

Crl.A.(MD)No.769 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2025

CORAM :

THE HONOURABLE **Dr. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.63 of 2017

1.Bava Pugardeen
2.Vijayan @ Vijay

... Appellants/A1 & A2

versus

The State of Tamil Nadu
rep., by the Inspector of Police,
Silaiman Police Station,
Madurai District.
Crime No.278 of 2011

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 10.02.2017 made in Spl.S.C.No.8 of 2013 on the file of the III Additional District and Sessions Court, Madurai and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.

For Appellants : Mr.V.Kathirvelu
Senior Counsel

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



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JUDGMENT

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This criminal appeal has been preferred challenging the judgment of the learned III Additional District and Sessions Judge, Madurai, dated 10.02.2017, made in Spl.S.C.No.8 of 2013.

2. The appellants are the Accused Nos.1 and 2, who have been found guilty for the offence under Section 306 IPC, convicted and sentenced to undergo rigorous imprisonment for seven years (each) and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for a further period of six months (each).

3. The case of the prosecution is that the defacto complainant belonged to Scheduled Caste and Scheduled Tribes community. The first accused belonged to Muslim and the second accused belonged to Hindu Valaiyar community. The daughters of the defacto complainant by name Priyanka and Suganya were working in Avinasi and they had come to the defacto complainant's house for the weekend. On 24.11.2011, at about 06.30 pm., when the defacto complainant went to Thirupuvanam, the accused called Priyanka, the daughter of the defacto complainant and teased her indecently by saying obscene words. After the defacto complainant



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returned, her daughter informed her about the incident and cried, but without getting convinced and being affected due to the act of the accused, Priyanka had committed suicide by pouring kerosene and setting fire upon herself. The defacto complainant gave complaint on 25.11.2011 itself and FIR in Crime No.278 of 2011 has been registered for the offences under Sections 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Section 3(1)(xi) of the Prevention of Atrocities of SC/ST Act, 1989. As the victim died next day, charges have been altered into Section 306 IPC, Section 4 of TNPHW Act and Section 3(1)(xi) of SC/ST(POA) Act.

4. After completion of investigation, charge sheet was filed and the same was taken on file in Spl.S.C.No.8 of 2013 and after completing the legal mandate of furnishing copies and all other legal formalities, the learned trial Judge framed charges against the appellants/accused 1 and 2 for the offence under Section 306 IPC, Section 4 of TNPHW Act and Section 3(2)(V) of SC/ST(POA) Act. When the accused were questioned, they denied the same and claimed to be tried.

5. During trial, on the side of the prosecution, P.W.1 to P.W.14 were examined and Exs.P1 to ExP13 were marked. Besides, M.O.1 was marked.



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On the side of the defence, no one was examined and one document was marked as Ex.D1.

6. After the conclusion of trial, based on the oral and documentary evidence, the learned trial Judge has convicted and sentenced the appellants as stated supra. Aggrieved over the same, this appeal has been preferred.

7. The learned counsel for the appellants submitted that no abetment has been established to prove that the accused abetted the suicide of the deceased, Priyanka. Even in the dying declaration, marked as Ex.P9, the deceased did not state anything about the abetment of suicide by the accused. He further submitted that P.W.1 has stated in the complaint about one Ganesan, who was interested in marrying the deceased, but he was not examined as a witness. Despite the accused have been acquitted from the charge under Section 4 of the Tamil Nadu Women Harassment Act and Section 3(2)(v) of SC/ST (PO)A Act, the learned trial Judge has convicted the accused for the offence under Section 306 of IPC. Though the ingredients making out the above offence have not been proved before the Court. The trial Court has got convinced with the hearsay evidence and ignored the material contradictions in the evidence of the witnesses.



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8. The learned Government Advocate (Crl.side) submitted that even in the dying declaration of the deceased, she has clearly stated that on the previous date of occurrence, she was teased by the second accused saying that the first accused was calling her to have sexual relationship. This caused mental agony to the deceased and being unable to withstand the same, she was forced to commit suicide. Therefore, the learned trial Judge has rightly found the accused guilty.

9. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

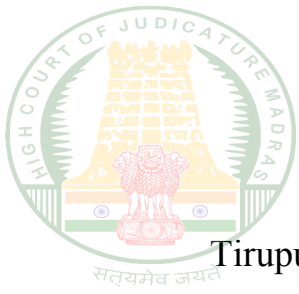
10. P.W.1, who is the mother of the deceased and the defacto complainant, has given a complaint on 25.11.2011, at about 05.00 pm., and the occurrence is said to have taken place on the same day at about 12.30 noon. As per the complaint of P.W.1, the deceased is her eldest daughter and sometime before, her relative, namely, Ganesan, teased her daughter and subsequently, the deceased and her sister were sent to work in a Cotton Mill at Avinasi. During the occurrence, according to the information received by P.W.1 from her deceased daughter, on 24.11.2011, at about 06.30 pm., the second accused came to her and told her that the first accused was calling her for sexual relationship. Both the accused teased the



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deceased by using obscene words. As P.W.1 was not in station on 24.11.2011, she was informed about the incident by the deceased in the evening after she returned. Despite P.W.1 convinced her that the parents of the accused would be informed, and she would see that they do not repeat the offence. The deceased was not convinced and she poured kerosene upon herself and set fire. On seeing her running out in fire, P.W.1 and her another daughter, P.W.3, had tried to extinguish the flame by pouring water. Even though the deceased was admitted in the hospital immediately and was under treatment, she succumbed to her injuries on the next day itself i.e., on 27.11.2011.

11. The complaint appears to have been given even before the death of deceased i.e., 25.11.2011 itself. One important evidence available in this case is the dying declaration of the deceased, which has been marked as Ex.P.9. In the dying declaration, the deceased stated that she herself set fire on her in view of the occurrence on the previous day. She has stated that at about 07.00 pm., on the previous day, the second accused came to her and told that the first accused wanted to talk with her and when she came near her doorway, then she saw the first accused standing and he asked her to have sex with him. At that time, her mother arrived and on seeing her mother, the accused ran away. She has further stated that the accused were teasing her before two years also and that is the reason why, she was sent to



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Tirupur to work in Prince Spinning Mill.

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12. The learned Magistrate, who has recorded the dying declaration has been examined as P.W.13. He has stated in his evidence that the victim was conscious enough to give her dying declaration and recorded the dying declaration as per the statement given by the deceased in the presence of the doctor. The doctor, who was present at the time of recording the dying declaration has stated that the deceased was conscious and oriented to give her dying declaration. Even though the doctor has not been examined, P.W. 13, the Magistrate, has stated about the state of mind in which the deceased was found at the time of recording her dying declaration.

13. In the evidence of P.W.1, she has stated that it was one Ganesan, who bothered the deceased by teasing her before two years. One of the witnesses, who examined as P.W.6, has also stated in his evidence that Ganesan had gone to the extent of attempting to commit suicide and thereafter, the villagers convinced him. Even though the said Ganesan is said to be a person interested in the deceased, he has no connection to the present occurrence.

14. Therefore, the prosecution has to prove whether the acts



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committed by the accused would amount to abetment of the deceased's suicide. No one directly witnessed the occurrence and even those witnesses, who have examined as eyewitnesses, did not support the prosecution's case. P.W.1 to P.W.3 are the hearsay witnesses and close relatives of the deceased.

15. All that could be understood from the dying declaration of the deceased is that she had been harassed on the previous day, which caused her deep humiliation as the accused had gone to her house and severely teased her. The sister of the deceased, who was examined as P.W.3, also stated the same facts in her evidence. The uncle of the deceased, who was examined as P.W.2, also stated in his evidence about the involvement of the boys in teasing Priyanka. However, none of the evidence given by the witnesses, P.W.1 to P.W.3, including the dying declaration of the deceased, contains the essential ingredients required to establish the abetment of suicide, which could have amounted due to harassment caused to the deceased, but unfortunately the trial Court did not find the accused guilty for the offence under Section 4 of SC/ST (POA) Act.

16. Even the prosecution has not challenged the same by way of preferring any State appeal seeking special leave. If the first accused



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exhibited inappropriate behavior by asking the deceased to have sexual relationship would have certainly caused her mental agony. Had the victim informed her parents about these facts, the parents would have taken the matter seriously and confronted the accused immediately.

17. P.W.1 to P.W.3 have stated in their evidence that they tried to console the deceased by assuring her that the issue could be dealt on the following day. P.W.2, brother of P.W.1, has stated in his evidence that his sister, P.W.1, asked the deceased why she was engaging in conversation with the boys/accused. P.W.3, sister of the deceased, has stated in her evidence that the deceased appeared very disturbed and was crying, though she was convinced that the matter could be resolved in the morning. On the next day, when P.W.2 had gone to a neighbour's house, she heard a screaming noise coming from her house and went and saw the deceased in fire. After extinguishing the flame on the deceased, she asked her why she had taken such an extreme decision and for which the deceased stated that she could not bear the ignominy caused to her by the indecent words uttered by the accused.

18. The dying declaration of the deceased also does not mention whether the accused threatened her, nor does it indicate any explicit act of abetment committed by the accused, which led her to commit suicide. In



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order to punish the accused under Section 306 IPC, the prosecution has got a duty to prove before the Court that the accused had been continuously teasing and instigating the her to commit suicide.

19. To prove an offence under Section 306 IPC, the essential ingredients of “abetment” as defined under Section 107 must be proved.

Section 107 IPC would define abetment as under:

*“107. **Abetment of a thing.**— A person abets the doing of a thing, who—*

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing .

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. “



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20. Only if any of the above ingredients are seen to be inferred from the overt act committed or from the behavior of the accused 1 and 2, they can be found guilty for the offence under Section 306 IPC. It is also relevant to refer the judgment of the Hon'ble Supreme Court in the case of *Ayyub and others Vs., State of Uttar Pradesh and another*, 2025 INSC 168.

For sake of clarity, the essential part of the said judgment is extracted hereunder:

“.....17.We find that based on the charge-sheet filed by the police on 02.05.2023 and the cryptic order of cognizance dated 17.06.2023, the proceedings cannot be allowed to be carried on against the appellants. Even taking the allegation on a demurrer, on the facts of the case, an offence under [Section 306](#) IPC cannot be said to be made out against the appellants. The law on [Section 306](#) IPC is well settled.

*18. In **Swamy Prahaladdas vs. State of M.P. and Another**, (1995 Supp (3) SCC 438), the appellant remarked to the deceased that ‘go and die’ and the deceased thereafter committed suicide. This Court held that :-*

“.... Those words are casual nature which are often employed in the heat of moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite means rea on the assumption that these words would be carried out in all events....”

19. By a long line of judgments, this Court has reiterated that in order to make out an offence under [Section 306](#) IPC, specific



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abetment as contemplated by [Section 107 IPC](#) on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It has been further held that the intention of the accused to aid or instigate or to abet the deceased to commit suicide is a must for attracting [Section 306 IPC](#) [See [Madan Mohan Singh vs. State of Gujarat and Another](#), (2010) 8 SCC 628]. Further, the alleged harassment meted out should have left the victim with no other alternative but to put an end to her life and that in cases of abetment of suicide there must be proof of direct or indirect acts of incitement to commit suicide [See [Amalendu Pal alias Jhantu vs. State of West Bengal](#), (2010) 1 SCC 707 and [M. Mohan vs. State](#), (2011) 3 SCC 626 and [Ramesh Kumar vs. State of Chhattisgarh](#), (2001) 9 SCC 618].

20. These principles have been reiterated recently by this Court in [Mahendra Awase vs. The State of Madhya Pradesh](#), 2025 INSC 76.

21. We find none of the ingredients required in law to make out a case under [Section 306 IPC](#) to be even remotely mentioned in the charge-sheet or are being borne out from the material on record. The utterance attributed to the appellants assuming it to be true cannot be said to be of such a nature as to leave the deceased Tanu with no other alternative but to put an end to her life. The surrounding circumstances, particularly the prior lodgment of the FIR by the first appellant against the family of Tanu for the death of his son Ziaul Rahman, does indicate an element of desperation on the part of the respondent no. 2 to somehow implicate the appellants. Reliance of the statements recorded under [Section 161 Cr.P.C.](#) belatedly on 07.11.2022, 08.11.2022 and 22.11.2022, only reinforces out suspicion viz. one-sided, partial and inimical investigation. Under these circumstances, proceeding with the trial against the



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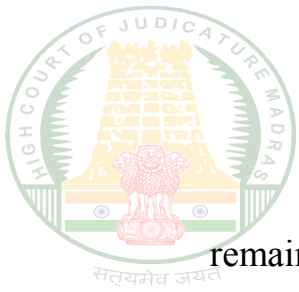
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appellants in the charge-sheet as filed will be a gross abuse of process.....”

21. In *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618,
the Supreme Court while explaining the meaning of “instigation”, the court
has stated that,

“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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.”

22. In the instant case, the prosecution has failed to establish the active or positive role played by the accused to instigate or aid the deceased to commit suicide. Even in the Dying Declaration of the deceased, she had only stated that the accused had insulted her by inviting to have sex and even that had been reported by her to her family members. The evidence available on record would show that they had persuaded the deceased to



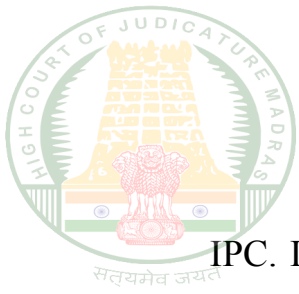
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remain calm and the things can be dealt the next day morning, but the deceased without getting convinced with their reassurance, had chosen to immolate herself.

23. The other evidence of the eyewitness and the official witnesses only reveal the surrounding circumstances, and it did not give any direct material to show the involvement of the accused in instigating or assisting the deceased to commit suicide.

24. Infact the deceased had stated in her Dying Declaration that, she had committed suicide after the accused left the place, so it should be the inability of the deceased to put up with the difficult situations and she did not have the mental stamina to tackle the issues by getting active assistance of the elders or the other family members. So, the deceased herself had opted the dangerous method instead of choosing to stand bold and face the issue.

25. As the prosecution has failed to prove any act on the part of the accused within the definition of “abetment” as envisaged in section 107 IPC, I feel the trial court has not properly appreciated the evidence before fixing the guilt upon the Accused 1 and 2 for the offence under Section 306



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IPC. In view of the same, the judgment of the trial court is liable to be set aside.

23. In result,

(i) This Criminal Appeal is allowed, the judgment of the learned III Additional District and Sessions Judge, Madurai, in Spl.S.C.No.8 of 2013 dated 10.02.2017 is set aside.

(ii) The bail bond shall stand cancelled and sureties, if any, shall be discharged.

(iii) The fine amount, if already paid, shall be refunded to the appellants.

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Index : Yes/No

NCC : Yes/No

Rmk

To

1. III Additional District and Sessions Judge, Madurai.



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2.The Inspector of Police,
Silaiman Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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

R.N.MANJULA, J.,

Rmk

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