

Suresh Vs. State Represented by

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Court : Chennai

Decided On : Sep-15-2014

Judge : P.R.Shivakumar

Appellant : Suresh

Respondent : State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 15.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Appeal(Md.No.236 of 2006 Suresh ..Appellant versus State represented by Inspector of Police, Manachanallur Vathalai Police Station, Trichy District.

(Crime No.462 of 2004) ..Respondent Appeal filed under Section 374 Cr.P.C., to set aside the judgment of conviction passed by the Additional Sessions Judge (Mahila Court) Tiruchirapalli in S.C.No.193 of 2005, dated 12.05.2006 and acquit the appellant herein.

!For Appellant : Mr.T.Senthilkumar ^For Respondent : Mr.T.Mohan, Additional Public Prosecutor.

:

JUDGMENT

The sole accused who was prosecuted in S.C.No.193 of 2005 before the learned Additional Sessions Court (Mahalir Neethimandram).Trichirapalli for alleged offences of cheating and abetment of suicide punishable under Sections 417 and 306 IPC and convicted for the said offences with Rigorous Imprisonment for three months without fine for the former one and with 10 years Rigorous Imprisonment along with a fine of Rs.2,000/- with default sentence of 6 months simple imprisonment for the latter, has filed this appeal under Section 374 Cr.P.C challenging the judgment of the trial Court in the said case dated 12.05.2006 both in respect of conviction and sentence.

2.The case of the prosecution, in brief, can be stated thus :- There was an intimacy between the deceased Muthukannu and the appellant/accused Suresh for quite a long time.

The appellant/accused developed such intimacy with the deceased by making a false promise that he would marry her and at last, four years prior to the date of occurrence, he refused to marry her and married another woman as per the wishes of his parents.

Thereafter, for more than two years they did not have any connection and they were also not in talking terms even though both of them were going to the very same place for work.

Again, recently before the date of occurrence, he made a promise to the deceased that he would marry her and wanted to renew his intimacy with the deceased.

Such an attempt was made while the deceased was grazing her sheep/goat (ML) and at that point of time, he was reprimanded by P.W.3- Paramasivam.

Thereafter, on 15.11.2004, pursuant to such promise made by the appellant/accused, the appellant/accused and the deceased had a meeting which came to be noticed by the villagers and also by P.W.2-Lakshmi, the mother of the deceased.

When the appellant/accused was pressurised to marry the deceased, he refused to do so.

The said news was conveyed to P.W.1-Jegadeesan, the elder brother of the deceased who was working as a night watchman at Tiruchirapalli tollgate.

P.W.1-Jegadeesan and his brother came down to Ramagiripatti in the early morning of 16.11.2004, questioned the deceased about the revival of the intimacy between the deceased and the appellant/accused and they also asked her why she was doing such things to bring disrepute to the family by having such intimacy with a person, who once again refused to marry her.

Resultantly, the deceased Muthukannu committed suicide in their house at Ramagiripatti by hanging using her half-sari.

P.W.1-Jegadeesan lodged a complaint under Ex.P.1 at about 9.30 a.m on 16.11.2004.

(ii)P.W.7-Bharathidasan, the then Sub Inspector of Police, Vathalai Police Station, prepared Ex.P.6?.FIR and registered a case in Crime No.462 of 2004.

The investigation of the case was taken up by P.W.8-Kannan, the then Inspector of Police, who conducted inquest and prepared Ex.P.8-inquest report in which the panchayatars opined that the deceased committed suicide by hanging.

After inquest the body was referred to the hospital for autopsy.

3.P.W.6-Dr.Karthikeyan who conducted autopsy and issued Ex.P.4 ?.

post mortem examination certificate.

After receiving the viscera report, the final opinion under Ex.P.5 regarding the cause of death was also submitted.

The Investigating Officer visited the scene of occurrence and prepared Ex.P.2-observation mahazar and Ex.P.7-rough sketc.in the presence of witnesses and recovered the dress materials and other materials found on the dead body of the deceased which were removed at the time of autopsy, under Ex.P.3-mahazar.

After completing investigation, P.W.8, the Investigating Officer submitted a final report alleging commission of offences by the appellant/accused punishable under Sections 417 and 306 IPC.

4.The final report was taken on file by the learned Judicial Magistrate, Musuri, as Preliminary Register Case No.17 of 2005.

After furnishing the appellant/accused with copies of the documents sought to be relied on by the prosecution, the learned Judicial Magistrate, Musuri considered the case and committed the case for trial to the Sessions Court, Tiruchirappalli for trial as one of the offences alleged was triable exclusively by a Court of Session.

The learned Principal Sessions Judge, Tiruchirappalli took it on file as S.C.No.193 of 2005 in the Sessions Division of Tiruchirapalli and on the question of jurisdiction, made over the said case to the Additional Sessions Judge, (Mahalir Neethimandram) Tiruchirappalli for disposal according to law.

5.On appearance of the appellant/accused, he denied having committed any offence.

Necessary charges under Sections 417 and 306 IPC were framed.

The appellant/accused denied those charges and wanted the case to be tried.

Accordingly, a trial was conducted.

In order to prove the case of the prosecution, as many as 8 witnesses were examined as P.Ws.1 to 8 and 8 documents were marked as Exs.P.1 to P.8 and 10 material objects were produced as M.Os.1 to 10.

6.On completion of recording of the evidence adduced on the side of the prosecution, the incriminating materials found in the evidence let in on the side of the prosecution were culled out and a questionnaire was prepared.

Based on such questionnaire, the appellant/accused was questioned regarding the incriminating materials found in the evidence adduced on the side of the prosecution and also generally on the case against him, under Section 313(1)(b)

of the Code of Criminal Procedure, 1973.

The appellant/accused denied such evidence and once again contended that he had not committed any offence and he reiterated his plea that he was not guilty.

No witness was examined and no document was produced as defence witness or defence document on his side.

7.The learned trial Judge heard the arguments advanced on both sides, considered the evidence in the light of the points urged in the arguments advanced on both sides and upon such consideration, pronounced a judgment holding the appellant/accused to be guilty of both the offences with which he stood charged.

After giving an opportunity under Section 235 (2) Cr.P.C., to the appellant/accused to make his submissions regarding the punishment to be imposed, the learned trial Judge convicted him for both the offences and sentenced him as indicated supra.

The judgment of the trial Court is challenged in this appeal on various grounds set out in the appeal petition.

8.The point that arises for consideration in this appeal is as follows:- Whether the judgment of the trial Court convicting and sentencing the appellant/accused for the offences under Sections 417 and 306 IPC suffers from any defect or infirmity requiring interference by this Court in respect of conviction or in respect of punishment??.

9.The arguments of Mr.T.Senthilkumar, learned counsel for the appellant/accused and Mr.T.Mohan, learned Additional Public Prosecutor for the respondent heard.

The judgment of the trial Court, the grounds raised in the appeal petition and other materials available on record are also perused.

10.The case of the prosecution seems to be a case of cheating punishable under Section 417 IPC, which according to the prosecution amended to an offence of abetment of suicide of the deceased punishable under Section 306 IPC also.

The simple case of the prosecution is that the appellant/accused committed cheating on the deceased muthukannu, not once but twice, namely 4 years prior to the occurrence at the fiRs.instance and a few days prior to the occurrence, as the second instance.

The gist of the complaint attracting Section 417 IPC is that the appellant/accused belonging to a neighbouring village, taking advantage of his acquaintance with the deceased Muthukannu as both of them were going to the same fields for work, developed an intimacy with her by making her to believe by that he would marry her.

According to the prosecution, because of such a promise made by him, she had an affair with him which lasted for about two years and when the people belonging to the village of the deceased muthukannu arranged for a panchayat with the elders of the village to ask the appellant/accused to marry her, he refused to marry her and heeded the request of his parents to marry a girl of their choice.

11.Merely having a love affair without crossing the Lakshman Rekha shall not amount to cheating.

Suppose by a false promise the appellant/accused had made the deceased to part with any property or to do anything which she would not have done had she not been cheated or to omit to do anything which she was legally entitled to do and she would have done, had she not been cheated, then the offence of cheating either under Section 417 IPC or under Section 420 IPC, as the case may be, might have been made out.

In the case on hand, there is no evidence to show that the deceased parted with any property or money or she did anything which would be to her detriment in case of the failure on the part of the appellant/accused to keep his promise.

To be frank, there is no averment and no evidence that the deceased did share her bed with the appellant/accused or that they lived together so as to create a relationship resembling husband and wife.

It is also not the case of the prosecution and there is no evidence to show that they had been projecting themselves before the public as husband and wife.

12.A careful scrutiny of the evidence of the prosecution witnesses will make it clear that the evidence would make out a case that there was a mutual attraction between the appellant/accused and the deceased which lasted for a couple of years from a point of time four years prior to the date of occurrence.

There might have been also an understanding that they would get married to each other but somehow or other fortunately or unfortunately, the dream of the deceased did not fructify and the attempt made by her to get her married to the appellant/accused proved ineffective.

If at all, she had chosen to lodge a complaint immediately after the refusal on the part of the appellant/accused to marry her, which took place two years prior to the occurrence, then there might have been some substance in the prosecution version that she was lured by the appellant/accused to fall in love with him by making false promise to marry her, which promise was given a go-bye by the appellant/accused when he was asked to marry her.

As it is evident from the testimonies of the prosecution witnesses that the attempts made by the panchayatars arranged by the deceased two years prior to the occurrence did not succeed and on the other hand, the appellant/accused got married to another woman in accordance with the wishes of his parents.

The same would show the possibility of a natural break down of the love affair if it was a mutual love affair.

It is also possible that it could have been a one-sided love affair on the part of the deceased which ended in frustration.

The said inference becomes probable because of the subsequent contact of the deceased as projected by the prosecution, through the evidence of the witnesses examined on the side of the prosecution.

This shall be made clear if the evidence adduced on the side of the prosecution regarding the alleged second incident of cheating attracting Section 417 IPC is taken into consideration.

13.P.W.1-Jegadeesan is none other than the elder brother of the deceased Muthukannu.

He is the person who lodged a complaint with the police after the death of the deceased Muthukannu.

P.W.2-Lakshmi is none other than the mother of the deceased Muthukannu.

P.W.3-Paramasivam is projected as one of the panchayatars who conducted panchayat on the earlier occasion.

He is also said to have reprimanded the appellant/accused when he allegedly found the appellant/accused talking to the deceased Muthukannu 1+ months prior to the occurrence.P.Ws.4's evidence shall not be helpful to the prosecution case as his evidence is not direct evidence and he has deposed as to what he claims to have heard.

P.W.5-Manivel, the mahazar witness does not support the prosecution version, even regarding the preparation of Ex.P.2-observation mahazar and Ex.P.3-seizure mahazar.

P.W.6-Karthikeyan is the Medical Officer who conducted autopsy and issued Ex.P.4-post mortem examination certificate and Ex.P.5-final opinion.

The evidence of P.W.6 and Exs.P.4 and 5 clearly show that the case was one of suicide by hanging.

Apart from that, they do not support the case of the prosecution as against the appellant/accused.

P.W.7-Bharathidasan, is the then Sub Inspector of Police who registered the FiRs.Information Report-Ex.P.6.

P.W.8-Kannan is the Inspector of Police who conducted the investigation and submitted the final report.

14.The testimonies of P.Ws.1 to 3 are vital to find out whether the story of the prosecution regarding the cheating and abetment of suicide stands established beyond reasonable doubt.

P.W.1 who is none other than the elder brother of the deceased admits the fact that four years prior to the occurrence, his sister and the appellant/accused had developed intimacy with each other.

However, in the chief examination itself he would admit that only when they heard about the arrangements made by the family members of the appellant/accused for his marriage with another woman, the deceased took the elders from her village to the place of the appellant/accused and asked them to get her marriage solemnised with the appellant/accused.

It is also the admission made by P.W.1 in the chief examination itself that when the elders of the village asked the appellant/accused to marry the deceased, he refused to do so and immediately thereafter, the parents of the appellant/accused arranged his marriage with another woman and solemnised it.

15.The very tenor of the evidence of P.W.1 will show that when the marriage of the appellant/accused had been arranged with another women, P.W.1 and others of Ramagiripatty went to Sengudi, the village of the appellant/accused and made an attempt to make the appellant/accused to marry the deceased; that the marriage of the appellant's/accused marriage with the other woman took place despite such an attempt made by the elders of the village in which the deceased was living; that pursuant to the same P.W.1 and others took back the deceased to their native place and that thereafter, the appellant/accused and the deceased were not in talking terms and they discontinued the intimacy if any.

Similar is the evidence of P.W.2-Laksmi, the mother of the deceased.

P.W.3's evidence also is in consonance with the same.

Their evidence is also uniform to the effect, that after the appellant/accused got married, the deceased and the appellant/accused discontinued their earlier affair, if any, though they had been going to the very same place for work.

16.P.W.3's evidence will give a clear picture regarding the earlier episode.

It is his clear evidence that about three years prior to the date of his examination in the Court below, the deceased Muthukannu had gone to the place of appellant/accused and was staying in the house of the village menial, pursuant to which a message was sent from the said village to Ramagiripatti informing the said fact and that the same made the villagers of Ramagiripatti go to the place of the appellant/accused and make a demand that the appellant/accused should marry the deceased, as according to to them they had developed a love affair.

The evidence of P.W.3 is to the effect that the deceased alone informed them that she and the appellant/accused had developed a love affair and the same was denied by the appellant/accused and his people.

The said panchayat proved to be a failure, as the villagers of village (Sengudi) in which the appellant/accused was residing refused to be borne by a verdict of the panchayat held by the members of Ramagiripatti village.

It is also evident from the testimony of P.W.3 that during the negotiation itself, refusing to be bound by the verdict of the panchayatars of the Ramagiripatti, the villagers of Sengudi village solemnised the marriage of the appellant/accused with a woman belonging to the very same village.

The further comedy is that, even thereafter the people from Ramagiripatti asked them to direct the appellant/accused to marry the deceased as a second wife which was refused by not only the appellant/accused but also by his villageRs.17.According to the evidence of the prosecution witnesses, the appellant/accused and the deceased in due couRs.of time were found talking with each other which ultimately led to the unfortunate suicide by the deceased by hanging.

How did they get the earlier relationship revived?.

- No clear picture is available from the prosecution case.

According to the evidence of P.W.3-Paramasivam, on a day 1+ months prior to the date of occurrence, he saw the appellant/accused talking with the deceased when she had gone for grassing.

According to his evidence, he saw the appellant/accused and the deceased together at 7.00 a.m in the eucalyptus garden of P.W.3 that he warned the appellant/accused for which the appellant/accused informed him that he would marry the deceased as a second wife and that thereafter, P.W.3 informed them that he would get their marriage solemnised.

It is his further evidence that the appellant/accused wanted three months time as he did not have money with him.

It is his further evidence that 1+ months thereafter, at 01.00 hours during night hours the deceased Muthukannu was missing and on search they found the appellant/accused and the deceased in the millet garden (fk;g[f;fhL).The further evidence of P.W.3 in this regard need not be elaborated at this point of time which will be dealt with at a later point of time.

The evidence of P.W.1-Jegadeesan in this regard, is quite contrary to the evidence of P.W.3- Paramasivam.

P.W.1-Jegadeesan would say that when P.W.3 saw the appellant/accused talking with the deceased he reprimanded the appellant/accused besides snatching cycle of the appellant/accused and keeping with him and asked him to send his parents to get the cycle.

18.P.W.2's evidence is contrary to the evidence of P.Ws.1 and 3, she would say that after the fiRs.break the deceased and the appellant/accused were not in talking terms and subsequently, four months prior to the death of the deceased, the deceased and the appellant/accused were found together in the garden behind her house and they were spotted by four persons who went for hare hunting pursuant to which the appellant/accused was questioned by them as to why he was bringing disrepute to the deceased.

19.P.W.1-Jegadeesan does not say that pursuant to the said occurrence the appellant/accused was caught hold of and was taken along with them and was transported in a motor cycle to Tiruchirapalli in an attempt to get him married to the deceased.

But P.W.2-Lakshmi would say that when he was thus brought by those four persons, the appellant/accused pleaded for three months time to get ready for marrying the deceased.

P.W.3-Paramasivam, on the other hand would say that when the appellant/accused and the deceased were seen together in the millet garden, the appellant/accused was taken in a two wheeler to Tiruchirappalli tollgate; that on the way to Tirchirappalli toll gate near Sirukampur petrol bunk the appellant/accused quarrelled with them stating that he could not be compelled to marry the deceased and that on the intervention of one Subramaniam, a milk vendor who advised them that they could have the marriage of the deceased in the morning, the appellant/accused was let out.

Such inconsistent stories propounded by all the three witnesses, namely P.Ws.1 to 3, examined on the side of the prosecution to prove what transpired before 1+ months prior to the date of occurrence are conflicting with each other and the same itself will show the probability of concoction of the prosecution story.

20.The learned trial Judge seems to have been carried away by the fact that the prosecution had approached the Court with a story that the appellant/accused, who once deceived the deceased by making a false promise to marry her and retracting from such promise, again revived the contact with the deceased by making a similar false promise and that his failure to keep the said compromise made for the second time also had led to desperation on the part of the deceased, which resulted in her suicide.

Nowadays, it has become a fashion for the Courts to convict not on strictly on legal grounds but on moral grounds, according to the perception of the Presiding Officer.

Convicting a person on the avowed moral grounds shall not be expected from the Judges in garbs and it may pertain to the realm of those who preach morality putting on the cassocks or saffron cloths.

Judges are expected to act strictly in accordance with the principles and the provisions of law.

Had the Court below approached this problem with an open mind and in an unbiased manner, it would have definitely come to a conclusion that there were different and conflicting stories propounded for the second spell of alleged cheating would show the improbability of the prosecution case or at least that things became worse because of the attempts made by the deceased and the people on her side to coerce the appellant/accused to enter into a marital contract with the deceased, prohibited by law.

The deceased was not an adolescent or a minor to show that she could have been repeatedly cheated by a person like the appellant/accused by making false promises.

Ignorance of fact can be excused; but ignorance of law cannot be excused.

The deceased with the support of the elders in the village and the members of her parental family had the audacity of pleading with the appellant/accused to marry the deceased as second wife immediately after his marriage with another woman was solemnised.

Similar is the attempt made by P.W.3 and others by making an attempt to abduct him to Tiruchirapalli toll-gate whereupon he could have been compelled to marry the deceased.

They seemed to have repeatedly made the attempts to compel the appellant/accused to marry the deceased.

The deceased allegedly renewed the relationship with the appellant/accused, she knew pretty well that the appellant/accused was the husband of another woman and during the subsistence of his marriage with his wife, no marriage with the

deceased would be possible, since both of them were Hindus.

21.If an adult chooses to develop an affair or revive the old affair with a person who is already married, it cannot be said that she did it due to the false promise made by him.

If at all such a promise was made, she could have asked him to get a divorce from his wife at the fiRs.instance and then approach her for the revival of the intimacy.

If such a woman, without doing so simply revives or restores the earlier relationship with the man, it can be said to be done out of promiscuity rather than based on the belief of the promise made by the other person.

If the evidence in this case had been evaluated by the trial Court keeping the said aspects in mind, the trial Court, as indicated supra, would have come to the conclusion that the charge of cheating punishable under Section 417 IPC was not proved by the prosecution beyond reasonable doubt and that the preponderance of probabilities showed the negative.

22.On the fatal day, namely on 16.11.2004, the deceased committed not because the appellant/accused refusal to marry her or he induced her to commit suicide.

On the other hand, the vital admissions made by the prosecution witnesses, who spoke about the occurrence and the lodging of the complaint, make it clear that it is more probable that the deceased should have committed suicide, because she was reprimanded by her brothers and mother for having revived contact with the appellant/accused, who had once, according to them cheated her and married another woman, rather than any act or omission on the part of the accused constituting abetment of suicide.

P.W.2-Lakshmi would clearly admit that on the previous day, namely on 15.11.2004 from 9.00 p.m, the deceased Muthukannu was missing and they went in search of her.

Her precise statement in her evidence is that the deceased at about 9.00 p.m on 15.11.2004 went for collecting the wages and she did not return, whereupon she

went in search of her daughter namely, the deceased.

However, she would further state that when she returned home she saw the appellant/accused with his motor cycle in front of P.W.2's house talking to the deceased and that she caught them, made them not to leave the place and she handed them over to the VIPs of village including P.W.3-Paramasivam.

23.The story propounded by P.W.3 is different from the one propounded by P.W.2.

According to P.W.3, the appellant/accused was caught hold of when he was found with the deceased at about 01.00 clock during night hours and he was taken to Tiruchirapalli toll-gate in a TVS-50; that on the way to Tiruchirappalli toll-gate, the appellant/accused refused to co-operate and he was left at a place near Sirukampur petrol bunk on the intervention of a milk vendor by name Subramaniam; that thereafter, the appellant/accused was sitting in his house at Sengudi village till 6.00 a.m; that when they were asking him to marry the deceased while he was thus sitting in his house the appellant/accused refused, whereupon they informed the deceased about the determination of the appellant/accused not to marry her and that on hearing such a news, the deceased went inside and committed suicide by hanging using her half-sari.

It is his further statement that he rescued her from the noose but he fainted after rescuing her.

The above said story was found in his statement in the chief examination.

During cross examination, he has admitted that after the appellant/accused and deceased stopped talking to each other from the date of marriage of the appellant/accused, for about 2 years they were not talking to each other though they were working at one and the same place.

P.W.3 has admitted that he was a distant relative of the deceased and that before she committed suicide the deceased was questioned by her brother as to why she was doing like that referring to her revival of the contact with the appellant/accused.

24.P.W.2-Lakshmi, the mother of the deceased also, during her cross examination, has admitted that though the appellant/accused and the deceased were not in talking terms for about 2 years from the date of marriage of the appellant/accused, after two years her daughter informed her that the appellant/accused talked to her; that thereafter, her sons namely, P.W.1-Jegadeesan and Selvam came at 5.30 a.m on 16.11.2004; that on their arrival she informed what transpired on the previous night and that her sons scolded P.W.2 alone and not the deceased.

However, P.W.1-Jegadeesan, in his evidence in cross examination, has candidly admitted that he along with his elder brother scolded their sister namely, the deceased Muthukannu and they asked the deceased in anguish as to why she was bringing such disrepute by reviving the contact with the appellant/accused, who had neglected her two years earlier.

Even though he would have stated thus towards in the earlier part of his evidence in the cross examination, at the end of his evidence in the cross examination he has clearly admitted that in the morning on the date of occurrence he scolded his sister (rk;gtj;jd;W fhiyapy; ehd; vd; rnfjhpiarj;jk;nghl;nld; vd;why; rhpjhd;) .

However, he would say that the same was not the cause of the suicide of his sister Muthukannu.

25.It is also probable that the case itself could have been concocted to entangle the appellant/accused which shall be obvious from the various contradictions found in the complaint compared with the evidence of the prosecution witnesses.

In Ex.P.1-complaint, it has been stated that the appellant/accused, after making a promise to marry the deceased had taken the deceased along with him on 15.11.2004 at about 8.00 p.m and that since she did not return, he along with others went to Ramagiripatti on the same night at about 1.30 a.m and they saw the appellant/accused and the deceased chatting with each other; that thereafter, the appellant/accused was caught hold of and they made arrangements for conducting the marriage of the appellant/accused with the deceased; that somehow or other, the appellant/accused, who said that he would marry her after a week, suddenly

escaped from them and that thereafter while they were discussing about the act of cheating committed by the appellant/accused, the deceased went inside and committed suicide by hanging.

26.The occurrence is said to have taken place at 7.30 a.m on 16.11.2004.

P.W.1-Jegadeesan, is admittedly employed as a night watchman in the Tiruchirappalli tollgate.

In the complaint-Ex.P.1, he had stated that he came to Ramagiripatti at 1.30 a.m on 16.11.2004, whereas in the evidence before the Court he has stated that he came to Ramagiripatti only at 5.30 a.m and his brother Selvam came there from Santhapuram at 6.00 a.m.If the said discrepancy between the evidence of P.W.1 and Ex.P.1-complaint is as to when he and his brother Selvam arrived at Ramagiripatti and what transpired thereafter is considered in proper perspective, then the inevitable derivation shall be that the prosecution story regarding the part played by the appellant/accused on the date of occurrence shall be improbable.

A lot of concoction and embellishment seem to have taken place, besides improvement of the case from Ex.P.1-complaint to the filing of the charge sheet, which cause the colour of the prosecution story to fade when it was put to the acid test in trial.

The admission made by P.Ws.1 and 2 that they either scolded or reprimanded the deceased just prior to the occurrence as to why she had brought disrepute by having contact with the person who had earlier cheated her, would have been the probable cause of the suicide of the deceased Muthukannu.

Even in the w ORS.case of the deceased having made such a promise and having gone back from such promise, it cannot be termed as an act of abetment of committing suicide as it will not fit in any of the clauses of Section 107 of IIPC defining abetment.

27.At the cost of repetition, this Court wants to point out the fact that once having been bitten, the deceased could have been alert enough not to be cheated once again.

Knowing fully well it was not legally possible for the appellant/accused to marry her, the deceased could not have been made to believe that he would marry her by the appellant/accused with a false promise.

Such an act on the part of the appellant/accused may amount to any other offence than the offence of the abetment of suicide.

If, all these aspects had been properly considered by the trial Court, the trial Court would have held that none of the charges framed against the appellant/accused was proved beyond reasonable doubt, with the result that the appellant/accused would have been acquitted by the trial Court itself.

On a thorough re-appreciation of evidence, this Court comes to the conclusion that the trial Court committed an error in holding the appellant/accused guilty of the offences punishable under Sections 417 and 306 IPC and convicting him for the said offences; that the prosecution has miserably failed to prove its case beyond reasonable doubt and that the appellant/accused is entitled to acquittal in respect of both the offences with which he stood charged.

28. In the result, the appeal is allowed.

The judgment of the trial Court convicting the appellant/accused for the offences under Sections 417 and 306 IPC is set aside and the appellant/accused is acquitted of all the offences for which he was tried.

Since it is reported that the appellant/accused is on bail, the bail bond shall be cancelled and the sureties shall be discharged.

Fine amount, if any, collected from the appellant/accused shall be refunded.

To The Additional Sessions Judge (Mahila Court) Tiruchirapalli

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