



CrI.A(MD)No.350 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 26.02.2025

Pronounced on : 21.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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1.Alexpandian

2.Iruvakkal

... Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
Thiruchulli Police Station,
Virudhunagar District,
Cr.No.12 of 2013.

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.113 of 2013 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputur, dated 21.11.2020 and set aside the conviction and sentence imposed against the appellants.



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For Appellant : Mr.G.Naveenkumar

for Mr.K.Jothimani

For Respondent : Mr.S.Ravi,

Additional Public Prosecutor

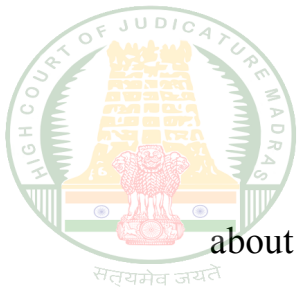
JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellants/A1 and A2 in the judgment dated 21.11.2020 passed by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputur, in S.C.No.113 of 2013 by convicting and sentencing the appellants for the offence punishable under Section 302 IPC and sentenced them to undergo rigorous imprisonment for life each and to pay a sum of Rs.10,000/- each in default, to undergo six months simple imprisonment each.

2. The case of the prosecution in brief is as follows :

(a) The complainant was married to A1 three years prior to the occurrence. They were blessed with two female children aged



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about 2 years and 3 months respectively. Her husband was doing mason work. Whenever she demanded money for family expenditures, he created quarrels with her. Her mother-in-law also used to quarrel with her by stating that they needed to get rid of her so that her son could marry another woman. She has not told to her parents, because she does not want to cause them sorrow.

(b) On 12.01.2013, the accused went to his work and came at about 9.00 p.m., both her husband and mother-in-law created problem and stated that they would kill her. Her sister-in-law Pandiammal and her husband Balu also created problem. She tried to manage them but she could not do so.

(c) Thereafter, her mother-in-law took kerosene and poured it on her while her husband took a matchbox and set her ablaze. As a result, her saree caught fire. She raised alarm and ran outside in flames. The neighbours poured water and extinguished the fire. She sustained injuries on her chest, stomach, back, hands and legs. Due to pain from her burns, she was unable to identify the neighbours. Her husband informed her parents, who then came and took her in an auto to the Government



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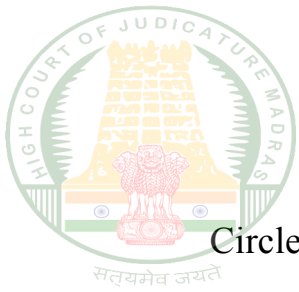
Hospital, Aruppukkottai. She was later sent to Madurai Rajaji

Government Hospital for further treatment. In an attempt to get her husband remarried, the accused poured kerosene on her with the intention to kill her, set her on fire. Hence, she sought action against her mother-in-law, husband and others. The complaint was written by her cousin Thiru.Muthupandi, P.W.1.

(d) P.W.11.Thiru.Padmanabhan, Sub Inspector of Police, on 12.01.2013 at about 10.30 p.m., received intimation from the Government Hospital that one Jothi was admitted with burn injuries. He had gone to the said hospital and learnt that she was taken to Madurai Rajaji Government Hospital for further treatment. Thereafter, on 13.01.2013, he went to the Rajaji Government Hospital and recorded her complaint statement was marked as Ex.P.1

(e) Thereafter, he had registered FIR in Crime No.12/2013 for the offence under Section 307 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act under Ex.P.2.

(f) P.W.19 Thiru.Kannan, Inspector of Police, Thiruchuli



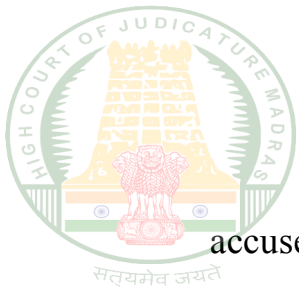
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Circle, after receipt of the FIR went to the place of occurrence at about 11 o'clock on 13.01.2013 and prepared observation mahazar Ex.P8, rough sketch Ex.P10 in the presence of witnesses Kandhasamy, Vellaipandi.

(g) At about 14.00 hours, he recovered the kerosene cane M.O.1 under seizure mahazar Ex.P.9. He examined the witnesses Kandhasamy, Vellaipandi, Katturaja, Kamatchi, Adaikalam and recorded their statements.

(h) He had gone to Madurai Rajaji Government Hospital and recorded the statements of victim Jothi and Muthu Pandi. After learning the truth, he arrested the accused on the same day at about 7.00 p.m., near Elangipatti burial ground and brought them to the Police Station at about 7.30 p.m., and then he sent A2 for remand through Women Constable 969. He also sent the material objects under Form 95- Ex.P.11 to the concerned Judicial Magistrate Court.

(i) On 14.01.2013 he examined witnesses Chokkammal, Saravanan, Chokkanan, Ramar, Adaikalam, and Raman and recorded their statements. After examining the witnesses he came to know that the



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accused Pandiyammal and Balu were not involved in the crime and deleted their name and filed the altered charge sheet under Ex.P.2 and forwarded to the Judicial Magistrate Court.

(j) On 15.01.2013, the victim Jothi died due to injury. Therefore, he altered the Section of law under Sections 302 IPC and 4 of the TNPHW Act and sent the alteration report to the magistrate under Ex.P.13. He received the death intimation from Madurai Rajaji Government Hospital and conducted an inquest on the dead body from 12.45 to 14.30 hours and prepared inquest report Ex.P.14.

(k) Thereafter, he sent the dead body through Thiru. Subramani, Head Constable 560 with a requisition letter for postmortem examination.

(l) He examined the witnesses Muthupandi, Pandi, Chokkammal, Saravanan, Ayyanar, Chokkanan, Kamatchi, Adaikalam, and Raman and recorded their statements. The Head Constable handed over the dead body to their relatives for final rites. He also examined other witnesses on 16.01.2013.



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(m) On 18.01.2013, he sent a requisition letter to the Chief

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Judicial Magistrate with a request to record the statements of witnesses under Section 164(4) Cr.P.C and produced the witnesses Adaikalam, Katturaja, Raman before the learned Judicial Magistrate, Virudhunagar and their statements were recorded under Section 164 Cr.P.C under Ex.P15, Ex.P16 and Ex.P17 respectively.

(n) He also examined other witnesses on 20.01.2013. On 8.02.2013, he examined Thiru. Sahul Hameed, Head Clerk, Dr.Maheswaran and recorded their statements.

(o) On 18.02.2013, he examined the witnesses Dr.Senthilkumar, Dr.Raja, Dr.Saravanan and Judicial Magistrate No.4 and recorded their statements.

(p) On 12.03.2013 he informed the parents of the deceased about the removal of two accused Pandiammal and Balu.

(q) After completion of the investigation, on 14.03.2013 he filed a final report against the accused for the offence under Sections



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302 IPC and 4 of the TNPHW Act.

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3. On receipt of the records, the Judicial Magistrate, Aruppukkottai, took up the case in P.R.C.No.31 of 2013 and issued summons to the accused. After the appearance of the accused, copies of the entire records were furnished to him free of cost under Section 207 Cr.P.C.

4. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Judge, Virudhunagar District at Srivilliputur, under Section 209(A) Cr.P.C. for further action.

5. The Principal District Judge, Virudhunagar District at Srivilliputur, received the case records, numbered it as S.C.No.113 of 2013 and made over to the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputur, for disposal according to law.

6. After receipt of the case records, the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputur,



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after hearing the learned Public Prosecutor and defence counsel framed charges against the accused under Sections 302 IPC and 4 of TNPWH Act. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

7. On the side of the prosecution, P.W.1 to P.W.19 were examined and Ex.P1 to Ex.P17 were marked. Material Objects M.O.1 was produced. On the side of the accused, no witness was examined and no document was marked.

8. After a full trial, the trial Court convicted the accused for the offence punishable under Sections 302 IPC, and sentenced them to undergo imprisonment for life each and to pay a sum of Rs.10,000/- each in default, to undergo six months simple imprisonment each, against which, the present Criminal Appeal has been filed on the following among other grounds :-

a. That the learned Sessions Judge failed to consider the evidence of PW-12 before convicting the appellants as he clearly stated that the deceased has informed him that the occurrence was happened only due to



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the cooking at 8.P.M and the same was affirmed by the other prosecution witnesses.

b. That the learned Sessions Judge failed to consider the evidence of PW-6, PW-7 and PW-8 before convicting the appellants whereas all the witnesses were stated that when the 1st appellant has requested the deceased for hospital and the deceased was refused to come to the hospital and she informed that after coming her parents she will go the hospital.

c. That the learned Sessions Judge failed to consider the evidence of PW-9 and other witness before convicting the appellants whereas they stated that when they went to the occurrence place victim informed him that while cooking she got fired and same was affirmed by other witness also.

d. That the learned Sessions Judge solely relied upon EX-P5 Dying Declaration whereas the dying declaration was given on 13.01.2013 at about 00.20 hours and she died on 15.01.2013 at about 09.15.A.M after the delay of 2 days whether it can be relied upon while convicting the appellants.

e. That the learned Sessions Judge failed to note that before registering FIR (Ex.P2) the deceased has given dying declaration Ex.P.5.



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f. That the learned Sessions Judge failed to consider that at the time of giving complaint the deceased stated that four accused were present and while giving Dying declaration there were no whisper about the other accused namely A-3 and A4 which is highly doubtful.

g. That the learned Sessions Judge failed to note that the prosecution has wrongly and wantonly collect the material objects (Stove).

h. That the learned Sessions Judge rightly come to a conclusion that there was no harassment on the part of appellants and hence, the appellants have been acquitted by the learned Sessions Judge for the offence under section 4 A of the Tamil Nadu Prohibition of Harassment of Women Act.

i. That the prosecution failed to establish the case against the appellants beyond all reasonable doubts and hence, the judgment of the trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor appearing for the State argued that the victim was burnt alive by A1 and A2 with an intention to kill her. The motive for the crime was that A2 wanted to arrange a second marriage for A1 and decided to do away deceased, they



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poured kerosene on her body and A1 set her ablaze in the match box.

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The family members of the deceased spoke about the quarrel of the accused had with the deceased. In her dying declaration, she clearly stated that both the accused poured kerosene on her, the first accused set her on fire. The victim girl was taken to the hospital by her parents, while the accused did not taking any steps to save her life. The dying declaration was made in a fit state of mind and the Doctor confirmed that the victim was mentally fit while giving the statement which pointed out the guilt against the accused. A dying declaration it is an importance of evidence and the Court can convict the accused solely based on it. The trial Court after proper appreciation of evidence, verified records, hold that the accused found guilty of offence and convicted them. There is no ground to interfere with the findings of the trial Judge and the Criminal Appeal has no merits, liable to be dismissed and prayed to confirm the judgment of the trial Court.

10. Heard the learned counsel on either side and perused the materials available on record.

11. Now this court has to decide whether the judgement



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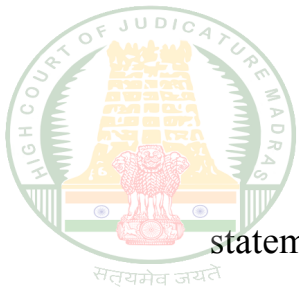
rendered by the trial Court is proper or liable to be set aside ?

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12. The complaint statement was given by PW1, cousin brother of the deceased Jyothi.

13. P.W.11 Thiru.Padmanabhan, Sub Inspector of Police, who had registered the FIR, in his chief examination stated that on 12.01.2013, at about 10.30 hours he received intimation, he went to Government Hospital, Aruppukottai at about 11.30 hours, he came to know that the victim was sent to Madurai Rajaji Government Hospital for further treatment. On 13.01.2013, he went to the Government Hospital, Madurai, and recorded the statement of victim and obtained her signature. He registered the FIR in Crime No.12/13 of Tiruchuli Police station for the offence under Section 307 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

14. On the reverse side of the complaint an endorsement found stating that he went to the Madurai Rajaji Government Hospital on 13.01.13 at about 4 o'clock, where he found that the victim in an unconscious state. After she regained consciousness, she dictated



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statement which was written by her cousin brother Muthu Pandi, P.W.1,

he received the same at about 9.00 hours, came to the Police Station at about 11.30 hours and registered the FIR.

15. The learned counsel for the appellant, argued that the witness P.W.11 failed to obtain certificate about the mental status of victim to show that she is capable of giving complaint statement which is fatal to the prosecution case and also argued that the FIR was received by the learned Judicial Magistrate only at 10.30 p.m., with 12 hours delay which could be reached within 45 minutes from the Police Station and the delay is fatal to the prosecution case.

16. The victim was indeed admitted to the Hospital with severe burn injuries. It was the duty of P.W.11 to obtain a certificate confirming that victim lady was in a fit state of mind to give complaint statement. However, he failed to do so. There is a delay in recording the statement of the victim, the FIR was also registered belatedly.

17. According to P.W.11, the victim was unconscious, after she regained her consciousness, he recorded the statement, P.W.11 failed



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to explain when the victim girl gained consciousness, at what time he started recording the statement and when he concluded the statement.

The FIR was reached the concerned Magistrate Court at about 10.30 p.m., after a delay of 12 hours for which the prosecution has provided, no explanation. This creates serious doubt about the veracity of the complaint Ex.P1, which is fatal to the prosecution case.

18. In the complaint statement, the victim had implicated four persons viz., A1, A2, her sister-in-law and her husband and stated that her mother-in-law poured kerosene on her body and her husband set fire and other two persons also quarrelled with her.

19. The Investigating Officer deleted the names of Pandiyammal (sister-in-law of the deceased) and Balu (sister-in-law's husband) as there was no evidence against them. Therefore, it is proved that they were falsely implicated in the offence by the victim.

20. P.W.16, Dr.Senthil Kumar, who treated the victim girl deposed that taking into consideration of the serious condition of the patient, he sent a message to make arrangements to record her dying



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declaration. After receipt of the intimation, the learned Judicial Magistrate No.IV, Madurai, P.W.15 Thiru.Rajalingam, came to the Hospital, he identified the victim, and recorded her dying declaration. P.W.15, the learned Judicial Magistrate before recording her confession statement, requested him to issue a certificate about the mental fitness of the victim lady. Therefore, he certified that patient is conscious oriented to give dying declaration. After recording the statement, the learned Judicial Magistrate requested him to issue a certificate that she was conscious oriented during the dying declaration. After the confession, the learned Judicial Magistrate obtained her Left Thumb Impression. The confession statement of the victim was marked as Ex.P5 to Ex.P7.

21. The learned Judicial Magistrate No.IV, Madurai, was examined as P.W. 15. He deposed that on 13.01.2013 that day the statement of the victim was recorded at about 12.20 hours when she was in fit state of mind.

22. We found from the evidence that soon after the occurrence, the victim came out of the house engulfed in flames. The neighbours poured water on her and extinguished the fire. In this

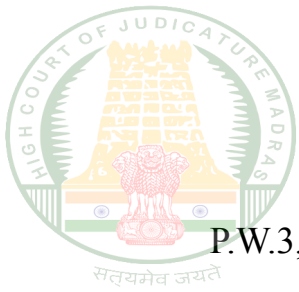


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connection, the prosecution examined number of neighbours of the deceased. Among them P.W.5 in her evidence stated that on the date of occurrence, the victim came out of the house engulfed with flames, he and others poured water and extinguished the fire. On enquiry, the victim stated that while she was cooking, she caught fire. P.W.8 and P.W.9 also corroborated the evidence of P.W.5.

23. P.W.12, Dr.Maheshwaran, who admitted the victim to the Government Hospital, Aruppukottai, at about 10.15 hours deposed that when he admitted the victim, enquired about her injury, she stated that, she sustained burns, while cooking in her house. It shows that initially the victim stated that she sustained injury by a fire accident, not stating that the accused poured kerosene on her and set her ablaze.

24. P.W.5 further stated that soon after the occurrence, the first accused and the neighbours wanted to take her to the Hospital, which was refused by the victim and she stated that she would go with her parents. The other neighbours, P.W.6, P.W.8 and P.W.9 also corroborated the evidence of P.W.5. It is further revealed that the A1 alone informed about the incident to the in-laws namely, P.W.2 and



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P.W.3, this was admitted by P.W.1 to P.W.3.

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25. In the dying declaration, she stated that on the date of occurrence, namely, 12.01.2013 at about 8.00 p.m., her mother-in-law asked her husband to chase her from the matrimonial house and marry for the second time. Both took kerosene and poured on her, her husband set her ablaze. The averment in the FIR and the Dying Declaration are contrary to each other. In the FIR she involved two more persons and stated that her mother-in-law poured kerosene on her, her husband set her ablaze. But in the Dying Declaration, it was stated that both A1 and A2 poured kerosene on her but the husband set her ablaze.

26. P.W.1, Cousin brother of the victim, P.W.2, her father, P.W.3, her mother and P.W.18 her brother during chief examination, not stated that the deceased Jyoti stated them that her husband and mother-in-law set fire on her. But P.W.18, during his cross examination, admitted that her father and mother on the way to hospital repeatedly requested the victim about the cause of injury, for which she stated that they should not ask her, she would inform the police. If A1, A2 really involved the crime the victim girl would have informed her parents when



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they came to rescue her.

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27. As per the charge against the motive for the occurrence is that, A2 induced A1 to marry for the second time, and in order to perform a second marriage, they wanted to kill the deceased.

28. P.W.2, father of the deceased deposed that her daughter and A1 quarrelled as A1 failed to pay money for family expenditure. P.W.3, mother of the deceased also corroborated the evidence of P.W.2. P.W.18, brother of the deceased alone stated that A1 threatened the deceased that he would marry for the second time, and the same was informed by her sister over phone to his father, P.W.2. However, P.W.2 not to stated anything about the conversation, he had with the deceased. None of the witnesses spoken about the motive for the crime, but stated that A1 and the deceased had a quarrel only for not giving money for family expenditures.

29. The trial Court convicted the accused on the sole basis of dying declaration. The dying declaration can be the sole basis of conviction, if it inspires the full confidence of Court. But at the same time the Court should be satisfied that the deceased was in fit state of



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mind at the time of making the statement and that was not the result of tutoring, prompting or imagination.

30. In this case, it is proved that after the occurrence the victim was surrounded by her relatives. P.W.3 admitted that the person who drafted the complaint, namely, P.W.1 was staying with deceased when the learned Judicial Magistrate - IV, Madurai recorded the dying declaration. The Judicial Magistrate also not made any endorsement in the statement that he had sent out the relatives while recording the dying declaration. Therefore, we infer that there was every chance of tutoring the victim by her relative as she changed her version only after she met her relatives.

31. Three different version at three different point of time and false implication of in-laws render the statement of victim got outside the classification of dying declaration.

32. There is no strong evidence against the accused to prove that that they had motive or intention to kill her or cruelly treated the victim. The prosecution has not proved the case against he accused



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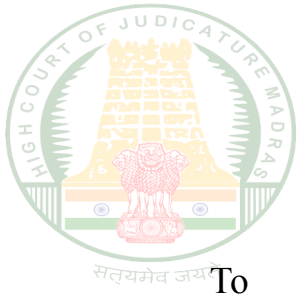
beyond all reasonable doubts. Therefore, the benefit of the doubt should be given to them. The trial Court solely relied upon the dying declaration and hold that the accused guilty of offence which is liable to be set aside for the reasons aforementioned.

33. Therefore, we hold that the prosecution had not proved the charge under Section 302 IPC beyond reasonable doubt as against the appellants and hence, the appellants/accused are acquitted from the charge under Section 302 IPC.

34. Accordingly, the Criminal Appeal stands allowed and the judgment passed in S.C.No.113 of 2013 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputtur, dated 21.11.2020 is hereby set aside. The appellants/A1 and A2 are acquitted of all the charges. The appellants are directed to be set at liberty forthwith. The bail bonds executed, if any, shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellants.

(G.J., J.) & (R.P., J.)
21.03.2025

Index : Yes / No
Internet : Yes / No
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To
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- 1.The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District at Srivilliputtur,
- 2.The Inspector of Police,
Thiruchulli Police Station,
Virudhunagar District.
(in Cr.No.12 of 2013)
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.JAYACHANDRAN J.
AND
R.POORNIMA, J.

RM

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