

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.572 of 2016

1. Kayar Nisha
2. Rafia

.. Appellants

Versus

State by Inspector of Police,
B-14, Kuniamuthur Police Station,
Kuniamuthur, Coimbatore.
(in Crime No.733/2011)

.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow this Criminal Appeal and to set aside the judgment of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore in S.C.No.28 of 2012, dated 21.07.2016.

For Appellants : Mr.J.Franklin

For Respondent : Ms.J.R.Archana,
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal challenges the judgment dated 21.07.2016 in S.C.No.28 of 2012 on the record of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore. By the judgment, both appellants were found guilty of an offence punishable under Section 305 of the Indian Penal Code and were sentenced to three years of rigorous imprisonment, a fine of Rs.2,000/- each, and in default, to three months of simple imprisonment.

2. The brief facts leading to the filing of this appeal are that on 18.08.2011, at about 14:00 hours, upon receiving information from the C.M.C.H. Hospital, *P.W.12, Mahalingam*, who is the Special Sub-Inspector of Police at Kuniamuthur Police Station, proceeded to the hospital where the victim in this case, a minor girl about 15 years old at that time and studying in X standard, gave a statement indicating that she resides at a specific address with her parents and younger brother, who is studying in VII standard. She stated that she fell in love with *Saddam Hussain*, aged about 19 years, who is a neighbour. The affair became known to *Saddam Hussain's* relatives. His parents admonished him for his actions, but he was determined to continue the relationship and marry the victim.

3. At that point, the parents of the said *Saddam Hussain* also agreed to marry the victim to him. Three months later, the parents of the said *Sadam Hussain* also visited the victim's house, and arrangements for the marriage between the victim and *Sadam Hussain* were being made. Under these circumstances, the appellants/accused, who are the aunts of *Saddam Hussain*, disliked the marriage plans. On 18.08.2011, at about 9:00 A.M, when the victim's mother had gone out, they came to the doorstep of the victim's house and shouted at her about her relationship with *Saddam Hussain*. They verbally abused her with sexually coloured remarks, threatened her about the relationship, and specifically scolded her, saying that she should commit suicide.

4. Unable to bear how they scolded her, the girl ran inside the house, poured kerosene, and set herself on fire. Later, others came to her rescue and admitted her to the hospital. Based on her statement, a case was registered as Crime No.733 of 2011, originally under Section 309 of the Indian Penal Code, and investigations began. Subsequently, the victim died of her burn injuries on 02.09.2011. The case was then altered to one under Section 305 of the Indian Penal Code, and *P.W.14* and thereafter, *P.W.16*

completed the investigation. *P.W.16* filed the final report, which was taken on file as *P.R.C.No.36 of 2011* by the learned Judicial Magistrate No.VII, Coimbatore. After the accused appeared, the case was committed and taken on file by the Trial Court as *S.C.No.28 of 2012*.

5. Thereafter, summons were issued and the copies were furnished. The Trial Court framed a charge under Section 305 of the Indian Penal Code against both the accused. Upon being explained and questioned, the accused denied the charge and stood trial. The prosecution, to prove the charge, examined one *Abuthahir*, the father of the victim child, as *P.W.1*, who deposed as if the victim was studying in the IX standard and the boy's parents and brother had come to their house demanding that his daughter be given in marriage to the said *Saddam Hussain*. However, the accused did not like the same and was enraged by the same; they came in front of his house and abused the victim girl, and the girl committed suicide. One *Jennath Nisha*, the mother of the victim child, was examined as *P.W.2*, who also deposed to the same effect. One *Panchavarnam*, who is residing near the house of the victim child and was the eye witness to the incident, was examined as *P.W.3*. She categorically deposed about the appellants/accused abusing the victim child with sexually coloured unparliamentary words and

admonishing the child for having a love affair with the said *Saddam Hussain* and intending to get married to him and threatening the girl. The extremely harsh words that are spoken and the threat that was made, even threatening the victim child of disrobing her and causing injuries in her private parts, etc., are all deposed in detail by the said eyewitness. *P.W.4*, one *Sait*, is the friend of *P.W.1*, who is a hearsay witness, who heard about the incident. One *Kaja* was examined as *P.W.5*, who was also an eyewitness, who saw the appellants/accused threatening and abusing the minor child.

6. *Kaja Hussain* was examined as *P.W.6*, who was also present during the incident and spoke about the harsh language used by the appellants in abusing the victim child. *Saddam Hussain*, who came to know about the incident, who is the person said to have been in an affair with the victim's child, was examined as *P.W.7*. One *Murugan*, who was the witness during the inquest and who was present during the confession, was examined as *P.W.8*. One *Abthullah*, who also witnessed the incident of the appellants abusing the victim girl, was examined as *P.W.9*. The Headmaster of the school in which the victim girl was studying and who produced the birth details, was examined as *P.W.10*. The Doctor who treated the victim, who spoke about the treatment and about the victim succumbing to the burn

injuries, was examined as *P.W.11*. One *Mahalingam*, who registered as the First Information Report, was examined as *P.W.12*. The Doctor who conducted postmortem, was examined as *P.W.13*. One *Samiyathal*, who initially continued the investigation, was examined as *P.W.14*. The learned Magistrate, who witnessed recording of the Dying Declaration of the victim was examined as *P.W.15*. One *Karthikeyan*, who completed the investigation and laid the final report, was examined as *P.W.16*.

7. On behalf of the prosecution, the following documents were also marked as ***Exs.P-1 to P-14:-***

1	<i>Ex.P-1</i>	18.08.2011	Observation Mahazar
2	<i>Ex.P-2</i>	18.08.2011	Seizer Mahazar
3	<i>Ex.P-3</i>	03.09.2011	Signature in the confession statement
4	<i>Ex.P-4</i>	26.06.1996	Certificate
5	<i>Ex.P-5</i>	02.09.2011	Ellea Hospital Certificate
6	<i>Ex.P-6</i>	18.08.2011	Hospital Intimation
7	<i>Ex.P-7</i>	18.08.2011	Complainant
8	<i>Ex.P-8</i>	18.08.2011	FIR
9	<i>Ex.P-9</i>	02.09.2011	Postmortem Certificate
10	<i>Ex.P-10</i>	02.09.2011	Final Report
11	<i>Ex.P-11</i>	18.08.2011	Rough Sketch
12	<i>Ex.P-12</i>	18.08.2011	Dying Declaration
13	Ex.P13	02.09.2011	Alteration Report
14	Ex.P14	02.09.2011	Inquest Report

The plastic can, used for storing kerosene, the school uniform, which

was partly burnt and the match box, were all collected and were collectively marked as **M.O.1**.

8. Upon questioning the accused regarding the evidence presented by the prosecution under Section 313 of the Code of Criminal Procedure, the accused denied it as false. Thereafter, one *Mathina* was examined as **D.W.1**. According to her, she also resides in the same vicinity, and no such incident took place. It is her case that both the accused, the mother of the victim, and herself are all in the same close-knit group, and if any incident had occurred, it would have come to her notice. One *Suthir Babu* was examined as **D.W.2**, who deposed that he also resides nearby. On the day of the occurrence, he was at his house with his children and saw people talking in the victim's house. He stated that there was no quarrel at that time. It was also said that the victim child was admonished by her mother, leading her to attempt to commit suicide, and she was then taken in an auto to the hospital.

9. Thereafter, the Trial Court proceeded to hear the learned Additional Public Prosecutor and the learned Counsel for the appellants/accused. The Trial Court, upon considering the Dying Declaration, which was duly recorded in the presence of *P.W.15*, and the direct evidence of *P.W.3*, *P.W.5*,

P.W.6, and *P.W.9*, and corroborated by *P.W.1* and *P.W.2*, concluded that the prosecution proved the incident beyond any reasonable doubt. Since very harsh words were spoken, also sexually coloured words, implying the victim child and her mother as sex workers and wielding grave threats in a manner that encouraged the child to commit suicide immediately, the Trial Court found that the charge under Section 305 of the Indian Penal Code was established. Accordingly, the Court convicted the appellants/accused and imposed a sentence of three years' rigorous imprisonment along with a fine of Rs.2,000/- each. Aggrieved by this judgment, the present Criminal Appeal is filed.

10. Heard *Mr.J.Franklin*, learned Counsel for the appellants/accused, and *Ms.J.R.Archana*, learned Government Advocate (Crl. Side), for the respondent.

11. *Mr.J.Franklin*, the learned Counsel for the appellants/accused, taking this Court through the evidence on record, would submit that the very basis of the prosecution's case is inconsistent. He would argue that while the victim's father states it was an arranged marriage, in the earliest version of the First Information Report, the girl victim admitted to having had an affair.

Even assuming, for the sake of argument, that the incident occurred as the prosecution claims, when the girl is only 15 years old and in X standard, there is nothing inappropriate about the boy's aunts admonishing her to end the affair.

12. He would argue that when the child took the extreme step of pouring kerosene on herself, it was in response to reasonable admonition given by the boy's aunts. Considering the social background of all parties involved, belonging to the lower social strata living in the vicinity where relatives and neighbors actively care for one another and do not hesitate to intervene in each other's affairs, the prosecution cannot suggest any intention that the aunts spoke with the purpose of encouraging the girl to commit suicide. This is especially relevant given that the girl was only 15 years old and still in school. The accused are also women, an aspect that the Trial Court did not consider. The learned counsel for the appellants further submits that this Court should also consider the question of sentence. He argues that the appellants are themselves in a precarious situation and are, at best, victims of their social upbringing and circumstances, which the Court should take into account in sentencing, a factor the Trial Court failed to do.

13. Per *contra*, Ms.J.R.Archana, learned Government Advocate (Crl. Side) for the respondent, submits that there is ample evidence on record, and eyewitnesses reaffirmed their testimonies even during cross-examination with reference to the incident. The words spoken by the appellants/accused are explicitly mentioned both by the victim girl in the First Information Report and in the Dying Declaration, as well as by the eyewitnesses. When read collectively, even though there are minor contradictions regarding the actual words spoken, they indicate two things: first, that the words are unduly harsh and sexually coloured remarks, and second, that if spoken to any young child around 15 years of age, they would cause significant anxiety and sadness, potentially leading to an inclination to commit suicide.

14. She further submitted that, in addition, express words were also spoken to encourage and direct the minor child to immediately go and die. Therefore, there is a strong connection to the incident where the child immediately ran inside the home, poured kerosene on herself, and committed suicide. The child's age is also established by examining the Headmaster of the School. Thus, all the elements for the offence under Section 305 of the Indian Penal Code are proven beyond doubt by the prosecution. Therefore, the Trial Court rightly convicted the accused and

imposed the sentence.

15. The learned Government Advocate (Crl. Side) would submit that it is true that the accused who are facing the charge are also women folk, but the sentence should be proportionate to the offence committed by them. According to her, the Trial Court itself imposed only a lenient sentence of three years.

16. After hearing the parties, this Court has also requested the learned Government Advocate (Crl. Side) for the respondent to instruct the Inspector of Police, Kuniamuthur Police Station, to conduct a field enquiry and record details about the age, social status, and job details of the appellants and their husbands, as well as the current family status. This report is placed on record and will be addressed by this Court at the appropriate stage.

17. I have examined the submissions from both sides and reviewed the case records.

18. Firstly, in the instant case, the child's statement was recorded in the presence of *P.W.16*, the learned Magistrate. It is clear that at the time of

providing information to the police and when the statement was recorded before the learned Magistrate, the child was fully conscious and aware. There is no doubt about the incident that occurred. The child explicitly stated that she was in a relationship with the neighbor, *Saddam Hussain*, and the boy's parents agreed to the marriage. In this context, if the appellants/accused, who are the boy's aunts, even considering their social status, opposed the marriage, they should have only admonished the boy and his parents. Their conduct of going to the girl and admonishing her is *inherently* unacceptable, and the words spoken by the accused are excessively harsh and extremely sexually charged, likely to drive any 15-year-old child to suicide.

19. Further, the evidence also shows that they had indeed spoken such words close to the time of the attempt, encouraging the child to die immediately. Independent witnesses also saw and vividly explained the incident. Considering that the area consists of people living in close proximity, their presence is natural, especially when the appellants/accused stood at the doorstep of the house and shouted at the victim. The evidence of the eyewitnesses inspires confidence and is thoroughly believable. Since the prosecution proved all elements of the offense under Section 305 of the

Indian Penal Code, namely, that just before pouring kerosene and setting herself on fire, the appellants/accused scolded, threatened, and abused the victim in a manner unbearable for any child of her age, and in a way that prompted her to harm herself, I believe the conviction of the appellants/accused under Section 305 of the Indian Penal Code is justified. Accordingly, I uphold the conviction of the appellants/accused.

20. Now, turning to the question of the sentence, it is true that the offence under Section 305 of the Indian Penal Code is a heinous offence punishable by death, life imprisonment, or imprisonment for a term not exceeding 10 years, and with a fine. Section 305 of the Indian Penal Code is provided below for easy reference:-

"305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."

21. It is evident that the offence applies not only to individuals under 18 years old but also to insane persons, delirious persons, idiots, and those in a state of intoxication. Therefore, considering the myriad circumstances under which the offence may occur, the Court is endowed with a broad range

of sentencing powers, from death to any term of imprisonment, and the legislature, in its wisdom, has explicitly not set a minimum sentence.

22. At this juncture, it would be appropriate for the context to bear in mind the Judgment of the Hon'ble Supreme Court of India in ***Shailesh Jasvantbhai Vs. State of Gujarat***¹, and paragraph 7 is extracted herunder :

7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that:"State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society." **Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be.** The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

(Emphasis supplied)

¹ (2006) 2 SCC 359

23. The first circumstance I consider is that both the appellants are the aunts of *P.W.7, Saddam Hussain*, with whom the girl was said to have developed an affair, and immediate steps were being taken for marriage. The girl was 15 years old at the time of the incident. In fact, if the incident occurred in 2012, the POCSO Act would have been in force by then, making it an offence if there was a marriage and physical relationship. The marriage, if celebrated, would have been a child marriage.

24. The second circumstance I am considering is the personal and social status of the appellants. The first appellant, *Kayar Nisha*, is now 64 years old. She lost her husband. According to the current report of the Inspector of Police, Kuniamuthur Police Station, she is employed as a domestic helper with a monthly salary of Rs.2,500/- and also receives Rs.1,000/- in financial assistance from the Government of Tamil Nadu. She has no children, and she is also unwell, suffering from high blood pressure. The second accused, *Rafia*, is now 40 years old. Her first husband, *Bakruddin*, died of cancer. She has since remarried *Abdul Muthalif*. She earns daily wages. She had no children with her first husband and has children with her second husband, a son named *Jainab*, who is about nine years old, and a daughter who is about four years old. She is also eligible

for the government's assistance of Rs.1,000/- per month.

25. Though I have considered the ill behaviour of the appellants, admonishing the girl child instead of the boy, despite them being from the boy's family, I take this into account again as a mitigating factor for imposing a lesser penalty. Their behaviour stems from *internalised misogyny*, which is a product of our male-dominated society² (). They are conditioned to question the female without realising they themselves are victims of such a mindset. In doing so, they harmed a girl child and made themselves liable for punishment.

26. This part of the area where the offence was committed, namely Kuniamuthur, is part of South Coimbatore, a metropolitan area, and these ordinary women, working as Domestic Helpers and Daily Wagers, are barely recognised or known and it cannot be said that their shorter imprisonment term will result in the erosion of the deterrent effect on the society. They have shown remorse and are only eking out their livelihood in their respective families and need not be committed again to Prison for reformation. They faced legal proceedings and were imprisoned

² Internalised Misogyny, The Patriarchy Inside Our Heads- By Maria Evteeva, M.Sc. University of the Balearic Islands, Spain [https://www.jiss.org/documents/volume_14/JIS%202024%2014\(1\)%2082-108%20Internalized%20Misogyny.pdf](https://www.jiss.org/documents/volume_14/JIS%202024%2014(1)%2082-108%20Internalized%20Misogyny.pdf)

immediately after arrest and sentencing. They remained in jail as remand prisoners for 61 days; after being convicted, the first appellant was jailed for an additional 29 days, and the second appellant for 22 days. In total, the first appellant served 90 days in prison, and the second appellant served 83 days. Therefore, I believe the sentence should be modified to the period already undergone. However, the appellant shall also continue to feel the pinch of their action and it would be appropriate to increase the fine from Rs.2,000/- to Rs.20,000/-. Only considering factors such as age, social status, employment details, and the presence of children for one of the appellants, and under these exceptional circumstances, the sentence has been modified as described.

27. In the result, this Criminal Appeal is allowed on the following terms-

(i) The conviction of the appellants/accused by the judgment of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, made in S.C.No.28 of 2012, vide the judgment dated 21.07.2016, for an offence under Section 305 of the Indian Penal Code, stands confirmed.

(ii) The sentence is modified to include Rigorous Imprisonment for

the period already served, and the fine amount is increased to Rs.20,000/- each. The remaining fine of Rs.18,000/- each shall be paid by each of the appellants/accused within four weeks from the date of receipt of a web copy of this order. Failure to do so will result in each of them undergoing simple imprisonment for two months.

02.07.2025

Neutral Citation : yes
grs

To

1. The Sessions Judge,
Magalir Neethimandram (Mahila Court),
Coimbatore.
2. The Inspector of Police,
B-14, Kuniamuthur Police Station,
Kuniamuthur, Coimbatore.
3. The Public Prosecutor,
High Court of Madras.

Crl.A.No.572 of 2016

D.BHARATHA CHAKRAVARTHY, J.

grs

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