.P-6, the statement recorded by the Head Constable P.W-11.

20. P.W-12, the learned Judicial Magistrate, Dharmapuri was subjected to cross-examination in which the learned Counsel appearing for the Accused had suggested that the relatives of the victim alone had narrated the facts implicating the Appellant and the victim committed self-immolation as her parents wanted her to study in Government Arts College but she was adamant to study in private Arts College. This was denied by the learned Judicial Magistrate, Dharmapuri. He had clearly stated that before recording the statement, he had put question to the victim for which she replied. Since the answers were cogent, he satisfied himself that the victim is mentally alert to give statement regarding the occurrence. Thereafter only, he proceeded to record the statement of the victim. Also, he stated that before recording the statement of victim, he informed that all the relatives of the victim who are in burns ward shall leave the ward and the Duty Doctor alone was available. Also, the learned Judicial Magistrate had stated that the Duty Doctor signed the



certificate stating that the victim was conscious through out the recording of the statement by the learned Judicial Magistrate.

21. As per the ruling cited by the learned Counsel appearing for the Appellant-Accused when there are two or three dying declaration, the earliest dying declaration alone is to be considered. Here, the facts are not so. What was recorded by the Head Constable P.W-11 under Ex.P-6 is the statement that cannot be treated as dying declaration because as per the evidence of P.W-11, he had not obtained certificate from the Duty Doctor that the patient was conscious. Also, he in his deposition stated that the mother of the victim was available nearby the deceased. Therefore, what was recorded by P.W-11 under Ex.P-6 cannot be treated as dying declaration and it has to be rejected as unreliable.

22. As per the deposition of P.W-10, Medical Officer on duty in the casualty ward the victim was admitted on 01.07.2010 by 11.50 p.m., As per his deposition, she herself had stated that it was an accidental fire. The person who accompanied the victim was Vasanth, her brother. What was recorded by P.W-10 at the earliest point of time under Ex.P-5-Accident Register and what had been stated by P.W-12, the learned Judicial Magistrate is considered, she



was unable to open her mouth when he had visited the hospital on intimation by the Doctor in the casualty ward on 02.07.2010 around 2.25 a.m., If that is considered in all probabilities the person who accompanied the victim/Vasanth on 01.07.2010 by 11.50 p.m., alone could be intimated that it was an accidental fire and not victim. That part the Doctor's deposition is found not correct. When the victim was unable to open her mouth as intimated by the same Doctor to the learned Judicial Magistrate then, what was deposed by him in the later point of time, cannot be true. Therefore, what was recorded by P.W-10 as Ex.P-5-Accident register cannot be treated as dying declaration.

23. What was recorded by P.W-12, the learned Judicial Magistrate alone can be treated as dying declaration as he had followed the due procedure in recording the dying declaration. The learned Magistrate had sent out the persons who were available in the ward where the victim was undergoing treatment. He had obtained the certificate from the duty Doctor/P.W-10 who was on duty from 8 p.m., to the next day 8 p.m., He certified that the victim is mentally alert and conscious. Apart from the Doctor certificate, the learned Magistrate had put questions to the victim and recorded the answers given by the victim. Therefore, what was recorded by him is to be treated as dying declaration.



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24. In the dying declaration recorded by P.W-12, certain new facts were also stated by the victim that on the date of occurrence, on the morning, when she was about to go to bathroom and take bath, the Accused had misbehaved with her and she was ashamed of it. She felt that the neighbours whispered among themselves discussing about those facts. Therefore, she felt ashamed and it was also one of the reasons for her to end her life. On perusing Ex.P-8-dying declaration recorded by P.W-12, it is found that the occurrence occurred by 8.30 p.m., on 01.07.2010. On 01.07.2010, morning when the deceased was about to take bath, the Accused misbehaved with her. In the evening, when she returned home, she found the Accused standing near the Tiffin shop run by her parents. When she went to Mobile Shop for recharge of her mobile near the co-optex and returning, the Accused alleged to have waylaid her and stated that if she refused continuously to marry him, he will be forced to kidnap her and will marry her on the next day morning. There also neighbours who had seen this occurrence and they whispered it among themselves. Since there was nobody at home and as the deceased felt that the Accused may come to her house the next day morning, as stated by him, she felt insecure and had set fire to herself. That part of the statement is found cogent. The evidence of P.W-1 and P.W-2, the parents of the deceased has to



be given due weightage as they had stated that the Accused came to their house with Thali and talked to them to give their daughter in marriage to him. The father of the victim had told him that he is her cousin and it is a prohibited relationship as per the custom prevailing among Hindus. Therefore, what was stated by the victim is found acceptable. The Accused continuously harassed the deceased, a young girl to marry him. Even though the victim had attained the age of majority and she is considered teenager, her mental ability regarding the future consequences and apprehension about her view is to be considered. She was helpless even after reporting the matter to her parents. Therefore, the conduct of the Accused attracts the Provisions of Tamil Nadu Prohibition of Harassment of Women Act which was a correct provision of law invoked by P.W-9 while registering the first information report. However, on coming to know about the death of the deceased, the case was altered to Section 306 of IPC and alteration report was sent to the jurisdictional Magistrate.

25. The learned Counsel for the Appellant submitted that even though the occurrence took place on 01.07.2010, the FIR was registered only on 04.07.2010 and it reached the Court on 06.07.2010 after the death of the victim. Such a lapse on the part of the investigation agency cannot be to the advantage of the Accused. The action of the Investigation Officer or



Investigation Agency in registering the First Information Report or sending it to the Magistrate Court belatedly will not in any manner affect the credibility of the case of the prosecution. The victim or the prosecution witnesses may not have any control over the investigation agency for the lapses committed by them.

26. The deceased, a teenage girl, had lost the courage to overcome the harassment of the Accused and decided to end her life. As pointed out by the learned Counsel for the Appellant it is admitted that most of the witnesses are hearsay witnesses. However, the evidence of the parents of the victim P.W-1 and P.W-2 is found to be cogent. They withstood the cross-examination and nothing credible could be elicited from their deposition in favour of the Appellant/Accused. Apart from that the Accused himself had approached the parents to give their daughter (deceased) in marriage to him. P.W-4 alone is from the Village where the Accused hails. In any event, the dying declaration recorded by P.W-12 cannot be found fault with or it can be compared with the statement recorded by P.W-11. P.W-12 is a competent officer of the Court. He had followed all the mandatory procedures while recording the dying declaration in this case. Therefore, on the basis of the dying declaration recorded by P.W-12, the conviction of the Appellant has to be upheld.



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27. From the evidence of P.W-1 to P.W-13, it is found that the deceased committed self immolation only due to the harassment caused by the Appellant herein. Under those circumstances, the assessment of evidence by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri convicting the Accused for the offence under Section 306 of IPC is found justified. The discussion of evidence by the learned Sessions Judge is found proper and well reasoned and it does not warrant any interference of this Court.

28. In the light of the above discussion, the Point for consideration is answered in favour of the Prosecution and against the Appellant. The Judgment dated 27.01.2016 passed in S.C. No. 72 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, is found proper which does not warrant any interference by this Court.

In the result, **this Criminal Appeal is dismissed** as having no merits. The Judgment dated 27.01.2016 passed in S.C.No.72 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, is confirmed.



Criminal Appeal No.203 of 2016

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The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri is directed to issue warrant in continuation of the judgment of conviction recorded in the judgment dated 27.01.2016 in S.C.No.72 of 2014 to undergo the remaining period of sentence of imprisonment by the Appellant/Accused. The Inspector of Police, Dharmapuri Police Station, Dharmapuri Taluk, Dharmapuri District, is directed to execute the warrant and secure the Appellant/Accused.

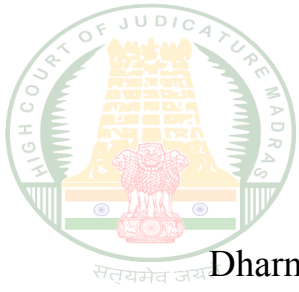
The Legal Services Authority attached to the Principal District Judge, Dharmapuri shall conduct enquiry regarding the compensation to the parents of the deceased victim of crime under the Victim Compensation Act as the victim succumbed to the burn injury and died.

17.04.2025

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh

To

1. The Sessions Judge,
Fast Track Mahila Court,

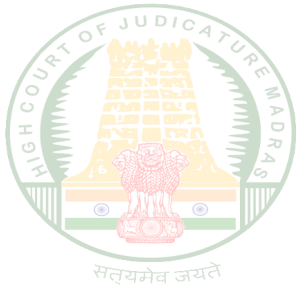


Criminal Appeal No.203 of 2016

Dharmapuri.

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- 2.The Inspector of Police,
Dharmapuri Police Station,
Dharmapuri Taluk & District.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer,
Criminal Section,
High Court Madras.



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Criminal Appeal No.203 of 2016

SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment made in
CRL.A.No.203 of 2016

17.04.2025