



Crl.A.(MD)No.144 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

Crl.A(MD)No.411 of 2017

1.Saratha

2.Pothumpon

... Appellants

Vs

The Inspector of Police,
Tiruchittambalam Police Station,
Pudukottai District,
Cr.No.160 of 2008.

... Respondent

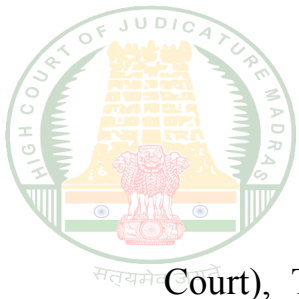
Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records relating to the Judgment in S.C.No.168 of 2012 of the learned Sessions Judge, Mahalir Neethimantram (Fast Track Mahila Court), Thanjavur, dated 27.09.2017 and set aside the same.

For Appellants : Mr. T.A.Ebenezer

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)

JUDGMENT

The present Criminal Appeal has been filed challenging the Judgment of the learned Sessions Judge, Mahalir Neethimantram (Fast Track Mahila



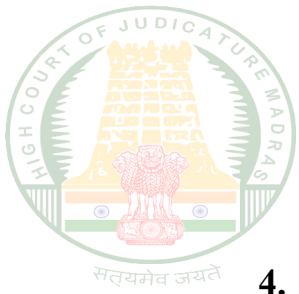
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Court), Thanjavur, dated 27.09.2017 made in S.C.No.168 of 2012. The appellant is the sole accused in this case.

2.The appellants are the accused A1 and A2, who have been found guilty for the offence under sec.306 I.P.C and convicted and sentenced to undergo 10 years Rigorous Imprisonment each and imposed with a fine of Rs.2000/- in default to undergo one year simple imprisonment.

3.The case of prosecution as it appears from the records is that the accused are the sisters and the deceased is the sister-in-law. There was a property dispute between the accused and the family of the deceased. On 27.10.2008, at about 01.00 p.m., there was a quarrel between the accused and deceased and the accused had scolded and insulted the deceased and so, the deceased got upset and poured kerosene upon her and lit fire on herself at the instigation of the accused. The deceased was admitted in the hospital immediately after the occurrence at about 02.45p.m., and she succumbed to her injuries on 06.11.2008.



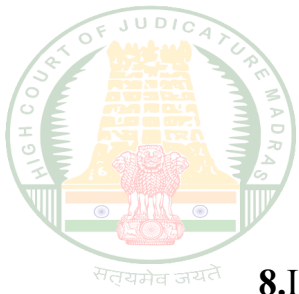
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4. After the charge sheet has been filed and the accused denied their involvement, they were subjected to trial. At the conclusion of trial the accused were found guilty under Section 306 IPC and they were convicted and sentenced as stated *supra*. Aggrieved over that, the appellants have filed this appeal.

6. The learned counsel for the appellant submitted that the accused were not present at the scene of occurrence or at the time of occurrence. The learned trial judge has convicted the accused solely based on the Dying Declaration, which was obtained from the deceased on 27.10.2008 at about 10.00 p.m.

7. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police categorically submitted that the trial Judge after appreciating the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.



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8.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

9.As per the Accident Register, it is seen that the accused has suffered 70% burn injuries at the time when she was brought to the hospital. The Doctor who registered the Accident Register has been examined as PW9 and he has stated that the deceased told him that she poured kerosene upon herself and lit fire on her.

10.In the Dying Declaration, it is stated that the deceased was in a fit state of mind and she would answer the question by understanding it. The Doctor has also certified that the deceased was conscious enough to give the Dying Declaration. The Doctor who had conducted the postmortem also certified that the cause of the death of deceased was due to the burn injuries.

11.In the Dying Declaration, Ex.P9, the deceased has stated that on the day of occurrence, the accused came to her house, quarrelled with her that she should vacate the house. Due to that, the deceased got upset and poured kerosene on herself and lit fire.



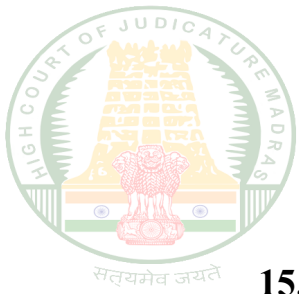
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12.The limited defence of the learned counsel for the appellant is that the accused were not present at the scene of occurrence during the time of occurrence. Even if they are presumed to be present, they did not do any act of instigation to encourage the deceased to commit suicide.

13.The fact that the accused 1 and 2 were present at the time of occurrence has been proved not only from the Dying Declaration of the deceased, but also from the evidence of PW5, who corroborated the same. PW5 has stated that she witnessed the occurrence on the alleged day of occurrence, which was a Diwali day. The accused had been to the house of the deceased to give Diwali sweets and during that time, they had fetched up a quarrel and they started to abuse each other. Unable to withstand the same, the deceased had poured kerosene on her.

14.Even during the cross examination of PW5, it was suggested to her that the accused had come there to give sweets. So there is no doubt as to the presence of the accused at the place of occurrence and the presence of accused is very much proved from the evidence of PW5 as well.



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15. The mother of the deceased, who was examined as PW7 has stated in her evidence that the husband of the deceased came to her house on the day of occurrence to exchange sweets and she heard that the accused and the deceased fetched up a quarrel and the accused asked the deceased to die by pouring kerosene on her.

16. Though PW7 is a hearsay witness, her evidence would show the presence of accused at the place of occurrence.

17. The husband of deceased was examined as PW4. He has not been confronted with any question of prolonged misunderstanding between himself and the deceased wife. Even PW4 has stated in his evidence that there was a property dispute between him and the accused. PW4 rushed to the spot on hearing the occurrence, as he was in the house of the mother of the deceased.

18. The relationship between PW4 and the deceased is so bitter that, PW4 cannot be expected to visit the mother of the deceased on the day of Diwali. After hearing the occurrence, he came to the occurrence spot.



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19. There is no reason to disbelieve the Dying Declaration given by the deceased, wherein, she had stated that she poured kerosene upon herself as she was upset because of the quarrel between the accused and herself. In the Dying Declaration also she has not stated that the accused had induced her to set fire. So, the evidence on this aspect given by PW5 appears to be an exaggerated one.

20. In the Dying Declaration, the deceased has stated that the accused had asked the deceased to leave the house or die. Just because someone asked a person to die, the other person has no obligation to die. PW1 could have called her husband or her neighbours to interfere and resolve. The frustration of the deceased to take away her life is something unnatural and an extreme decision.

21. On seeing the deceased on fire, the accused ran away without helping her. The deceased herself poured water to extinguish the fire on her. The accused might have run away out of fear for their own safety. Since the deceased had set herself on fire following a quarrel with the accused, it is



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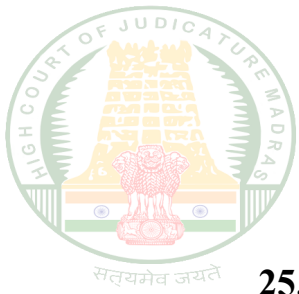
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natural that they felt insecure and fled away instead of helping her. The neighbours came to her rescue and took her to the hospital.

22. The learned trial judge has given reason as to why he has relied on the Dying Declaration of the deceased. However, he has found the accused guilty despite the deceased had stated in her dying declaration that she herself poured kerosene on her and lit fire.

23. In this regard, it is appropriate to rely on the decision of Hon'ble Supreme Court in *Rohini Sundarshan Gangurde Vs State of Maharashtra & Another*, reported in *2024 SAR (Crl) 1027*, wherein, it is held that the abetment to suicide will be made out only if the accused had done any active assistance to the deceased to commit suicide.

24. The accused did not come with an intention to abet the deceased to commit suicide, as they had only visited the deceased on the day of Diwali and to exchange sweets. But their conversation became intense and bitter. Thereafter, the deceased had committed suicide. It was the deceased, who poured kerosene on herself as she was upset.



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25.The Hon'ble Supreme Court in the case of **Ramesh Kumar Vs State of Chhattisgarh** reported in **2001 (9) SCC 618** has held what is instigation in the matter of abetment to commit suicide. The relevant portion is extracted hereunder:

“20.Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

26.In **Gurucharan Singh Vs State of Punjab**, the Hon'ble Supreme Court has dealt with the principles of necessary ingredients to punish the accused for the offence under Section 306.



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16. The necessary ingredients for the offence under section 306 IPC was considered in the case SS Chheena Vs. Vijay Kumar Mahajan¹ where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

17. While dealing with a case of abetment of suicide in *Amalendu Pal alias Jhantu vs. State of West Bengal*², Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also



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assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the 2 (2010) 1 SCC 707 time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

27. The accused came to the house of the deceased with an intention to abet the deceased to commit suicide. It was a Diwali day and they visited the



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deceased and exchanged sweets. But their conversation had suddenly turned the other way and it became intense and bitter. It was the deceased, who poured kerosene on herself as she was upset. During the course of the sudden quarrel between the accused and the deceased, it is probable that the accused might have asked the deceased to die. But those words would have been uttered only in a fit of anger and not really with an intention to drive the deceased mad and thereby abet her to commit suicide.

28. Even though the accused were present in the place of occurrence they did not do any positive act in order to abet the deceased to commit suicide within the meaning of interpretation given to abetment in the above referred decision of Hon'ble Supreme Court. However, the learned trial judge has not appreciated the evidence on record in the context of the position of law of abetment to commit suicide. Hence, I feel the judgment of the trial Court calls for interference.

29. In fine,

(i) the Criminal Appeal stands **allowed**.

(ii) The conviction and sentence imposed on the appellants/accused A1



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and A2 for the offence punishable under **Section 306** of the Indian Penal Code in S.C.No.168 of 2012, dated 27.09.2017, by the learned Sessions Judge, Mahalir Neethimantram (Fast Track Mahila Court), Thanjavur, are hereby **set aside**.

(iii) The appellants/accused A1 and A2 are accordingly **acquitted of the charge under Section 306 IPC**.

(iv) The bail bonds, if any, executed by the appellants shall stand cancelled. The fine amount, if already paid by the appellants, shall be refunded to them forthwith.

16.07.2025

NCC :Yes/No

Index :Yes/No

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To

1.The Sessions Judge,
Mahalir Neethimantram (Fast Track Mahila Court), Thanjavur

2. The Inspector of Police,
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Pudukottai District,
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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.N.MANJULA, J.

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