



Crl.A.No.310 of 2017

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.310 of 2017

Murali @ Muralidharan

.. Appellant

Versus

State of Tamil Nadu
Rep by Prosecutor
Through Commissioner of Police,
Pulianthope Range,
Chennai – 600 012.

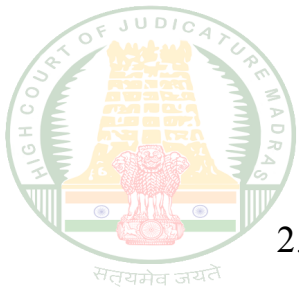
.. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Chennai in S.C.No.150 of 2014, dated 02.06.2017.

For Appellant	:	Mr. G.M.Shankar
For Respondent	:	Mrs. G.V.Kasthuri Additional Public Prosecutor

JUDGMENT

This Criminal Appeal had been filed to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court (Mahalir Neethimandram), Chennai, in S.C.No.150 of 2014, dated 02.06.2017.



2. The brief facts, which are necessary for the disposal of this

WEB CRI Criminal Appeal, are as follows:

2.1 The deceased Daisy @ Selvi was married to the first Accused on 07.09.2012. It was an arranged marriage. After marriage, the deceased Daisy @ Selvi was residing along with her husband, father in law, mother-in-law. Their marriage was performed three months prior to the alleged occurrence. On 16.12.2012, the deceased Daisy @ Selvi was brought to Kilpauk Medical College Hospital by her mother-in-law Kaveri stating that she alleged to have committed self immolation in the morning by around 5:15 A.M in their house.

2.2. On intimation given by the hospital authorities, P.W-19-Banu Priya, Sub-Inspector of Police rushed to the burns ward in the hospital and recorded the statement given by the deceased. Since the body of the deceased was completely burnt, P.W-19 could not get the thumb impression. Therefore, P.W-19 obtained the toe impression from the left leg of the deceased. Ex.P-14 is the statement recorded by P.W-19 from the deceased. Thereafter, P.W-19 proceeded to the Police Station and registered the case in Crime No.1700 of 2012 for the offence under Section 309 of I.P.C. Ex.P-15 is the First Information Report. P.W-19 sent the original complaint under Ex.P-14 and the original F.I.R, Ex.P-15 to the Court as well as the higher Police Officials. Since the deceased in her statement had stated that she committed self

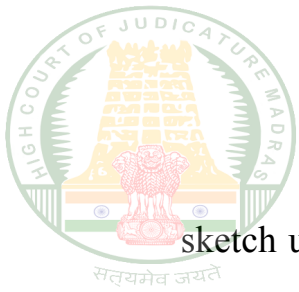


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immolation within three months of her marriage, intimation was also sent to the Executive Magistrate, District Collector, Chennai. Also, P.W-19 sent a requisition letter to the jurisdictional Metropolitan Magistrate to record the dying declaration of Daisy @ Selvi.

2.3. On the basis of such intimation, P.W-17 Vijayarani, learned VIII Metropolitan Magistrate visited the burns ward in Kilpauk Medical College Hospital at around 1.40 p.m. on 16.12.2012. She enquired the injured victim who was undergoing treatment. P.W-16-Doctor Sankari had certified that the deceased is in a fit state of mind and also issued a certificate regarding the mental alertness of the victim. After satisfying that the victim is able to speak and respond cogently, P.W-17 recorded the dying declaration of the injured victim Daisy @ Selvi under Ex.P-10. Under Ex.P-10, it was stated that the husband and sister-in-law of the deceased have poured kerosene and set her ablaze. Therefore, under Ex.P-10, the deceased sought to take appropriate action against them.

2.4. P.W-20, Inspector of Police, on receipt of a copy of the First Information Report and other records proceeded to conduct investigation in this case. He recorded the statement of Epsy Lilli Bai-P.W-1 and one Nagaraj. He also proceeded to the scene of occurrence where the deceased suffered burn injuries and prepared an observation mahazar under Ex.P-17 and rough



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sketch under Ex.P-18 in the presence of witnesses. He had recovered a green plastic bottle which had smelled kerosene. He also recovered a burnt match stick and match box and recovered the same under Ex.P-19, Mahazar. Later, he went to the hospital and recorded the statement of Doctor Balamurugan-P.W-14 and collected the Accident Register from him. He also recorded the statement of Dr. Shankari-P.W-16 in the hospital. Thereafter, on the basis of the evidence collected, P.W-20 prepared an alteration report under Ex.P-20, altering Section 309 of IPC into one under Sections 498-A, 304-B and 306 of IPC. Since the deceased died within 7 years of marriage, he had entrusted the entire case file to the Assistant Commissioner of Police for further investigation.

2.5. On 17.12.2012, the deceased succumbed to the burn injuries. In this regard, on the basis of an intimation received from the Assistant Commissioner of Police, Puliyanthope Range, the Special Deputy Collector working in the office of the District Collector, P.W-18, he recorded the statement of the Accused. He also recorded the statement of the parents and neighbours of the deceased. Thereafter, he proceeded to K.M.C. Hospital and prepared an inquest report. Ex.P-11 is the Inquest report which was forwarded by P.W-21 to the Assistant Commissioner of Police.

2.6. P.W-21 is the Investigation Officer in this case since the death of

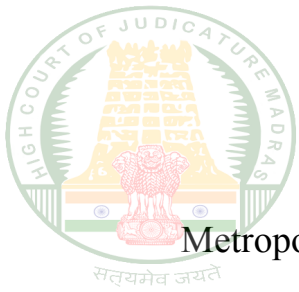


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the deceased had occurred within 7 years of her marriage. On receipt of the case records, P.W-21 proceeded to the place of occurrence. He also had gone through the rough sketch drawn by the Inspector of Police. He had also caused enquiry with Nagaraj and Domen-P.W-10 and they have repeated the same statement, which they have given to the Inspector of Police. Later, he had examined Cysilia-P.W-5, Anitha-P.W-4, Malliga-P.W-6, Anjalai-P.W-7, Bommi-P.W-8, Radha-P.W-13, Stephenraj-P.W-9, Mangala Mary-P.W-11 and Sagaya Mary-P.W-12 and recorded their statement. Thereafter, P.W-21 arrested the Accused 1 to 3 in this case and recorded their voluntary confession statement. He also sent the Accused in this case to remand. On 20.12.2012, P.W-21 once again recorded the statement of Epsy Lilly Bai, mother of the deceased and Chinnadurai, father of the deceased. On 25.03.2013, P.W-21 recorded the statement of Doctor Devasena and obtained the Postmortem Certificate. Thereafter, P.W-21 recorded the statement of P.W-18, Deputy Collector. He also recorded the statement of Dr.Balamurugan and obtained the copy of Accident Register. Further, P.W-21 recorded the statement of Dr. Sankari. After completion of his investigation, P.W-21 had filed the charge sheet against the Accused 1 to 3 for the alleged offences punishable under Sections 498A and 304-B of IPC.

2.7. The final report filed by P.W-21 was taken up on file by the X



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Metropolitan Magistrate, Egmore under P.R.C. No. 37 of 2014 and summons

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were served to the Accused. On their appearance, the copies of the documents were provided to them under Section 207 of the Code of Criminal Procedure. As the case has to be tried by a Court of Sessions, the case was committed to the learned Principal Judge, Chennai and the Accused were bound over to the said Court. The learned Principal Judge, Chennai taken up the case and assigned it as S.C. No. 150 of 2014. On appearance of the Accused, after hearing the Counsel for the Accused and the learned Public Prosecutor, charges were framed for the offences under Sections 498A and 306 of IPC. The charges were read over to the Accused and they denied at as false and pleaded not guilty. Therefore, trial was ordered.

2.8. To prove the charges, Prosecution had examined 21 witnesses as P.W-1 to P.W-21 and marked 21 documents under Ex.P-1 to Ex.P-21. After closing of the evidence of the Prosecution, the incriminating evidence against the Accused from the evidence of P.W-1 to P.W-21 and Ex.P-1 to Ex.P-21 were put to them. They denied the incriminating evidence against them. After hearing the arguments of the prosecution and the learned Counsel for the Defence, the learned Sessions Judge, Fast Track Mahila Court, Chennai by the judgment dated 02.06.2017 passed in S.C.No. 150 of 2014 acquitted the Accused 2 and 3 from the charges and convicted Accused-1 alone for the



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offence under 306 I.P.C. and 498 A of IPC. For the offence punishable under Section 498A of IPC, the first Accused was sentenced to undergo 18 months rigorous imprisonment with fine of Rs.3,000/-, in default, to undergo further 3 months rigorous imprisonment. For offence under 306 of I.P.C the Accused-1 was sentenced to undergo five years rigorous imprisonment with fine of Rs.3,000/-, in default, to undergo three months rigorous imprisonment.

2.9. Aggrieved by the said judgment dated 02.06.2017 passed in S.C. No. 150 of 2024 by the learned Sessions Judge, Fast Track Mahila Court, Chennai, the Accused-1 has filed this Appeal.

3. The learned Counsel for the Appellant Thiru. G.M. Shankar, invited the attention of this Court to the deposition of the parents of the deceased P.W-1 and P.W-2. He also invited the attention of the evidence of the Doctors P.W-14 to P.W-16. By referring to the Accident Register, under Ex.P-5, it is argued that under the said Accident Register, it is clearly reported that the injured herself informed the duty Doctor P.W-14-Dr.Balamurugan that she committed self immolation. Further, it is stated that the case was originally registered for the offence under Section 309 of IPC but subsequently altered to Section 498A and 306 IPC without any material evidence. The evidence of the P.W-1 and P.W-2, who are parents of the deceased does not



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inspire confidence. They had given statement based on presumptions and conjectures to the Deputy Collector/Executive Magistrate as well as the Police Officials who examined them. The statement given by the victim to P.W-19 under Ex.P-14 and the dying declaration recorded by P.W-17, Thirumathi Vijayarani, the then learned VIII Metropolitan Magistrate are at variance. When there are two dying declarations recorded by two different officials, it is not safe for the Court to rely on such dying declarations. In this case, the learned Sessions Judge, Fast Track Mahila Court, Chennai had in her judgment did not properly consider the deposition of the witnesses, particularly, the cross examination of the witnesses, but only relied on Ex.P-10 and Ex.P-14.

4. It is the contention of the learned Counsel for the Appellant that both the families are residents under the Pulianthope jurisdictional Police. The marriage between the first Accused and the deceased was an arranged marriage. There was no demand of dowry at the time of marriage or till the date of death. There was no previous case registered either by the Police or any complaint was given either by the deceased after marriage or by her parents on her behalf. Therefore, for the cause of death, the Accused being the husband of the deceased cannot be convicted solely on the basis of dying declaration



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5. In support of his contention, the learned Counsel for the Appellant relied on the following reported decisions:

5.1. In the case of ***Mangat Ram v. State of Haryana*** reported in ***AIR 2014 SUPREME COURT 1782***, in which it is held as follows:

“... In the instant case, the Accused had left the wife in the matrimonial home in the company of his parents and we fail to see how that action would amount to abetment to commit suicide.

498-A, Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand”.

23. Explanation to Section 498-A gives the meaning of 'cruelty' which consists of two clauses. To attract Section 198-A, the prosecution has to establish the wilful conduct on the part of the Accused and that conduct is of such a nature as is likely to drive the wife to commit suicide...

24. We have already indicated that the trial Court has found that no offence under Section 304-B IPC has been made out against the Accused, but it convicted the Accused under Section 306 IPC, even though no charge had been framed on that section against the Accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. Section 306 IPC reads as under:

“306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Abetment of



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suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107.

Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.

25. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113A of the Evidence Act could be raised. Section 113A of the Evidence Act reads as follows:

“113A. Presumption as to abetment of suicide by a married woman.- when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and 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 and subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

26. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be



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sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* (2004) 12 SCC 257, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC."

5.2. In the case of ***Sivashankar vs. The State*** in ***Criminal Revision***

Case No.578 of 2013, this Court held as follows:

"6. In this context, the learned counsel for the revision petitioner relied on the decision reported in (*Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh*) 2002 5 SCC 371 as well as the decision in (*Assoo vs. State of Madhya Pradesh*) (2011) 14 Supreme Court Cases 448 to contend that each and every quarrel between the husband and wife which results in a suicide cannot be taken as an abetment by the husband and the standard of a reasonable and practical women as compared to a headstrong and oversensitive one, has to be applied. By placing reliance on the above decisions, the learned counsel for the petitioner would contend that when the courts below categorically found that there was no demand for dowry and consequential harassment meted out to the deceased, the question of abetment does not arise.

"9. We are of the opinion that besides the evidence of PWs 1 and 2, which itself is extremely shaky, there is no other statement to show any misbehaviour or demands for dowry. There is also no indication as to when these demands has been made. It must be noted that every quarrel between a husband and wife which results in a suicide cannot



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be taken as an abetment by the husband and the standard of a reasonable and practical woman as compared to a headstrong and oversensitive one, has to be applied.

15. Similarly, in the decision in (Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh) 2002 5 SCC 371 = AIR 2002 SC 1998, the Honourable Supreme Court held in para Nos. 9 to 11 as follows:-

"9. In Swamy Prahalddas vs.State of M.P. and another, the Appellant was charged for an offence under Section 306 of IPC on the ground that the Appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the Accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh vs. State of M.P. (1996 CrL.LJ 1894) the Appellant was charged for an offence under Sec. 306 of IPC basically based upon the dying declaration of the deceased, which reads as under:-

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wanted to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed, I want to die by burning.

11. This Court, considering the definition of 'abetment' under Section 107 of IPC found that the charge and conviction of the Appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the Accused.'

Therefore, it has to be held that the deceased could have committed suicide in a spur of moment without the inducement or abetment of the revision petitioner/A-1. In such circumstances, this Court is inclined to extend the benefit of doubt in favour of the revision petitioner/A-1 and consequently, the conviction and sentence imposed on him by the first appellate Court has to be set aside."

5.3. The decision of the Honourable Supreme Court in **Gurucharan**

Singh vs. The State of Punjab reported in **AIR 2020 SUPREME COURT**



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5.4. The Judgment of this Court in the case of **A.Sekar vs. State by Inspector of Police in Crl.A.No.123 of 2016**

5.5. This Court in the case of **Babu @ Gopalkrishnan and Others vs. State in Crl.A.Nos.534 and 564 of 2018** held as follows:

“Provision under Section 306 of IPC mandates that there must be instigation by the Accused persons soon before the death of the deceased. In this case, there was absolutely no evidence to show that the Accused persons instigated the deceased to commit suicide. 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.”

5.6. Judgment of this Court in the case of **Partheeban vs. State in Crl.A.No.308 of 2021.**

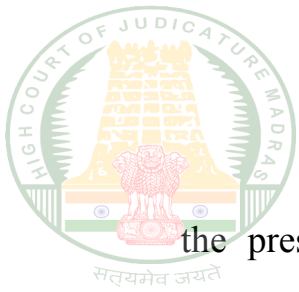
6. By placing reliance on the aforesaid decisions, it is submitted by the learned Counsel for the Appellant that the oral testimony of the Prosecution witnesses are contrary to the First Information Report as well as the dying declarations recorded in this case. The variations and inconsistencies in the deposition of the Prosecution witnesses were omitted by



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the trial Court while convicting the Appellant. In such circumstances, the conviction of the Appellant by the trial Court is perverse and it is liable to be interfered with. Merely because the wife committed self immolation within three months of the marriage, the Court cannot draw adverse inference against the husband and her in-laws. For very many reasons, a newly married woman or young woman commits suicide, for which the Husband cannot be held responsible. The learned Sessions Judge, Fast Track Mahila Court, Chennai, in the judgment had based her reasoning only on the dying declaration recorded by the learned VIII Metropolitan Magistrate, Chennai and ignored the statement recorded by the Sub Inspector who recorded the statement of the victim, based on which the First Information Report was registered under Ex.P-15. In any event, for corroborating Ex.P-15, statement recorded by the Sub-Inspector of Police or the dying declaration recorded by the learned Magistrate, there is no corroborating evidence from any of the Prosecution witness. While so, it is unsafe to rely on the dying declaration recorded by the learned Magistrate.

7. The learned Counsel for the Appellant also submitted that the Prosecution failed to establish the motive for the deceased to commit self-immolation. Unless the Prosecution establishes, the foundation for the charge,



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the presumption cannot be drawn against the Accused. In this case, the Prosecution failed to prove the case against the Accused through proper evidence. Even though the Prosecution examined 21 witnesses, none of them had spoken about Dowry harassment or the harassment caused by the husband. Under those circumstances, the learned Sessions Judge, Fast Track Mahila Court, Chennai, relying on the dying declaration under Ex.P-10 and Ex.P-14 and drawing presumption against the Accused ought not to have recorded a conviction for offence under Section 306 of IPC and it is perverse.

8. The learned Counsel for the Appellant further submitted that the Panchayatars had only given their opinion before P.W-18, Deputy Collector, Chennai. In this case, there are three dying declarations. The first one is in the form of Accident Register recorded by P.W-14 Dr.Balamurugan. The second one is the statement recorded by Sub-Inspector of Police and the third is by way of dying declaration recorded by the Magistrate. While so, placing reliance on any one of these statement will cause injustice to the Appellant.

9. As far as the demand for dowry, except the parents of the deceased namely P.W-1 and P.W-2 none of the Prosecution witness had stated anything about the demand of dowry or any harassment thereof. The mother of



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the deceased as P.W-1 had stated that there was no talk of dowry before the marriage but only after betrothal, there was demand for dowry. This is an after-thought of P.W-1 for implicating the in-laws of the deceased. It is on the basis of such statement, the Deputy Collector, P.W-18 had given a report stating that the death might have been caused due to harassment meted out by the Accused-1 to Accused-3 to seek more dowry from the deceased. This development made by them only after the death of their daughter. They had not given any complaint to the Police during the lifetime of the deceased. Therefore, their statement cannot be considered by the Court.

10. The learned Sessions Judge, Fast Track Mahila Court, Chennai, had relied on dying declaration under Ex.P-10 and Ex.P-14. It was also considered that as required under Section 113 (1) of Indian Evidence Act the Accused had not entered witness box to rebut the presumption raised by the Prosecution. However, the Prosecution failed to prove the charge against the Accused. Some of the witnesses examined by the Prosecution remained hostile. The evidence of the witnesses who are neighbours of the deceased had only stated that the deceased was not in normal contact with neighbours. She was always reserved and will not talk to the neighbours. The deceased had not been good at studies in School and she had not passed VIII Standard. She failed in all the classes upto VIII Standard. Earlier, out of frustration, the



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deceased attempted to commit suicide by falling before the running train and

that is very much available through the cross examination of the witnesses.

The trial Court omitted to take note of the deposition of witnesses in the right perspective and erroneously convicted the Appellant. The learned Counsel for the Appellant therefore prayed for allowing this Appeal.

11. Per contra, the learned Additional Public Prosecutor by way of reply vehemently objected to the line of arguments of the learned Counsel for the Appellant and submitted that within a few months after marriage, the deceased, a newly married woman committed self immolation. The reason for the death of the deceased is duly recorded in the dying declaration of the learned Metropolitan Magistrate. As per the settled legal proposition, if the dying declaration inspires confidence of the Court, the Court can convict the Accused. Here, the Accused alleged to have poured kerosene and set the deceased ablaze after three months of marriage. As per the statement given to P.W-19/Sub-Inspector of Police under Ex.P-14 based on which F.I.R was registered under Ex.P-15, she had clearly narrated the incidents that occurred on the night of 15.12.2012. It was stated that before going to bed the Appellant alleged to have told her, *'keep your clothes ready I will drop you in your house in your mother's house tomorrow morning and I will pick you up after*



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Christmas holidays'. He is alleged to have told her that only on the insistence of his mother he had married her so that the family can have a maid and not for any purpose. He also informed the deceased that he is likely to get married to a girl from an affluent family with better dowry and told her, '*you go and die. Even if you die, I may be imprisoned for seven years. After I come out, within three months I will get married to a woman from affluent family'*. These words uttered by the Appellant had caused disappointment, pain and agony in the mind of a newly married girl, who expected love and affection from her husband. Early in the morning, she had recollected those words uttered and decided that instead of losing her life in the hands of the Accused, she herself can take away her life. This was the reason stated to the Sub Inspector of Police for her self-immolation. It was clearly recorded as under:-

“அவர் சொல்லி சாகுறதை விட நானே செத்துப்போயிடலாம்னு முடிவு பண்ணி pump stoveல் இருந்து மண்ணெண்ணெய் எடுத்து தலையிலயும் ஓடம்புலயும் ஊத்திக்கினேன்.”

12. The learned Additional Public Prosecutor invited the attention of this Court to the wordings in both Ex.P-10 and Ex.P-14 and they are cogent. The learned Sessions Judge, Fast Track Mahila Court, Chennai, had also perused and analysed it and found that there is no contradiction between Ex.P-10 and Ex.P14. The dying declaration recorded by the learned Metropolitan



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Magistrate and the dying declaration recorded by the sub Inspector of Police,

Pulianthope Police Station, Bhanupriya narrates the incident in two different manner. However, the statement of the deceased with regard to her death remains the same. The learned Additional Public Prosecutor also invited attention the attention of this Court to the evidence of the Prosecution witnesses and submitted that none of them had deviated from the statement given by them in their chief examination. Therefore, the claim of the learned Counsel for the Appellant that the Prosecution had not established the foundation case against the Accused is not sustainable. The Prosecution had established its case through cogent evidence. The Panchayatdars who had attended the inquest conducted by Deputy Collector clearly stated about the involvement of the Accused in demanding dowry. The Panchayatdars are not relatives to the Accused or the deceased, but they are neighbours residing in the same locality. The Deputy Collector had clearly stated that the statement given by the husband and mother-in-law of the deceased are found unbelievable and thereby rejected their statement regarding cause of death.

13. The learned Sessions Judge, Fast Track Mahila Court, Chennai, also observed that the Accused wantonly avoided the witness box as Defence witness to let in rebuttal evidence and made no attempt to disprove the



Prosecution case. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Chennai, on the basis of the Prosecution evidence rightly recorded a judgment of conviction. The Judgment of the trial Court is not based on any surmises and conjectures.

14. The ruling cited by the learned Counsel for the Appellant in this case will not support the case of the Appellant. The facts of the reported rulings are different and they have no application to this case. In ***Mangat Ram vs. State of Haryana***, the woman had committed suicide after her husband left her under the care of her in-laws and went to his working place which is far away. It was also noticed that the deceased was brought up in an affluent atmosphere in an Urban locality, whereas after marriage, she was forced to live in a village atmosphere with uneducated illiterate parents. Therefore, the Honourable Judges of the Honourable Supreme Court had found that the Accused cannot be blamed for leaving the wife in the care and custody of his parents for which husband cannot be punished.

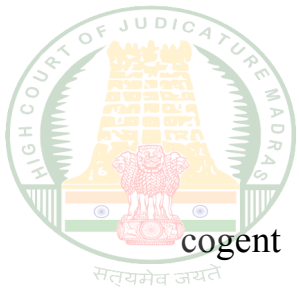
15. In this case, the husband is alleged to have used the word ‘செத்துப் போ’ and this had provoked the deceased to commit self-immolation. The husband had also stated that even if she commits self immolation, he will be



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incarcerated for 7 years and thereafter, within 3 months, he will get married to a woman from an affluent family. Even on the intermediate night, before going to sleep, there was a wordy quarrel between them as per her own statement under Ex.P-14. The same is also reported in Ex.P-10.

16. As per the dying declaration recorded by the learned VIII Metropolitan Magistrate, it was stated that on 16.12.2012 by 5:45 p.m. when she was in the kitchen, her sister-in-law picked up quarrel with her and in the course of such quarrel, the mother and the sister of the husband poured kerosene over her and set her on fire and on seeing this, her husband ran away. This dying declaration was recorded by the learned Metropolitan Magistrate, P.W-17 at 1.40 p.m. At the time when the Sub-Inspector of Police recorded the statement of the deceased at the first instance, immediately after her admission, the mother-in-law and sister-in-law of the deceased are very much available and therefore, the deceased did not implicate them. However, when the learned VIII Metropolitan Magistrate recorded the statement at 1.40 pm, none was available and therefore, she had opened up and clearly implicated the Accused. In such circumstances, the reliance placed by the trial Court upon the dying declaration recorded by the learned VIII Metropolitan Magistrate, Chennai cannot be found fault with. The learned trial Judge had recorded



cogent reasons for convicting the Appellant and it does not call for any interference by this Court. Accordingly, the learned Additional Public Prosecutor prayed for dismissal of this Appeal and for confirmation of the Judgment of conviction passed by the trial Court against the Appellant.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court recording conviction against the Accused in S.C.No.150 of 2014, dated 02.06.2017 is to be set aside as perverse?

17. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State. Perused the evidence of the Prosecution witnesses P.W-1 to P.W-21 and documents marked as Ex.P-1 to Ex.P-21. Perused the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai, in S.C.No.150 of 2014, dated 02.06.2017.

18. On appreciation of evidence, the learned Sessions Judge had acquitted the Accused-2 and Accused-3 but convicted the Accused-1/husband of the deceased on the ground that he had not rebutted evidence by letting in evidence as defense witness. The learned Sessions Judge, Fast Track Mahila Court in the course of the discussion had rejected the Prosecution evidence



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regarding the incriminating materials against Accused-2 and Accused-3.

Except P.W-1, P.W-2 and P.W-3, the other witnesses had turned hostile.

19. As rightly pointed by the learned Counsel for the Appellant, the Prosecution failed to establish the charge through proper and cogent evidence. P.W-18 Velammal, Deputy Collector, Pulianthope Subdivision of Chennai Collectorate was under the impression that there was involvement of dowry harassment and had given a report to that effect. In cases of this nature, except the parents and the near and dear ones, others have no involvement to support the case of the Prosecution and they only remain indifferent. In any event, the statement of parents might be exaggerated in such situation given the fact that their daughter died within three months of marriage by self-immolation. Their anguish will naturally be against their son-in-law. Therefore, the statement of the parents, in cases of this nature, requires to be scrutinized carefully.

20. The learned Sessions Judge, on perusal of the reported decision in the case of *Basith and others vs. Unknown* reported in *1997 Crl.L.J.3232*, had concluded that if there are more than one dying declarations, then the Court has to scrutinize all the dying declarations to find out whether each one of such declaration passes the test of being trustworthy. The Court must



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further find out whether different dying declarations are consistent with each other in material particulars before accepting and relying upon the same. Once the statement of the dying person and the evidence of the witnesses testified to the same are found reliable has to be carefully scrutinised. If the Court is satisfied that the dying declaration is true and free from inducement, such a dying declaration itself can be sufficient for recording a conviction.

21. The learned Sessions Judge had also relied on the ruling of the Honourable Supreme Court in *State of Gujarat v. Jayarajbhai Punjabhai Varu*, and arrived at a conclusion that upon weighing all the attendant circumstances the dying declaration was properly recorded by P.W-17 and it was voluntary and truthful.

22. It is seen that the learned Judge had considered that there are elaborate statement by the deceased to the learned VIII Metropolitan Magistrate who recorded the dying declaration wherein she had stated that mother-in-law and sister-in-law poured kerosene and set her on fire. That itself is not accepted by the learned Sessions Judge, Fast Track Mahila Court as it is an afterthought. Instead it should be considered as influence by the mother of the victim who had deposed evidence as P.W-1 stating that she met her



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daughter, her daughter was talking cogently and mentally alert. P.W-1 also stated that her daughter narrated the entire incident that the mother-in-law and sister-in-law poured kerosene and set her on fire. If that part is to be believed, then the earliest version that she herself set her ablaze under Ex.P-14 is found without any influence. Ex.P-5 was recorded by the duty Doctor, Casualty Department at the earliest point of time wherein it can be believed to have been stated so by the mother-in-law who accompanied her. But Ex.P-14 recorded by Banupriya/Sub Inspector of Police is found proper as it was without any influence. The learned Sessions Judge, Fast Track Mahila Court had rejected the improvement made in the dying declaration by the deceased and considered that part of dying declaration as cogent and reliable, from the earlier version that she herself wanted to end her life and thereby drawn presumption against the Accused under Section 113 of the Indian Evidence Act. The trial Court also concluded that the Accused failed to adduce evidence to disprove the claim of the Prosecution. If the learned Sessions Judge had believed what was stated by the deceased to her mother was true she should have convicted Accused-2 and Accused-3 also. The evidentiary value of the dying declaration is lost when the victim narrating the incident differs from her earlier version given to P.W-19/Banupriya, Sub Inspector of Police. Therefore, the learned trial Judge had not taken note of the consistency in the dying



declaration while convicting the Appellant. On analysis of Ex.P-10 and Ex.P-14, Ex.P-14 is the earliest and Ex.P-10 was recorded by around 1:40 PM by the learned VIII Metropolitan Magistrate where there is improvement from the earlier version. In the subsequent version, she incriminates her in-laws as though they set her on fire and her husband ran away. Whereas in the earliest version recorded by 8.35 a.m by the Women Sub Inspector of Police, she claims that she herself set her ablaze and her husband was away on duty by 5:30 a.m. Such statement of the deceased is found more probable.

23. P.W-5 Cysilia is a neighbour and P.W-4 Anitha is also residing on the opposite of the residence of the deceased. They had stated that their mother-in-law and the sister-in-law doused the fire and took her to hospital whereas under Ex.P-10 it is claimed that the mother-in-law and the sister-in-law poured kerosene on her and set her ablaze. This was absent in the statement recorded by the women Sub Inspector of Police. Presumably, the mother of the deceased P.W-1 after seeing her had influenced her. Therefore, the dying declaration under Ex.P-10 lost its credibility.

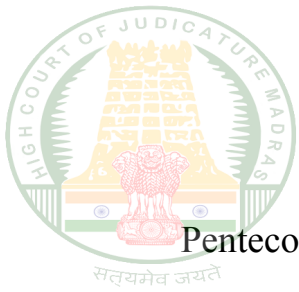
24. As pointed out by the learned Counsel for the Appellant, when there are three or four dying declarations, the trial Court cannot believe or pick



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and choose one of the versions and convict the Accused without any corroboration. In this case, there is no corroboration available to the dying declaration of the deceased. Therefore, recording a judgment of conviction by the learned Sessions Judge will not be proper and it may end up in miscarriage of justice. On analysis of the evidence available before the trial Court, the findings given by the learned Sessions Judge cannot be accepted. A newly married woman had committed self immolation or died within three months. There are very many circumstances that can be presumed against the family of the Accused but mere presumption will not substitute the evidence available. Therefore, convicting a person based on presumption is unwarranted where the Prosecution had not established the case of the Appellant beyond reasonable doubt.

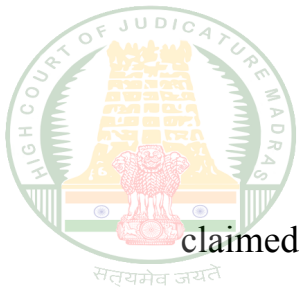
25. The evidence of the mother of the victim P.W-1 itself is found doubtful. In her examination in chief, she had deposed that the family of the Accused are Hindus whereas they are Christians. When she was confronted regarding this fact in the cross examination by the learned Counsel for the Accused, she would answer that the family of the deceased were Christians belonging to Church of South India denomination, whereas the Accused family are Hindus subsequently converted to Christians by embracing



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Pentecostal mission. She also deposed that the marriage was not performed in any church, but it was performed in a Kalyanam Mandapam. As Hindus they have the practice of wearing gold jewellery, whereas people belonging to Christian dominations particularly Pentecostal mission will not wear jewellery. Therefore, that part of evidence of the P.W-1 creates doubt regarding her intention to portray that Accused as Hindus would wear jewellery but Christians belonging to Pentecostal people does not wear gold jewellery. By virtue of such statement, P.W-1 want to say that there was demand for gold jewellery by the Accused and it creates suspicion. The claim of P.W-1 that the mother-in-law and sister-in-law of the deceased set her on fire by pouring kerosene is found unbelievable since she had not stated so when giving statement to the women Sub Inspector of Police.

26. As per the decision in the case of *Mangat Ram vs. State of Haryana*, it can be observed that just because the newly married woman died within 7 years, the presumption cannot be drawn under Section 113 (a) and 113(b) of the Indian Evidence Act. Section 113(a) is attracted if it is suicide. Section 113(b) is attracted if it is homicide. The Prosecution have to establish the case against Accused regarding dowry harassment which resulted in the wife committing suicide. Here the parents of the victim, P.W-1 and P.W-2

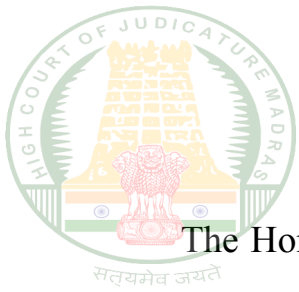


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claimed that it was dowry harassment. In their cross examination, they admitted that there was no complaint given to the Police regarding dowry harassment. In the cross examination, it was also suggested on behalf of the Accused that the deceased attempted suicide earlier as she failed in her VIII Standard which was denied by both the parents. P.W-9 Stephen Raj in his cross examination admitted that there was a rumor in the neighborhood of the family of the victim that she attempted suicide earlier also by jumping before moving train. The fact that the deceased was not having cordial relationship with anyone and she was always reserved indicate that she has insecure feelings.

27. In the case of ***Babu @ Gopal Krishnan v. State***, the trial Court had acquitted only based on the enquiry conducted by the Revenue Divisional Officer. Therefore, in Appeal, the judgment of the learned trial Judge was set aside in Appeal. Therefore, this decision will not be applicable to this case.

28. In ***Gurucharan Singh v. The State of Punjab*** the parents of the husband were also arrayed as Accused. The trial Court acquitted the parents of the Accused/Husband. In the Appeal, Honourable Punjab and Haryana High Court dismissed the Appeal against which the Husband had preferred Appeal.

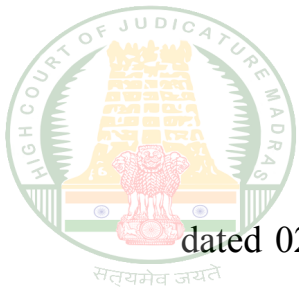


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The Honourable Supreme Court acquitted the Accused as the judgment of the trial Court and confirmed by the High Court was based on presumption alone and there is nothing more than inference without any material support. Therefore, it was held that sustaining the conviction under Section 307 of IPC is not proper.

29. As pointed out by the learned Counsel for the Appellant, when there are three versions regarding suicide the trial Court relying on Ex.P-10 based on presumption under Section 113(a) of the Indian Evidence Act is found to be perverse. Therefore, relying on the principles enunciated by the Honorable Supreme Court in *Mangat Ram v. State of Haryana* and the subsequent rulings of this Court in *Sivashankar v. State*, *A.Sekar v. State*, *Babu @ Gopalakrishnan v. State* and *Partheeban v. State*, the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai against the Appellant cannot be sustained.

30. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The Judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai recording conviction against the Appellant/Accused-1 in S.C.No.150 of 2014,



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dated 02.06.2017 is found perverse warranting interference by this Court and the same is set aside.

In the result, **this Criminal Appeal is allowed**. The conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No,150 of 2014, dated 02.06.2017 is set aside. The Bail bond if any executed by the Appellant-Accused No.1 is to be cancelled. The fine amount paid, if any, is to be refunded.

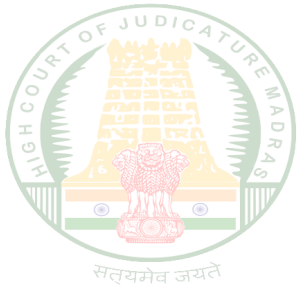
17.04.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

1. The Sessions Judge,
Fast Track Mahila Court, Chennai .
2. The Prosecutor
Through Commissioner of Police,
Pulianthope Range,
Chennai – 600 012.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court of Madras – 600 104.
5. The Superintendent,
Central Prison, Puzhal, Chennai.

Judgment in
Crl.A.No.310 of 2017

17.04.2025