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NC: 2025:KHC:25507
CRL.A No. 265 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL APPEAL NO. 265 OF 2012 (C)

R

BETWEEN:

1. SMT. LOLAMMA
W/O KADHREGOWDA
AGED ABOUT 56 YEARS
R/O KADAKOLA VILLAGE
MYSORE TALUK AND DISTRICT
2. CHANDRA
S/O KADHREGOWDA
AGED ABOUT 27 YEARS
OCC: AGRICULTURIST
R/O KADAKOLA VILLAGE
MYSORE TALUKA AND DISTRICT
3. RAVI
S/O KADHREGOWDA
AGED ABOUT 36 YEARS
OCC: AGRICULTURE
R/O KADAKOLA VILLAGE
MYSORE TALUK AND DISTRICT

...APPELLANTS

(BY SRI. PARASHURAM AJJAMPUR LAKSHMAN, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY MYSORE SOUTH POLICE

Digitally signed
by ANJALI M
Location: High
Court of
Karnataka



2. ANAND
S/O GURURAJ
MAJOR
R/O KADAKOLA VILLAGE
VARUNA HOBLI
MYSURU TALUK AND DISTRICT 570 010

...RESPONDENTS

(BY SRI. M.R. PATIL, HCGP FOR R1;
R2-SERVED AND UNREPRESENTED)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET-ASIDE CONVICTION AND SENTENCE DATED 08/10.2.2012 PASSED BY THE VI - ADDL. SESSIONS AND SPECIAL JUDGE UNDER SC AND ST (POA) ACT,1989, MYSORE IN SPL. CASE NO.41/2011 - CONVICTING THE APPELLANTS/ACCUSED NOS.1 TO 3 FOR THE OFFENCE P/U/S.323, 324, 354, 306 R/W. 34 OF IPC AND UNDER SECTION 3(1)(x) OF SC AND ST (POA) ACT, 1989

THIS CRIMINAL APPEAL HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR



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(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

Appellant Nos.1 to 3 being aggrieved by the judgment of conviction dated 08.02.2012 and order on sentence dated 10.02.2012 passed in Special Case No.41/2011 by the VI Additional District and Sessions Judge and Special Judge under SC & ST(POA) Act 1989, Mysore, has preferred this appeal.

2. The parties to this appeal are referred to as per their rank before the Trial Court for convenience.

Factual matrix:

3. The accused Nos.1 to 3 were charge-sheeted by the Dy.S.P., Mysore Rural Sub-division for the offences punishable under Sections 323, 324, 354, 306 read with Section 34 of IPC and under Section 3(1)(x) and 3(1)(xi) of SC & ST(POA) Act, 1989, alleging that, on 07.04.2011 at about 01.00 p.m., at Kadakola Village, all these three accused in furtherance of their common intention to



assault deceased Anitha, accused No. 1 assaulted her with hand, while she was drawing water from the tap and accused No. 2 assaulted her with hand stating as to why she assaulted his mother and accused No. 3 assaulted PW2 when he went to rescue deceased Anitha, with hand and caused simple injuries. So also, this accused No. 3 assaulted deceased Anitha with a brick piece on her head and caused her simple injuries. All the accused persons abused deceased Anitha knowingly fully well that Anitha belongs to the 'Soliga' community and tried to outrage the modesty of deceased Anitha and all these accused persons in furtherance of their common intention, abetted deceased Anitha to commit suicide, stating, that she should better die and as a result of the same, Anitha went inside the house and closed the door and poured kerosene on herself and set her ablaze and subsequently she died because of these burn injuries. With these allegations, a complaint came to be filed as per Ex. P1 by the complainant, father of the deceased by name Ananda on



07.04.2011 itself, which was registered in Crime No. 131/2011 and the criminal law was set in motion.

4. The Investigation Officer, on completion of investigation, filed the charge sheet against the accused persons for the aforesaid offences. The Jurisdictional Magistrate took the cognizance of the offence, as the offence is trialed by the Sessions Court, the case stood committed to the Sessions Court for trial.

5. The learned Trial Court framed the charges against the accused for the aforesaid offences for which all the accused persons pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, prosecution in all examined 13 witnesses from PW1 to PW13 and got marked Exs.P1 to P21 with respective signatures and also M.O. Nos. 1 to 5 and closed prosecution evidence. On closure of the prosecution evidence, all the accused persons were questioned under Section 313 of Cr.P.C so



as to enable them to answer the incriminating circumstances appearing in the evidence of the prosecution. They denied their complicity in the crime and did not lead any defence evidence on their behalf.

7. On hearing the arguments and on evaluation of the evidence, the learned Trial Court found the accused guilty of committing the offences under Sections 323, 324, 354, 306 read with Section 34 of IPC and 3(1)(xi) of SC & ST(POA) Act, 1989 and acquitted the accused persons for the offences under 3(1)(x) of SC & ST(POA) Act, 1989 and sentenced accused Nos. 1 to 3 as under:

"Accused No.1 to 3 are directed to pay a fine of Rs.500/- each for the offence punishable under Section 323 r/w Section 34 of IPC or in default, they should undergo Simple Imprisonment for one month.

Accused No.1 to 3 are directed to pay a fine of Rs.1,000/- each for the offence punishable under Section 324 r/w Section of IPC or in default, they should undergo Simple Imprisonment for two months.

Accused No.1 to 3 are directed to pay a fine of Rs.1,000/- each for the offence punishable under Section 354 r/w Section of IPC or in default, they should undergo Simple Imprisonment for two months.

Accused No.1 to 3 are directed to undergo Simple Imprisonment for two years and pay a fine of



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Rs.1,000/- each for the offence punishable under Section 306 F/W Section 34 of IPC and in default of payment of fine, they are directed to undergo Simple Imprisonment for two months.

Accused No.1 to 3 are directed to undergo Simple Imprisonment for six months and pay fine of Rs.500/- each for the offence punishable under Section 3(1)(xi) of SC&ST (POA) Act, 1989 and in default of payment of fine, they are directed to undergo Simple Imprisonment for 15 days.

The sentences awarded shall consecutively. run concurrently."

8. Being aggrieved by the acquittal of the accused under the provisions of the SC & ST(POA) Act, 1989, the State has not preferred any appeal. Thus, the order of acquittal of the accused for the aforesaid offences has attained finality.

9. Sri. Parashuram Ajjampura Lakshman, learned counsel for the appellants/accused persons would submit before the Court that, in this case except the evidence of PW.2 there is no other evidence placed on record by the prosecution. The other eye witnesses so stated in the complaint as well as in the statements of the witnesses have been turned hostile.



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10. He submits that, only basing the evidence of PW.2, the learned Trial Court has committed a serious error in convicting the appellants. PW.2 being the fiancé of the deceased was highly interested witness and his evidence is full of contradictions and omissions. The prosecution has suppressed the material evidence and has not led any proper evidence to prove the guilt of the accused. The learned Trial Court ought to have acquitted the accused persons. There is delay in filing the complaint, it is not properly considered. The Trial Court has committed serious error in coming to the conclusion that the accused are guilty of the offences under Section 306 of IPC. No ingredients of the offence have been made out by the prosecution. PW2 a sole eye witness is an interested witness, who was engaged with deceased Anitha and his evidence is full of omissions and material contradictions. These factors have not been properly considered by the Trial Court.



11. It is further submitted by the learned counsel for the appellants that, there was an ill-will between the appellants and the complainant family and taking advantage of the same, the appellants have been falsely prosecuted by the complainant. There is no evidence that the appellants have encouraged or abetted Anitha to commit suicide.

12. In addition to the grounds urged in the appeal memo and also pointing out the contradictions and omissions in the evidence brought on record by the prosecution, he submits that, the Trial Court has committed an error in passing the impugned judgment. In support of his submission, he relied upon the following judgments:

"1. Judgment of the Hon'ble Supreme Court of India dated 29.01.2024 in SLP (Crl.) No. 6367 of 2023 - Dashrath Sahu v. State of Chhattisgarh.

2. Prakash & Ors. v. State of Maharashtra & Anr. 2024 SCC Online SC 3835.

3. Vegulla Leela Krishna v. State of Andhra Pradesh 2022 SCC Online AP 393.



4. Awadhesh & Anr. State of Madhya Pradesh (1998) 2 SCC 557.

5. Takhaji Hiraji v. Thakore Kubersing Chamansing (2001) 6 SCC 145."

13. As against this submission, Sri. M.R.Patil, learned High Court Government Pleader, with all vehemence submits that, there is no rule as such that number of witnesses has to support the case of prosecution. As PW2 sole eye witness has supported the case of prosecution and though there are some minor contradictions and omissions in his evidence, they will not go to the root of the case to disbelieve the version of prosecution. He further submits that, the deceased has committed suicide is an admitted fact. These accused persons are innocent persons and have not committed any offence. The so-called delay is explained by the complainant and PW2 in their evidence.

14. Learned HCGP submits that, the Trial Court has considered the evidence of all the witnesses and believed the evidence of PW.2 - the sole eyewitness and has rightly



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convicted the accused persons for the aforesaid offences. Relying upon the observations and findings of the learned Trial Court, he submits that there is no merit in this appeal and appeal is to be rejected.

15. Having heard the arguments of learned counsel for the appellants as well as learned HCGP and on perusal of the material placed on record, the only point that arise for consideration is:

“Whether the Trial Court has committed any factual or legal error in convicting and sentencing accused persons?”

16. So far as death of the deceased, suffered suicidal death is concerned, it is an admitted fact between both the sides. To prove the said fact the prosecution has relied upon Ex. P1, the complaint averments. It shows that deceased Anitha suffered a suicidal death by setting her ablaze, by pouring kerosene on her. Ex.P2 is the spot panchanama to show that where exactly the said offence has taken place. Ex.P6 is the inquest panchanama,



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wherein the number of burn injuries sustained by the deceased has been mentioned along with a photograph. Exs.P3 to P5 are the photographs of the deceased, who had suffered the burn injuries on her person. Coupled with that, Ex.P9 is post-mortem report; it shows that the deceased has suffered superficial deep burnt injuries on her person over head, neck, face, foot and chest etc. It is stated in the PM report that, deceased has suffered 98-99% of burn injuries on her person. The cause of death is due to shock as a result of burn injuries. These contents are not denied by the defence.

17. Further, PW1 - father of the deceased, PW2 - the fiancé of the deceased, the so called eye witness, PW4 - The mother of the deceased have spoken before the Court in their respective evidence that, deceased died because of burn injuries on her person. There is no effective cross-examination to that effect by the defence. When the suicidal death of the deceased Anitha is not disputed because of pouring kerosene on her and the



documentary evidence supports the same, the prosecution is able to establish that deceased Anitha suffered suicidal death. Merely because the prosecution is able to establish the suicidal death of the deceased that does not mean that because of abetment to commit suicide she died.

18. To substantiate the said fact, prosecution relies upon the oral evidence adduced by it. Amongst them, PW1, the complainant by name Ananda, father of the deceased. According to his evidence, there was a talk with regard to the performance of marriage of deceased Anitha with PW2. Accused persons are the neighbors, so also CW10 and CW11. He belongs to Soliga Caste. Accused Nos. 2 and 3 are the children of accused No. 1. They belong to Ediga Caste.

19. He deposes before the Court that, on 07.04.2011 himself and his wife went to Yennehole for the purpose of cleaning the clothes, as the Ugadi festival was approaching. At that time his daughter Anitha and PW2



were in the house and PW2 came from Hunasuru. They went to Yennehole at about 10 a.m. on that day. He deposes that, in between 02.00 and 2.15 p.m on that day, PW.2 was bombarding himself, came to the said Yennehole and told the story of said death of the deceased Anitha. He has stated that, there was a quarrel in between the accused persons and deceased with regard to the taking of the tap water. At about 11.30 a.m., on that day, when deceased was taking the water, he told that accused Nos. 1 to 3 came there and did a galata with the deceased. Accused No. 1 removed the pot of the deceased and when she went to take the water, there was a quarrel. Even accused No. 1 pushed deceased from the said place and when he was enquired, forcibly she was pushed by accused No. 1. Even accused No. 2 - Chandra assaulted Anitha and accused No. 3 came there and assaulted her. When the women folk gathered went to rescue, the accused abused them. Thereafter, the deceased Anitha



went inside the house and poured kerosene on her and set her ablaze.

20. On narration of these facts by PW2, this PW1 rushed to the house and noticed the dead body and thereafter went to the police station and lodged a complaint as per Ex.P1. On the same day itself, according to this evidence, police came there at 04.30 p.m., conducted the inquest panchanama, so also spot panchanama as per Ex. P2. It is his allegation that, because of the abetment to commit suicide by the deceased by these accused persons she died and suffered a suicidal death. He says that after post-mortem the dead body was given to him and he performed the last rights of the deceased.

21. On reading the entire evidence of PW1 as spoken to in examination-in-chief, he is a hearsay witness. He has narrated the story of quarrel and death of the deceased as heard from PW2. That means PW2 is the



person who has conveyed all this story of death of the deceased in the manner he has seen according to his evidence. As PW1 is a hearsay witness, unless there is corroboration to the evidence of this PW1, the evidence of this PW1 pale into insignificance.

22. This PW1 has been cross-examined by the defence at length. According to the cross-examination of this PW1, when PW2 - Srinivasa informed about the death of the deceased in between 2.00 and 2.15 p.m., he came to know about the said fact. He states that, he has not stated before the police that he got knowledge about the death of the deceased at 01.30 p.m. on that day. He returned to the house at 03.00 p.m. on that day and enquired Siddappa, Guddappa, Shivanagamma, Tahasin and Puttama. But the names of these persons are not stated in the complaint. There is no difficulty for him to state the names of these persons with whom he enquired about the death of the deceased. According to his evidence, at 03.30 p.m. on that day he left for Kadakola



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Police Station and initially he went to Kadakola Police Station and thereafter to the South Police Station, Mysore. He went to Mysore South Police Station at 03.45 p.m along with CW2 and CW6. According to him, Siddappa wrote the complaint as per his saying. He has not discussed about the contents of the complaint with Siddappa. Further he states that, he met PSI there and lodged a complaint at 04.30 p.m. But the complaint averment shows that, it was filed on 07.04.2011 and the time is not mentioned.

23. In the further cross-examination, he is categorical that it was PW2 – Srinivasa, who informed about the quarrel in between the deceased and the accused persons. Though the complaint is silent about the assault of the deceased by holding her hairs, but PW1 states that accused No.1 by catching hold her hairs assaulted the deceased. Even he has not stated in his complaint that, one Shivamma, Puttamma and Shivanagamma came to rescue his daughter. It was PW2



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informed that accused abused the deceased with filthy language so as to insult her. Thus, the entire evidence of PW1 is full of contradictions and omissions and there is so much of improvement in his evidence. As he is a hearsay witness, much value cannot be attached to the evidence of this PW1.

24. It is brought on record that in front of the house of accused No. 1, there is a tap and, on that day, there was no flow of tap water in the tap belonging to the accused No. 1. Therefore, they came to the tap of the complainant. For the first time this PW1 has spoken about this fact in his cross-examination. A thorough and lengthy cross-examination directed to this PW1 and he is consistent that as per the say of PW2 only he is deposing before the Court. He denied a suggestion that, because of some ill-will between his family and accused family a false complaint has been filed. He has denied all the suggestions so directed to him. According to him, the incident took place at 01.00 p.m. on that day. But the



complaint averment shows that, the incident took place at 11.30 a.m. on that day. He states that, near the said tap where the incident took place there was a blood stain on the brick at its corner. But this fact is not stated by any of the witnesses in their respective evidence. As evidence of PW1 is hearsay evidence, unless there is corroborative evidence, much value cannot be attached to the evidence of this PW1.

25. PW4 is none else than the wife of the PW1. She too is the hearsay witness and she rushed along with PW1 to the spot and noticed the dead body of her daughter. According to PW4's evidence, it was PW2 informed them about the incident. She too has been cross-examined at length and there are so many contradictions, omissions brought on record in the cross-examination.

26. The defence version is that, as this PW1 and PW2 used to do some illegal activities and there are so many cases foisted against them, therefore a false case is



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been registered against these accused persons by the complainant. But the suggestions are denied. This PW4 states that, there was a galata in between the family of the complainant and accused persons with regard to the dust to be sent out. Thus, there was some animosity as per the evidence of PW4 in between family of the complainant and accused persons. In view of the contradictions, omissions and PW4 being the hearsay witness, unless there is some corroborative evidence, the evidence of PW4 also becomes formal in nature and cannot be given any weightage.

27. Then remains the evidence of PW.2, the sole eyewitness. This PW.2 - Srinivasa has come before the Trial Court and deposed that, he too belongs to Soliga Caste. On 06.04.2011 in the morning hours, he went to the house of PW.1 for the purpose of marriage talks. On 07.04.2011 at about 8.00 a.m., PW.1 and PW.4 went to Yennehole for the purpose of cleaning the clothes. But PWs.1 and 4 states that, they went to Yennehole at 10



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a.m. At that time, himself and deceased were only in the house. At about 1 p.m. deceased Anitha went for taking the water from the tap. At that time, accused No. 1 came there and removed the pot of the deceased and started quarreling and assaulted the deceased by her hands. By that time accused No. 2, who was behind the house came and abused the deceased in a filthy language and took out the brick piece and assaulted on her forehead. Even accused No. 3 assaulted this PW.2 on his back and cheek. It deposed by PW2 that, accused No. 1 and accused No. 2 told the deceased to die by hanging herself. Accused No. 3 also assaulted the deceased. They dragged her. Thereafter the deceased went inside and closed the door. According to the evidence of PW1 and PW4, whatever PW2 has seen, he narrated to them. But PW2 speaks different evidence in his examination-in-chief.

28. Further he deposed that, after going inside the house and after closing the door, he noticed a smoke coming from the window. Thereafter Siddappa came there



and opened the door. They noticed that, deceased Anitha fell near the door. Because of burn injuries she died. A cloth worn by the deceased were burnt. It is the evidence of PW2 that, when the quarrel took place in between deceased and the accused persons, one Shivanagakka, Chandrakka, Sundari were present and they tried to rescue. But these witnesses have been turned hostile.

29. It is the further evidence of PW2 that, after filing the complaint by PW1, police came to the spot and noticed the dead body of the deceased who suffered the burn injuries. There the police conducted the inquest panchanama, spot panchanama as per Ex.P2 and P7 respectively. According to the evidence of this PW2, because of hanging she died and for that reason the accused are responsible. Altogether different evidence has been spoken to in the examination-in-chief at page-3. This PW2 is thoroughly cross-examined by the defence.



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30. According to his cross-examination, one day prior to the incident he came to Kadakola Village. He came to know about the names of the accused persons as they attended the engagement ceremony in between himself and the deceased. There were talks of marriage about 4 months back prior to the said incident. He states that, the Yennehole is about 1 kilometer away from the house of PW1. According to him, after the incident he went running to Yennehole to inform PW1. He took about half an hour to reach the said Yennehole. According to him, police station is very much near to the house of PW1. When the incident took place, it was about 01.00 p.m. on that day. He informed the said fact to PW1 at about 01.30 p.m. According to him, he has not stated to PW1 that, the incident took place at about 11 a.m. on that day. He did not inform the said fact to PW1 and PW4 in between 02.00 and 02.15 p.m. According to him, he informed PW1 that, the incident took place at about 01.00 p.m. on that day.



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Because of fear he did not go to the police station on that day.

31. Further he states that, accused No. 2 assaulted deceased by using the brick. According to him by standing 3-4 feet away, accused No. 2 assaulted deceased. When accused No. 2 assaulted deceased, this PW2 was standing by the side of the deceased. He did not try to rescue her. There was no time at all. For the first time he states that, because of assault by using the brick by the accused No. 2 on the forehead of the deceased there was swelling and there was no bleeding at all. For the first time without any assertions in the complaint or in his statement, he has stated so many things in his cross-examination. By using the same brick accused No. 3 assaulted deceased and to that effect he has stated before the police according to his evidence. He has not sustained about any bleeding injuries on her back. When he enquired that, why they are assaulting, at that time, accused No. 3 assaulted him by using his hands. He has stated about the assault on him



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to the police. He has not kept any special mark to identify M.O. No. 1. According to him, himself and PW4 dictated the contents of the complaint at Kadakola police station. But PW1 states that, one Siddappa wrote the complaint. PW1 put the signature on the complaint. According to him, before his engagement with the deceased, deceased was studying at 10th Standard and when incident took place she was studying in first year PUC. This fact is not informed to the police according to him. It is the defence of the accused that, one Rajesh was the person who used to visit the house of the complainant. There was a talk of a marriage of a deceased with Rajesh and because of some reasons it was dropped, etc. But the suggestions so directed to PW1, PW2 and PW4 have been denied by these witnesses. This PW2 is quite ignorant about the contents of the panchanama, which was written in his presence.

32. On scrupulous reading of the entire cross-examination so directed to him and compared to the evidence of PW1 and PW4, the evidence of this PW2 is full



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of contradictions, omissions and discrepancies. The very time of the incident is differently spoken by this PW2 than PW1 and PW4. Such inconsistent evidence if led by the prosecution, it creates some doubt with regard to the very genesis of the case of the prosecution.

33. PW3 - Sahadeva is the inquest pancha, who was present when the inquest panchanama was conducted by the police on 07.04.2011 in between 04.00 p.m and 06.00 p.m on that day and police have recovered MO Nos. 2 to 5. This fact is not denied by the defence. No effective cross-examination is directed to him. He was also present when the panchanama Ex.P8 was written but he does not know the contents of Ex.P8. To the extent of his presence when the inquest panchanama was conducted, the evidence of PW3 has to be accepted. Accordingly, it is accepted.

34. PW5 - Shivappa Javaranyak, an autorickshaw driver, is a hearsay witness and went to the scene of



offence on getting information with regard to the death of the deceased because of burn injuries. So much value cannot be attached to the evidence of this PW5 that, he has not witnessed the said incident in the manner stated by him. He too has been cross-examined by the defence. According to him, police came to the spot at about 04.00 p.m. on that day and he noticed the dead body of the deceased in a hall and she died because of burn injuries. Even he does not know that, who has showed the scene of offence to the police. Thus, the evidence of PW5 would not help the case of the prosecution in any manner so as to connect the accused persons in the commission of the crime.

35. PW6 - Nagaraju is the Pancha to Ex.P7 in whose presence the scene of panchanama was conducted. Though he has been cross-examined by the defence, but he is consistent that, he was very much present when the scene of offence panchanama was conducted. To that extent, I believe the evidence of this PW6.



36. PW7 - Dr. Ravi, the Assistant Professor of Mysore Medical College, conducted the post-mortem on the dead body of the deceased Anitha. He has noticed cold rigors on the dead body. Noticed so many injuries on her head, neck, face, chest, behind the chest, back, stomach, both the hands, both the legs and private part and even her hairs were also burned. She had sustained 98 - 99% burn injuries as per the PM report and accordingly has issued Ex.P9 the P.M. report. There is no effective cross-examination directed to this witness by the defence. When suicidal death of the deceased is admitted by the defence and when she is died because of burn injuries, the evidence of PW.7 has to be accepted to the extent that he conducted the post-mortem on the dead body of the deceased and noticed the burn injuries on her person as noticed in Ex.P9.

37. PW8 - Kumudha M.C. was the woman police constable who took the FIR to Court and reached the same to the Judicial Magistrate. She identified Ex.P1 -



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complaint, Ex.P10 - the First Information Report. No cross-examination is directed to this PW.8 by the defence. That means defence admits the evidence of PW8 in material particulars.

38. PW9 - C.D. Jagadish, the then A.C.P, N.R.Sub-division, Mysore, has conducted the inquest panchanama, recorded the statement of the witnesses, spot panchanama was conducted by him. As a Investigation Officer he has recovered the MO's, so also arrested the accused persons etc. He has spoken before the Court about filing of a charge sheet against the accused persons and collecting of FSL report. He has been thoroughly cross-examined by the defence, but nothing worth is elicited. In all criminal cases, investigation officers are the supervisors of the investigation. Unless there is corroborative evidence, the evidence of these IO's becomes formal in nature.



39. PW10 - Jayamma is the so-called eye witness of the said incident, but she has completely turned hostile. Though she has been cross-examined at length, but nothing worth is elicited. Therefore, her evidence would not help the case of prosecution.

40. PW11 - M. Sunitha is the spot pancha to Ex. P7 and also inquest pancha. In her presence the MOs are seized and panchanama was conducted. To that extent the evidence of this PW11 is to be accepted.

41. PW12 - H.P. Venkateshaiah, the then PSI, who has received the complaint, registered the same in Crime No. 131/2011 and set the criminal law in motion. According to him, at about 03.00 p.m., the complainant appeared before him in the police station and lodged a written complaint as per Ex.P1. He prepared the FIR as per Ex.P10 and sent the same to the Court. Thereafter, at about 07.00 p.m., he arrested accused No. 1 and produced him before PW9. At that time, WPC No. 20 was



on duty. To the extent of registering the crime and setting criminal law in motion, his evidence is to be accepted.

42. PW.13 - Surayabhanu is an eyewitness of said incident but has been turned hostile. Nothing worth is elicited from the mouth of this witness so as to disbelieve her version given in the examination-in-chief.

43. In a case of present nature, it is bounden duty of the prosecution to prove the ingredients of the offences. On going through the FIR and the evidence of the complainant as well as evidence of PW2, the case as projected in the FIR is that, because of the sudden quarrel in between the accused person and the deceased, they asked her to go and die and because of the same she went inside and poured the kerosene on her and set her ablaze. As stated supra, in an offence of present nature it must be proved by the prosecution that, it is accused and accused only have abetted to commit suicide. Even no immediate



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threat is sufficient. Abetment of suicide is defined under Section 306 of IPC and the Section reads as under:

"306. Abetment of suicide.—

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

44. Section 306 of IPC has to be read along with Section 107 of the Indian Penal Code which speaks of abetment of a thing. It reads 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



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cause or procure, a thing to be done, is said to instigate the doing of that thing."

45. Thus, when Section 306 read with 107 of IPC are attributed, time and again the Hon'ble Apex Court has interpreted these Sections that, to attract the offence of abetment to commit suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of a suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. That means such instigation or incitement should reveal a clear *mens rea* to abet the commission of a suicide and should put the victim in such a position that, she would have no other option but to commit suicide. In this case it is not at all made out about the proximity to the commission of the suicide because of direct or indirect acts of instigation by the accused persons.

46. The learned counsel for the accused/appellants places reliance on the Judgment of the Apex Court in **PRAKASH AND OTHERS V. STATE OF MAHARASHTRA**



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AND ANOTHERS reported in **2024 SCC Online SC 3835**.

The Hon'ble Apex Court in para-16 of the Judgment have observed as under:

"16. The word in the case of S.S. Chheena v. Vijay Kumar Mahajan, had an occasion to consider the scope of Section 306 of the IPC and the ingredients which are essential for abetment, as set out in Section 107 of the IPC. It observed as follows:

16. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself."

47. These observations so made by the Hon'ble Apex Court fit in with regard to the allegations made against the accused persons. As stated *supra*, it is a well established legal principle that, the presence of a clear *mens rea* that is the intention to abide by the Act is essential to prove the offence under Section 306 of IPC. Mere harassment by itself is not sufficient to find an



accused guilty of abetting suicide. In this case there was a quarrel with regard to the taking of the tap water. That means the prosecution must demonstrate an active or direct action by the accused that led the deceased to take her own life. No such evidence is placed on record by the prosecution. The element of *mens rea* cannot simply be presumed or inferred, it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.

48. For the purpose of finding out that, these accused persons really abetted the commission of suicide by the deceased, the consideration would be, the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by the Hon'ble Apex Court in various in catena Judgments, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the person who committed suicide had been



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hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. If these principles are applied to the present facts of the case, as observed above, the very instigation or provoking of the deceased to commit suicide is missing in this case. Except for the quarrel between deceased and accused persons, no such incident has taken place. Except for the evidence of PW2 there is no evidence at all. The other women so named in the examination-in-chief of PW1, have not supported the case of prosecution.

49. Considering the charge framed and the commission of her offence based upon the sole evidence of PW2, it cannot be stated that he has spoken truth before the Court. It is the established principle of law that a word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the Court that a victim who



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committed suicide was hypersensitive to ordinary petulance, it cannot be stated that such an offence is complete. It is stated by PW2 that, it was accused No. 1 who told the deceased to go and die by hanging herself. Even if we accept the prosecution's story that these appellants did tell the deceased to go and die, that itself does not constitute the ingredient of instigation.

50. The word instigate denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. That means presence of *mens rea* is necessary concomitant of instigation, that is missing in this case. The prosecution story if believed shows that, there was a quarrel in between the deceased and accused persons to take the water. Deceased raised voice and started quarrelling. The very ingredients of the offence committed by the accused persons are missing in this case. The principles laid down in the Judgments, relied by the learned counsel for the accused can very well be made applicable to the present facts of the case. That means as



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can be seen from the facts of the case, *prima facie* there is absolutely no allegation that, the accused persons really have abetted the deceased to commit suicide. It is well settled that, in order to constitute an offence punishable under Section 306 of IPC, the necessary ingredients contemplated under Section 107 of IPC stated above regarding intentional instigation said to have been given by the accused persons to the deceased to commit suicide or intentional aid said to have been given by the accused persons to the deceased to commit suicide shall be established.

51. In this case, there is absolutely no allegation as can be seen from the facts of the prosecution case that, it was accused have instigated or aided the deceased to commit suicide. Therefore, as the ingredients of offence are missing in this case, except the evidence of PW2, there is no other evidence placed on record to prove that, really these accused persons are involved in the commission of the crime in the manner stated by this PW2. Therefore, in



the absence of acceptable evidence led by the prosecution, there arises a doubt in the case of prosecution. The prosecution evidence is full of contradictions, omissions and discrepancies and especially evidence of PW2 is quite contradictory to the evidence of PW1 and PW4.

52. PW1 and PW4 are the hearsay witnesses. Only based upon the sole evidence of PW2, it cannot be stated that the prosecution is able to prove the guilt of the accused. When three women were very much present named in the examination-in-chief of PW1 and when two of them have been turned hostile, unless there is corroboration, the evidence of PW2 cannot be accepted as truthful evidence. If all these factual features are put together, it cannot be stated that, the prosecution is able to establish the guilt of the accused beyond all reasonable doubt. Therefore, a doubt arises in the case of the prosecution and that benefit of doubt has to be extended to the accused.



53. Accordingly, the above point is answered against the prosecution and in favour of the appellants. In view of the discussions made above, the appeal deserves to be allowed and accused Nos. 1 to 3 being the appellants are entitled for acquittal by giving the benefit of doubt.

54. Resultantly, I pass the following:

ORDER

- (i) The Criminal Appeal is ***allowed***.
- (ii) The Judgment of conviction dated 08.02.2012 and order of sentence dated 10.02.2012 passed in Special Case No. 41/2011 by the VI Additional District and Sessions Judge and Special Judge, Mysuru, is hereby set aside.
- (iii) Consequentially, accused no. 1 to 3 being the appellants are acquitted of the charges under Section 323, 324, 354, 306 read with Section 34 of IPC and Section 3(1)(xi) of SC&ST (POA) Act, 1989, by giving benefit of doubt.



- (iv) Their bail bond stands cancelled and they set at liberty.
- (v) Send back the Trial Court records along with copy of this judgment forthwith.

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

AM
List No.: 2 Sl No.: 2