



CrI.A.No.57 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02-06-2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 57 of 2017

K. Rathinavel Murugan

.. Appellant

Versus

State rep by the
Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C against the Judgment dated 26.10.2016 made in S.C. No. 38 of 2015 on the file of the learned District Sessions Judge, (Fast Track Mahila Court) Erode.

For Appellant : Mr. V.P.K. Gowtham

For Respondent : Mrs. G.V. Kasthuri
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal had been filed to set aside the Judgment dated 26.10.2016 passed in Sessions Case No. 38 of 2015 on the file of the learned District Sessions Judge, (Fast Track Mahila Court) Erode.

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



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Criminal Appeal, are as follows:

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2.1. The deceased Maheswari and the Complainant in this case, P.W-1, are husband and wife. Both the husband and wife are daily wage earners. They are blessed with two children and they are Jeevanandam and Nandini. The deceased and P.W-1 are residents of Madheswaran Koil Street, Gobichettipalayam. The deceased Maheswari was working as daily wage earner with One Chitra who was the Supervisor in the construction site where the deceased was employed. While going for her job, she used to go to the house of Chitra and then proceed for job. The house of Chitra was in the adjoining street. In the construction site, she was acquainted with the Accused.

2.2. In the course of time, there was rumor in the neighbourhood that there had been illicit intimacy between the deceased and the Accused Rathinavel Murugan. On coming to know about the same, the father/P.W-2 and her husband/P.W-1 advised her that she is a family woman having 2 children and it is better to avoid such relationship with the Accused. Therefore, the deceased Maheswari avoided talking to the Accused Rathinavel Murugan.

2.3. On 16.04.2014 Wednesday at around 2:00 P.M, the Accused Rathinavel Murugan had gone to his work in the construction site in Gobichettipalayam near Co-Optex showroom in Car street (தேர்முட்டி வீதி). At that time, the deceased Maheswari was employed there. On seeing the deceased, the Accused wanted to know why she had been avoiding him.



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However, the deceased did not respond. Agitated by her silence, the Accused picked up a stick from nearby and hit her. The Accused also slapped her. After her working hours in the construction site, the deceased returned home at about 6:00 pm. At that time, the Accused Rathinavel Murugan went to the residence of P.W-1/Pasupathi and picked up a quarrel with the deceased Maheswari. He once again wanted to know as to why she was avoiding him and asked her to know what she had been exchanging with him for the past 3 years was false or whether she had concern and love and affection towards him. In the course of the wordy quarrel, the Accused is alleged to have uttered '*Get lost, Go to hell*'. Unable to bear such words of the Accused, the deceased consumed cow dung powder (Auramine), a poisonous chemical. On seeing this, the Accused himself had engaged an auto rickshaw and brought her to the Government Hospital Gobichettipalayam and admitted her in the ward to treat her. On the same day by 8:40 pm the deceased Maheswari died.

2.4. On hearing the news about his wife committing suicide by consuming cow dung powder, P.W-1 went to the Hospital. He saw the body of his wife (since deceased) kept in the mortuary of the Hospital. Immediately, based on the information he received, P.W-1 preferred a complaint under Ex.P-1 to the Inspector of Police, Gobichettipalayam. On receipt of the complaint under Ex.P-1 from P.W-1, the Special Sub Inspector of Police Gobichettipalayam Police Station registered the case under Crime No.177 of



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2014 for the offence under Section 306 of I.P.C. The Original Complaint under

Ex.P-1 and original F.I.R under Ex.P-15 were forwarded to the learned Judicial Magistrate, Gobichettipalayam as well as the higher Police Officials.

2.5 On receipt of the copy of the First Information Report, Ex.P-15, the Inspector of Police, Gobichettipalayam Police Station, P.W-12 proceeded with investigation. He visited the house of P.W-1 and prepared Rough sketch/Ex.P-17 and Observation mahazar/Ex.P-16 in the presence of witnesses Marimuthu and Karthikeyan/P.W-5. He issued a requisition letter to the duty Doctor at the Government Hospital Gobichettipalayam to conduct postmortem on the body of the deceased. Subsequently, P.W-12 arrested the Accused and produced him before the learned Judicial Magistrate for remand.

2.6. P.W-12, in the course of his investigation recorded the statement of P.W-1/Pasupathi. He also recorded the statement of Ramasamy, P.W-2, who is the father of the deceased Maheswari. He also recorded the statement of the Supervisor of the deceased Maheswari, Chitra as P.W-3, the Doctor who conducted the autopsy on the body of the deceased as well as the Doctor who treated her in the Government Hospital Gobichettipalayam. He also recorded the statement of the Scientific Officer, Forensic Science Laboratory Coimbatore who had conducted forensic analysis of the internal organs sent to the forensic laboratory by Doctor who performed the autopsy on the body of the deceased. He then recorded the statement of the Special Sub Inspector of



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Police P.W-11 who registered the F.I.R under Ex.P-15, the Head Clerk of the learned Judicial Magistrate Court who forwarded the internal organs of the deceased to the forensic laboratory with the requisition letter of the Doctor. On completion of the investigation, he laid final report against the Accused for the offence under Section 306 of I.P.C before the learned Judicial Magistrate-I Gobichettipalayam.

2.7. The learned Judicial Magistrate-I had taken cognizance of the offence. Since the offence under Section 306 I.P.C is triable by the Court of Sessions, the final report was taken on file as P.R.C No.18 of 2014. On appearance of the Accused, the learned Judicial Magistrate-I Gobichettipalayam furnished copies of the documents under Section 207 of Cr.P.C and committed the case to the Court of the learned Principal Sessions Judge, Erode and bound over the Accused to the Court of the learned Principal Sessions Judge, Erode.

2.8. On appearance of the Accused before the learned Sessions Judge and on receipt of the records in P.R.C No.18 of 2014 from the file of the learned Judicial Magistrate-I, Gobichettipalayam, the learned Principal Sessions Judge had taken cognizance of the offence and taken the case on file as S.C. No. 38 of 2015 and made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Erode.

2.9. On receipt of the records in S.C. No.38 of 2015 and on appearance



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of the Accused, after hearing the learned Additional Public Prosecutor and the learned Counsel for the defense, the learned Sessions Judge, Fast Track Mahila Court, framed charges against the Accused under Section 306 I.P.C. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. During trial, the Prosecution examined 12 witnesses as P.W-1 to P.W-12 and marked 19 documents under Ex.P-1 to Ex.P-19. After closing of the evidence, the incriminating materials available through P.W-1 to P.W-12 and Ex.P-1 to Ex.P-19 were put to the Accused. The Accused denied the incriminating evidence against him.

2.10. After hearing the prosecution and the learned Counsel for the Accused, the learned Sessions Judge, Fast Track Mahila Court on assessment of evidence had arrived at a conclusion that the charge framed against the Accused under Section 306 I.P.C have been proved beyond reasonable doubt. Therefore, by the judgment dated 26.10.2016 in S.C.No.38 of 2015, the learned Sessions Judge convicted the Accused for the offence under Section 306 I.P.C and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment of one year. It was also directed that the period of sentence already undergone by the Appellant/Accused shall be given set off under Section 428 of I.P.C.

2.11. Aggrieved by the Judgment dated 26.10.2016 passed in Sessions Case No. 38 of 2015 the Appellant/Accused is before this Court with this



Criminal Appeal.

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3. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the prosecution witnesses P.W-1 to P.W-12. It is the contention of the learned Counsel for the Appellant that a false case had been foisted against the Appellant to protect P.W-1. It was falsely projected as though there was illicit relationship between the Accused and the deceased, but there was no such relationship. On the contrary, the deceased committed suicide due to the wayward life led by P.W-1. According to the learned Counsel for the Appellant, P.W-1 was not a responsible husband and he was addicted to alcoholic drinks and narcotic substances. P.W-1 did not attend to his job and he was a drug-addict. The family of P.W-1 was run only by the earnings of the deceased. Further, the deceased conducted Chit and did not return the amount to subscribers. Therefore, the subscribers kept demanding the deceased of the chit amount. Unable to pay back the money to various subscribers of the chit, the deceased had committed suicide. However, a case has been foisted against the Accused as though he was in an illicit relationship with deceased.

4. The learned Counsel for the Appellant submitted that the defense of the Appellant had been proved by way of cross-examination of P.W-



3/Supervisor, Chitra. She had admitted that the husband of the deceased, P.W-1

was jobless and addicted to intoxicating drinks and narcotics substances.

Similarly, P.W-4/Ward Councillor also deposed that the deceased was unable to pay the chit amount to various subscribers besides she also availed loans from several persons but unable to repay to borrowers. Therefore, she committed suicide. P.W-4 was therefore treated as a hostile witness. The brother of the deceased P.W-5 Karthikeyan turned hostile. The cross-examination of P.W-3 and P.W-4 will be sufficient to hold that what had been claimed by the prosecution is not true. The fact that the Accused is alleged to have hit her with stick as per the complaint under Ex.P-1 and as per the evidence of P.W-1/ Pasupathi and P.W-2/Ramasamy the father of the deceased is not true. When the evidence of the Doctor who performed autopsy on the body of the deceased P.W-8 indicates that there was no visible injury on the body of the deceased, the said deposition of P.W-1 and P.W-2 have to be brushed aside. The prosecution was unable to prove the fact that the deceased committed suicide only due to provocation by the Accused. However, the learned Trial Judge, relying on the evidence of P.W-1 and P.W-2 erroneously convicted the Appellant/Accused.

5. The learned Counsel for the Appellant submits that in cases of this nature, the mother of the deceased also will be examined but, for reasons best



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known, the mother of the deceased had not been examined. The brother of the deceased had stated that his sister committed suicide for the reasons not known to him and therefore, he was treated as hostile. The prosecution had not proved the case against the Accused through cogent evidence. The witnesses who supported the prosecution case is the husband and father of the deceased, as P.W-1 and P.W-2. Their testimony is not reliable as they are interested witnesses. They wanted to wreck personal vengeance against the Accused for the reason that the deceased owed chit amount to the Accused. However, the case has been foisted as though the Accused was in a relationship with the deceased and it was not so. According to the learned Counsel for the Appellant, the Accused met the deceased demanding payment of chit amount only and he had not assaulted her with a stick, as has been alleged. The learned Sessions Judge, Fast Track Mahila Court failed to consider the evidence of witnesses in cross-examination and erroneously convicted the Accused only on the basis of the evidence of P.W-1 and P.W-2.

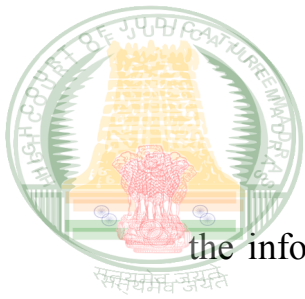
6. As per the evidence of P.W-2/father of the deceased they accompanied their daughter, the deceased Maheswari from her place of residence to Government Hospital Gobichettipalayam. If what had been stated by P.W-2 is true, the mother of the deceased would have been examined as a witness. Since she did not support the case of the prosecution, she was not



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examined as a witness. As per the records in the Hospital, the Accused only took her to the Hospital for which he cannot be convicted. It is the reasoning of the learned Sessions Judge that the father of a woman will not make allegation against his own daughter that she was in a relationship with another man. Such a conclusion sans logic and it cannot be accepted. The evidence of the father, an interested witness, cannot be entertained to convict the Accused. The father has intention to blame the Accused so that the Accused will not claim the chit amount which the deceased owed. The learned Sessions Judge, placing heavy reliance on the evidence of the father of the deceased as well as husband of deceased, convicted the Appellant and it is not proper. Therefore, the learned Counsel for the Appellant prayed for allowing this Criminal Appeal by setting aside the Judgment of conviction recorded by the Trial Court.

7. Per contra, the learned Additional Public Prosecutor by way of reply vehemently objected to the argument of the learned Counsel for the Appellant by stating that the Appellant was the sole reason for a married women, having two children, to commit suicide by consuming cow dung powder. The evidence of the father and husband of the deceased will be sufficient to convict the Accused and merely because they are interested witnesses, it need not be discarded. The learned Judge rightly believed the version of the father of the deceased. The learned Sessions Judge also relied on



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the information given during the admission of the deceased into Government Hospital where, in the Column, 'Husband', it was struck off and instead mentioned the name of the Accused herein. The Appellant/Accused, realising his folly that the deceased consumed cow dung powder due to his instigation, has taken efforts to save the deceased so as to save himself from being punished. The prosecution established the case that the deceased committed suicide only due to harassment meted out by the Accused.

8. The learned Additional Public Prosecutor relied on the discussion of evidence by the learned Judge and contended that the Trial Court had arrived at a correct conclusion that the Accused was the cause for the death of the deceased as he had nagged the deceased to break her silence and to talk to him. On the one hand, the Accused insists her to openly talk to him and on the other hand, her husband and father reprimands her and to avoid talking to the Accused. It is in such circumstances, the deceased committed suicide. The cause for the death of the deceased has been established by the prosecution through cogent and reliable evidence. The learned Trial Judge, on proper appreciation of the evidence made available had rightly convicted the Appellant/Accused for the offence under Section 306 of IPC. According to the learned Additional Public Prosecutor, the judgment of the Trial Court is well-reasoned and it does not warrant interference by this Court. Accordingly, the



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learned Additional Public Prosecutor prayed for dismissal of this Appeal.

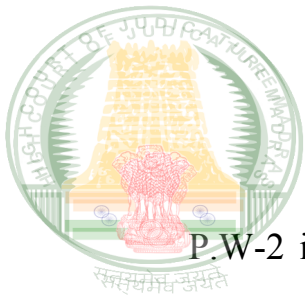
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Point for consideration:

Whether the judgment dated 26.10.2016 passed in S.C.No.38 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Erode, is to be set aside?

9. Heard Mr. Gawthaman, learned Counsel for the Appellant and Mrs. G.V. Kasthuri, learned Additional Public Prosecutor for the State. Perused the evidence of the prosecution witness P.W-1 to P.W-12, the documents under Ex.P-1 to Ex.P-19.

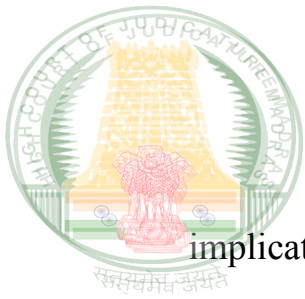
10. On perusal of the deposition of the prosecution witnesses, it is seen that P.W-1/husband and P.W-2/father of the deceased have been subjected to elaborate cross-examination and they withstood it. Even though they are interested witnesses, their testimony need not be discarded on that sole ground but their deposition has to be scrutinised with caution. Therefore, the reliance placed by the learned Sessions Judge on the evidence of P.W-1 and P.W-2 is found justified. At the same time, P.W-1 and P.W-2 claims that the Accused had attacked the deceased on the date of the occurrence on 16.04.2014. Had it been true, the Doctor would have noticed the visible injury on the body of the deceased in the post-mortem report under Ex.P-10. There is no visible injury on the body of the deceased. Therefore, what had been stated by P.W-1 and



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P.W-2 is not true. This Court finds that the allegation that the deceased was attacked by Appellant had not been witnessed by any one or any witness has been examined to substantiate the same. This allegation therefore must be the sheer imagination or an exaggeration on the part of P.W-1 and P.W-2.

11. P.W-4/Jayakumar is a Ward Councillor and P.W-3 is the Supervisor under whom the deceased was employed. P.W-3 in the cross examination admitted that the husband of the deceased was addicted to taking intoxicating drinks and is not earning anything. She indirectly attributed the death of the deceased to the inability of P.W-1 to earn money or to run the family befitting to his status as a husband of the deceased. P.W-4 admitted that Chit was conducted by the deceased, but she could not repay the subscribers. Thus, this goes to show that due to money transaction or her inability to pay the subscribers of the chit, the deceased got frustrated coupled with the fact that her husband P.W-1 is not supporting her financially. However, there is no evidence to show that there was illicit relationship between the Appellant and the deceased or the Appellant nagged the deceased to talk to him on the date of occurrence. Even according to the Appellant, he met the deceased in her workplace and demanded her to repay the chit amount. While so, in the absence of any evidence to substantiate that the deceased was in an illicit relationship with the Appellant, the foundation laid by the prosecution to



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implicate the Appellant/Accused itself is not proper or well founded. On the other hand, there are enough evidence made available to show that the deceased received chit amount from subscribers but unable to repay the subscribers. Therefore, out of such frustration, the deceased could have committed suicide but not due to any instigation on the part of the Appellant/Accused.

12. The case of the prosecution was not proved through the deposition of P.W-1 and P.W-2. They are not only interested witnesses but they have suppressed the real fact that the deceased conducted chit but was unable to repay the subscribers. Therefore, the defense of the Appellant/Accused that he met the deceased to receive the chit amount is plausible. Even otherwise, it is the Appellant/Accused who took the deceased to the hospital. There is no ill intention on the part of the Appellant to instigate the deceased to commit suicide. Therefore, blaming the Appellant/Accused for the death of the deceased itself is not proper. Further, in the cross examination of P.W-1, P.W-2, P.W-3 and P.W-4, there are several short comings and contradictory statements which had weaken the credibility of the case.

13. In the reported decision in **2016 (12) SCC 150 [V.Sejappa - Vs - State]**, the Hon'ble Supreme Court had laid down the following guidelines to



the Appellate Courts to deal with appeal against conviction as well as

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“23.....

Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

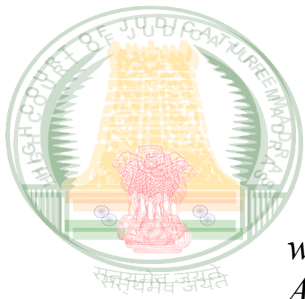
(i) There is presumption of innocence in favour of an Accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The Accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court.

It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.” Thus,



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when there are two views possible, the view favourable to the Accused deserves acceptance.”

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14. In the reported decision of the Honourable Supreme Court, it was held that if there are two views possible, the Court has to lean towards the one which leads to acquittal of the Accused. In this case, the circumstances leading to the death of the deceased had not been proved by the prosecution beyond reasonable doubt. P.W-3, P.W-4 and P.W-5 have deposed against the case put forth by the prosecution and therefore, they are treated as hostile witnesses. P.W-1 and P.W-2 in this case are interested witnesses. It is settled that the interested witnesses need not be discarded but they must be scrutinised with caution. If this principle is adopted and the deposition of P.W-1 and P.W-2 are examined, they have suppressed the financial doldrum confronted by the deceased in conducting chit and the resultant non-payment of the chit amount to the subscribers. Therefore, in this case, relying on the deposition of P.W-1 and P.W-2 will be unsafe. If the deposition of P.W-1 and P.W-2 are excluded, there is no other witness to speak about the case of the prosecution. On an in-depth analysis of the evidence, this Court can even conclude that because of the inability of the husband/P.W-1 to support the deceased financially, she might have ended her life. This much evidence is available in this case in the form of examination and cross-examination of prosecution witnesses. However, there

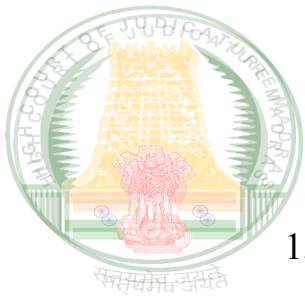


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are none to substantiate that soon before the deceased consumed cow dung powder, the Appellant/Accused had instigated her to take the extreme step.

Further, the non-examination of the mother of the deceased with whom any woman will share the burden, pains and sufferings, is fatal to the case of the prosecution. Even though P.W-2 deposed that his wife, mother of the deceased, also accompanied the deceased to the Hospital, which was also corroborated by P.W-5, the brother of the deceased, for the reasons unknown, the prosecution did not examine the mother of the deceased. Under those circumstances convicting the Accused for having allegedly instigated the deceased to commit suicide is not proper.

14. It is well settled that merely because witnesses are related to the deceased, their evidence cannot be rejected. At the same time, the evidence of those witnesses had to be dealt with the required degree of caution. Here the husband claims that his wife/deceased had illicit relationship with the Appellant and on his advice she severed the relationship. However, again the Accused is alleged to have created trouble with the deceased. The father of the deceased also supports the same case but denying the claim that she committed suicide due to debt. However, they cleverly suppressed the financial shortcomings confronted by the deceased.



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15. The circumstances leading to the death of a married woman having two children is a suspicious death. There may be very many contributing factors. A woman of normal human conduct naturally share her pains and sufferings only with their mother. Here, the mother was not examined even though she accompanied the victim to the Hospital in the auto rickshaw driven by the brother of the Accused. However, in the Hospital records it was entered as 'Rathinavel Murugan' the Appellant herein is the one who brought the deceased to the hospital. If that be so, based on the evidence of P.W-1 and P.W-2 who are interested witnesses, convicting the Appellant will be unsafe. While so, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Erode is found perverse. The learned Sessions Judge, Fast Track Mahila Court, Erode had been carried away by the evidence of the father of the deceased and husband of the deceased but lost sight of the fact that the most dependable evidence, the evidence of mother was not before it. Under those circumstances, placing reliance on the evidence of P.W-1 and P.W-2 who are interested witnesses to convict the Accused is wholly unsafe.

16. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The judgment dated 26.10.2016 passed in S.C.No.38 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Erode, is found perverse and the



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same is to be set aside.

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In the result, **this Criminal Appeal is allowed.** The conviction and sentence recorded in the Judgment dated 26.10.2016 made in Sessions Case No. 38 of 2015 on the file of the learned District Sessions Judge, (Fast Track Mahila Court) Erode, is set aside. The bail bond, if any, executed by the Appellant/Accused shall stand cancelled. The fine amount, if any, paid by the Appellant/Accused shall be refunded to him.

02.06.2025

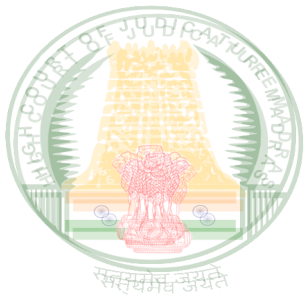
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Speaking/Non-speaking order

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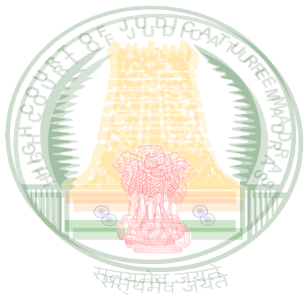
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To

- 1.The District Sessions Judge,
(Fast Track Mahila Court)
Erode.
- 2.The Judicial Magistrate-I,
Gobichettipalayam.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court of Madras,
Madras.
- 5.The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
- 6.The Section Officer,
Criminal Section,
High Court of Madras,
Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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