

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 21.03.2022**

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**CORAM:****THE HONOURABLE MR.JUSTICE R.PONGIAPPAN****Crl.A.No.495 of 2019**Mangaiyarkarasi,  
W/o.Mahesh

...

Appellant /  
P.W.2**versus**1.The Inspector of Police,  
A.Pallipatti Police Station,  
Dharmapuri District.  
(Crime No.108 of 2012)

...

Respondent 1 /  
Complainant2.Kamaraj  
3.Sekar  
4.Tamilarasan  
5.Durai

...

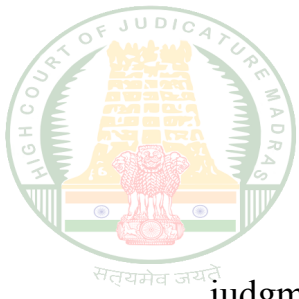
Respondents 2 to 5 /  
Accused 1 to 4

**Prayer:** Criminal Appeal filed under Section 372 r/w 401(5) of the Code of Criminal Procedure, praying to call for the records and to set aside the judgment dated 09.04.2014 passed by the learned Additional Sessions Judge, Dharmapuri, Dharmapuri District in S.C.No.9 of 2014.

For Appellant : Mr.B.Vasudevan

For Respondent No.1 : Mr.Leonard Arul Joseph Selvam  
Government Advocate (Crl. Side)

For Respondent Nos.2 to 5: Mr.V.Elangovan

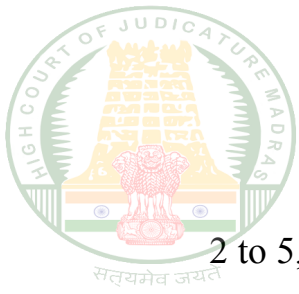


## JUDGMENT

The present appeal has been filed praying to set aside the judgment of acquittal passed by the learned Additional Sessions Judge, Dharmapuri dated 09.04.2014 in S.C.No.9 of 2014.

2. The appellant herein is the victim in the alleged occurrence. Upon the complaint lodged by one Santhamoorthy, the respondent police registered a case in Crime No.108 of 2012 under Section 174 Cr.P.C. After completing investigation, they filed a final report alleging that the respondents 2 to 5 / accused 1 to 4 are liable to be convicted under Sections 323 and 306 of IPC. Based on the final report, the trial Court framed the charges as against the respondents 2 to 5 for the offences under Sections 323 and 306 of IPC. After elaborate trial, by judgment dated 09.04.2014, the learned Additional Sessions Judge, Dharmapuri, came to the conclusion that the charges framed against the accused / respondents 2 to 5 are not proved beyond reasonable doubt and passed an order of acquittal.

3. Challenging the same, the appellant, who is P.W.2 in the above referred case, filed this appeal.



4. For the sake of convenience, hereinafter, the respondents 2 to 5, are called as accused nos.1 to 4 respectively.

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5. The case of the prosecution, in brief, is as follows;

5.1. The deceased Mahesh and the accused are neighbours.

The deceased having wife (P.W.2) and 2 children. One Abinaya, who is the relative of the accused, is an unmarried minor girl, with whom, the deceased was having love affair. The same was questioned by the accused. Consequentially, as a result of which, on 01.05.2012 in the tiffin stall run by P.W.5, the accused assaulted the deceased and thereby, he consumed poison and died. During such occurrence, P.W.1, who is the friend of the deceased Mahesh got information from the said Mahesh through phone that he has consumed poison. So, P.W.1 went to Pudhupatti where the deceased was present and after seeing the P.W.1 took him to Pappireddipatti Government Hospital and later, he informed the matter to the relatives of P.W.2. Despite necessary treatment given to the deceased, the said Mahesh has died. Thereafter, P.W.1 lodged a complaint under Ex.P1 in A.Pallipatti Police Station.

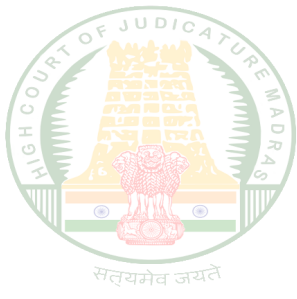


**5.2.** P.W.14 Sub Inspector of Police received the complaint given by P.W.1 and registered a case in Crime No.108 of 2012 for an offence under Section 174 of Cr.P.C. The printed copy of the First Information Report was marked as Ex.P.7. Thereafter, the Inspector-Duraisamy took up the case for investigation and visited the scene of occurrence. In the presence of witnesses, he prepared an observation mahazar under Ex.P.2. He drawn the rough sketch and the same has been marked as Ex.P.8. He conducted the inquest on the body of the deceased Mahesh in the presence of villagers and prepared inquest report under Ex.P.9. He examined the witnesses and recorded their statements.

**5.3.** He recovered the poison bottle at the scene of occurrence and forwarded the same for chemical examination. Meanwhile, after completing the inquest, an application under Ex.P.4 has been submitted before the hospital authorities for conducting postmortem. On receipt of the application given by the Investigation Officer, P.W.8 Dr.K.Ganeshkumar, conducted postmortem and found the following injuries;

“No external injuries.

Internal examination : Hyoid Bone intact, skull, brain intact.



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Ribs intact. Pleural cavity intact. Lungs normal size c/s congested. Heart c/s chambers filled with blood. Stomach empty c/s pale. Small intestine empty finger, spleen, kidney normal in size c/s congested.”

**5.4.** He collected viscera and sent the same for chemical examination. In the chemical examination, it was identified that there was poisonous substance found in the viscera. After receipt of the report from P.W.9 Geetha, who is the chemical examiner, P.W.8 issued a postmortem certificate alleging that due to consumption of organo phosphorous compound, the death was caused to the deceased. The postmortem certificate was marked as Ex.P.5 and viscera report issued by P.W.9 was marked as Ex.P.6. After completing the investigation, the Investigating Officer came to the conclusion that the accused nos.1 to 4 after causing simple injury to the deceased abetted him to commit suicide. Accordingly, he filed a final report against the accused alleging that they are liable to be convicted under Sections 323 and 306 of IPC.

**6.** Based on the above materials, the trial Court framed charges under Sections 323 and 302 of IPC and all the accused denied the



same. In order to prove their case, on the side of the prosecution, as many as 13 witnesses were examined as P.W.1 to P.W.13 and 10 documents were exhibited as Exs.P.1 to P.10.

7. Out of the said witnesses, P.W.1-Santhamoorthy is the friend of the deceased Mahesh. He spoken about the occurrence as during the relevant point of time, the deceased informed him that the accused assaulted him. He has further stated that after consuming the poison, the deceased informed about the same and after getting information from him, he went to the occurrence place and admitted the deceased in the hospital.

8. P.W.2-Mangaiyarkarasi appellant, is the wife of the deceased Mahesh. She has also spoken about the occurrence that, on 28.04.2012 when at the time her husband went to eat briyani, the accused are all assaulted him with coconut roof and caused simple injury. Afterwards, when at the time, she contacted her husband, there was no response from him. Later, her father-in-law informed her about the consumption of poison by the deceased.



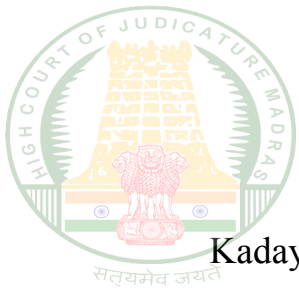
**9.** P.W.3-Munusamy is the father of the deceased Mahesh.

He gave evidence in support of the evidence given by P.W.2 as during the relevant point of time, the accused herein all are assaulted the deceased and due to the same, the deceased consumed poison.

**10.** P.W.4-Chinnasamy is the father of P.W.2. He has also spoken about the occurrence in support of the evidence given by P.W.2 and P.W.3.

**11.** P.W.5-Subban @ Subbu is the resident of Kadathur. He runs a bryani shop near to the Agricultural Office at Kadathur. He spoken that during the relevant point of time, all the accused herein attacked the deceased Mahesh with wooden log and after seeing the same, he compromised the issue.

**12.** P.W.6-Eswaran spoken about the preparation of the Observation Mahazar by the Investigation Officer.



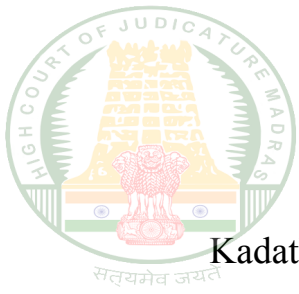
**13.** P.W.7-Kaladevi is the Doctor attached with Kadayampatti Primary Health Centre, spoken about the treatment given to the deceased and about the death. In this regard, she issued a A.R. copy under Ex.P.3.

**14.** P.W.8-K.Ganeshkumar is the Doctor attached with Mohan Kumaramangalam Government Hospital, Salem, spoken about the process of postmortem conducted on the body of the deceased Mahesh.

**15.** P.W.9-Dr.Geetha, who is the Scientific Assistant working in Forensic Department spoken about the examination of viscera, which was collected from the body of the deceased. According to her, there was organo phosphorous compound found in the body of the deceased.

**16.** P.W.10-Chinnasilaiyan and P.W.11-Devan gave evidence in support of the evidence given by P.W.5 as during the relevant point of time, all the accused herein attacked the deceased with wooden log.





**17.** P.W.12-Murugan, the then Sub Inspector of Police, Kadathur Police Station spoken about the occurrence that had happened at the tea stall run by P.W.5. He gave evidence as on 28.04.2012, the accused herein lodged a complaint against the deceased wherein they stated that the accused had illegal affairs with Abinaya, who is the relative of the accused Sekar. In this regard, they wanted to threaten the deceased.

**18.** P.W.13 and P.W.14 are the police officers gave evidence in respect to the receipt of complaint, registration of the case, filing of the final report.

**19.** When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, none examined on the side of the accused as a defence witness.

**20.** The learned Additional Sessions Judge, Dharmapuri, after perusing all the above materials and on considering the arguments advanced by either side, acquitted the accused from the charges. Aggrieved over the said judgment of acquittal, the appellant, who is the wife of the deceased is before this Court with this appeal.



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**21.** I have heard Mr.B.Vasudevan, learned counsel appearing for the appellant, Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl. Side) appearing for the State and Mr.V.Elangovan, learned counsel appearing for the respondents 2 to 5. I have also perused the records carefully.

**22.** The learned counsel for the appellant would contend that due to the attack made by the accused, the deceased consumed poison and committed suicide. Therefore, by way of attacking the deceased, all the accused abetted him for committing suicide. He would further submit that the trial Court without considering the same as only due to the attack made by the accused, the deceased committed suicide, after citing the erroneous reasons, acquitted the accused, which is liable to be set aside.

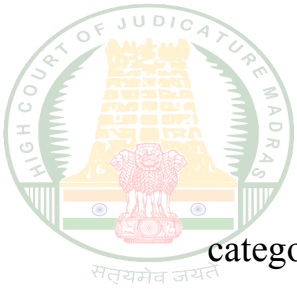
**23.** The learned Government Advocate (Crl. Side) appearing for the respondent police supported the contentions raised by the learned counsel for the appellant.



**24.** On the other hand, the learned counsel for the respondents 2 to 5 made submission as the act committed by the accused are all not come into the ambit of Section 107 of IPC. Further, the deceased herein committed suicide, after 5 days from the date, on which, the accused assaulted him. Therefore, the said act committed by the deceased, is not within the scope of abetment and therefore, the judgment of acquittal passed by the trial Court, is within four corners of law.

**25.** Submissions made by the learned counsel appearing on either side are considered.

**26.** The evidence given by P.W.5 and P.W.11 would disclose the fact that, on 28.04.2012 in a shop run by P.W.5, all the accused assaulted the deceased with wooden log. Later, on 02.05.2012, the deceased committed suicide. The evidence given by P.W.7, the Doctor, who gave initial treatment to the deceased would categorically mentioned that on 02.05.2012 around 1.30p.m., the deceased was admitted as inpatient saying that he consumed poison. In support of the said evidence, P.W.1 has also stated before the trial Court that the deceased informed him on 02.05.2012 as he consumed poison.



**27.** Therefore, the said evidence given by those witnesses categorically proved that, after 5 days from the date of attack, the deceased consumed poison. In respect to the interregnum period, there was no evidence from the side of the prosecution as after the assault made by the accused, on 28.04.2012 under whose custody the deceased was found available. In fact, P.W.2 is the wife of the deceased gave evidence as she is unable to contact her husband during such time. Therefore, it would necessary to see whether the attack made by the accused amounts to abet the commission of such suicide or not.

**28.** It is settled law the gravamen of the offence punishable under Section 306 of IPC, is abetting suicide. Section 107 IPC defines abatement as comprising;

- “(a) instigation to commit the offence;
- (b) engaging in conspiracy to commit the offence; and
- (c) aiding the commission of an offence.”

**29.** Further, it is settled law that the 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 the Supreme Court are 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.

**30.** Here, it is a case, since the alleged attack committed by the accused had happened 5 days prior to the occurrence, it cannot be said that the attack made by the accused is provoke or instigate the deceased to commit suicide. The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act. But, in this case, after such occurrence, the whereabouts of the deceased were not known to others for a period of 5 days. The evidence let in by the prosecution did not say about the whereabouts of the deceased and therefore, it cannot said that the consumption of poison, is the direct result of the attack made by the



accused. Before the trial Court, the witnesses examined as P.W.1 to P.W.4 are all spoken about the occurrence as the accused attacked the deceased, in otherwise, the said incident happened on 28.04.2012, P.W.11 alone stated that he has seen the occurrence. In fact, the actual eye witnesses, P.W.5 and P.W.10 had clearly stated that A-1 to A-2 alone assaulted the deceased. In the said circumstances, the evidence let in by the prosecution witnesses, are not sufficient to accept the case of the prosecution as all the accused had attacked the deceased at the relevant point of time i.e. on 28.04.2012.

**31.** Furthermore, there is external injury found on the body of the deceased. In the said circumstances, the contradictions available in the evidence given by the prosecution witnesses also raised a doubt whether all the accused attacked the deceased or not. Accordingly, in this aspect also, the case of the prosecution is unbelievable that on 28.04.2012 all the accused herein attacked the deceased.

**32.** The another one aspect, which is necessary to decide in this appeal is that, it is settled law that before setting aside the judgment of acquittal, it would necessary to see whether the judgment rendered by the



Court below may result in grave miscarriage of justice or the same patently illegal.

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**33.** Applying the said principle with the case in hand, the ingredients for abetment, which are all necessary under Section 107 of IPC is not available in this case. Further, the evidence given by the prosecution witness would go to show that the love affair having by the deceased with one Abinaya was objected by the accused and due to the failure of the love affair with the said lady, the deceased may attempted to commit suicide. In this occasion, it would necessary to see the judgment of our Hon'ble Apex Court in **UNION OF INDIA vs. SEPOY PRAVAT KUMAR BEHURIA** reported in **(2019) 10 SCC 220** wherein it has observed as follows;

*“17. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard a judgment of acquittal were examined by this Court in Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, which are as follows: (SCC p.477, para 70)*

*“70. ...1.*

- i) The trial court's conclusion with regard to the facts is palpably wrong;*
- ii) The trial court's decision was based on an erroneous view of law;*



iii) *The trial court's judgment is likely to result in "grave miscarriage of justice";*

iv) *The entire approach of the trial court in dealing with the evidence was patently illegal;*

v) *The trial court's judgment was manifestly unjust and unreasonable;*

vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the ballistic expert, etc.*

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The appellate court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."*

**34.** Accordingly, applying the said decision with this case, herein also, this Court do not find any patent illegality in the judgment rendered by the trial Court. Further, if the deceased consumed poison due to the failure of the love affair with Abinaya, for the same the accused are held no way responsible. Accordingly, in view of the fact, in respect to the occurrence, two views are possible, it is necessary to acquit the accused.





**35.** Resultantly, this Criminal Appeal is dismissed.

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**21.03.2022**

Speaking / Non-speaking order

Index : Yes / No

Internet : Yes

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To

1.The Additional Sessions Judge,  
Dharmapuri, Dharmapuri District.

2.The Inspector of Police,  
A.Pallipatti Police Station,  
Dharmapuri District.

3.The Public Prosecutor,  
High Court, Madras.



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CrI.A.No.495 of 2019



**R.PONGIAPPAN, J.**

sri

**CrI.A.No.495 of 2019**

**21.03.2022**