

BAIL SLIP

The Appellant Petition Accused namely Veeraraju@Salvakula Veeraraju s/o Achutaramayya was directed to be released on bail as per the order of this Court dated 07/06/2012 made in Miscellaneous Petition 1/12 in CrI.A.No.327/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.A.No.327 of 2012

Veeraraju @ Salvakula Veeraraju ...Appellant/Petitioner

Vs.

State represented by
The Assistant Commissioner of Police,
T.Nagar,
Chennai - 600 017. ...Respondent/Respondent

Criminal Appeal filed under Section 374 Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 31.05.2012, passed by the Sessions Judge, Magalir Neethimandram, Chennai, in S.C.No.445 of 2007.

For Appellant : Mr.P.Suresh
for Mr.R.Sreerangan

For Respondent : Mrs. Kritika Kamal. P.
Government Advocate (CrI. Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 31.05.2012, passed by the Sessions Judge, Magalir Neethimandram, Chennai, in S.C.No.445 of 2007.

2.The facts of the case as distilled from the evidence on record run thus:

2.1.The deceased Durgambika was the daughter of Krishna Rao (P.W.1) and hailed from Balanthram Village, East Godavari District, Andhra Pradesh.

2.2.The family of the appellant is also from the same village. The appellant was a Software Engineer and was employed in Bangalore when the two families decided to give the hand of Durgambika to him.

2.3.The marriage of the appellant with Durgambika was solemnised with pomp and show in Balanthram Village on 15.06.2006. After marriage, the appellant stayed in the house of his in-laws for a few days and thereafter, left for Bangalore. He got a job in a Software Company in Chennai and shifted to Chennai, thirty days prior to the date of incident (02.11.2006).

2.4.On 26.10.2006, Krishna Rao (P.W.1) dropped her daughter Durgambika at Door No.39/19, Rameswaram Street, T.Nagar, Chennai, where the appellant had taken accommodation on rent. Krishna Rao (P.W.1) stayed there for two days and left for his village on 28.10.2006.

2.5.On 02.11.2006, Durgambika consumed Monocrotophos, an insecticide, and on coming to know of that, the appellant rushed her to SRM Hospital, where, she was examined by Dr.Raghavan (P.W.5) at 10.00 p.m. on 02.11.2006, as could be seen from the copy of the Accident Register (Ex.P6). Durgambika was not conscious and despite best attempts to save her life, she breathed her last at 01.25 a.m. on 03.11.2006 in the hospital. On information, the family members of Durgambika, viz., Krishna Rao (P.W.1), Nageswara Rao (P.W.2) and others, rushed to Chennai.

2.6.On the written complaint (Ex.P1) given by Krishna Rao (P.W.1), Thalavaishamy (P.W.11), Sub-Inspector of Police, registered a case in Crime No.878 of 2006 on 03.11.2006 at 19.30 hours, for the offences under Sections 498-A and 306 IPC and under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P15).

3.Since the death was within seven years of marriage, Sundari (P.W.10), Tahsildar, conducted inquest and submitted her report (Ex.P8) to Ramasamy (P.W.7), Personal Assistant to the District Collector, who, in his evidence as well in the final report (Ex.P9), has stated that the death of Durgambika was not a dowry death, but there were materials to show that her husband (appellant) had inflicted cruelty on her.

4.Investigation of the case was taken over by Salethraj (P.W.12), Assistant Commissioner of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P4) and Rough Sketch (Ex.P16) in the presence of witnesses Mathiyazhagan (P.W.3) and Ramesh (not-examined). The Investigating Officer also seized a Nycil Powder Tin (M.O.1), which was found to contain the insecticide, under the cover of Mahazar (Ex.P5).

5.The body was shifted from SRM Hospital to Government Royapettah Hospital, where Dr.Mathiharan performed autopsy on the body of Durgambika and issued the post-mortem certificate (Ex.P13). Since Dr.Mathiharan abandoned the service, Dr.Elango, the RMO under whom Dr.Mathiharan worked, was examined as P.W.9. Samples of visceral organs were sent to the Tamil Nadu Forensic Sciences Laboratory for chemical examination. Similarly, the seized Nycil Powder Tin (M.O.1) was also sent through Court to the Tamil Nadu Forensic Sciences Laboratory for examination. Mallika (P.W.8), Scientific Assistant Grade-I examined the visceral organs and in her evidence as well in the report (Ex.P10), she has stated as follows :

1.Stomach and contents	:	Detected Monocrotophos
2.Intestine and contents	:	Detected Monocrotophos
3.Liver & Kidney	:	Detected Monocrotophos
4.Brain	:	Detected Monocrotophos
5.Blood	:	Detected Monocrotophos
6.Preservative	:	Did not detect Monocrotophos

NOTE : Monocrotophos is a poisonous organophosphorus type of Insecticide."

Based on this report, Dr.Mathiharan gave his final opinion (Ex.P14) as under :

"The deceased would appear to have died of Monocrotophos (insecticide) poisoning."

No other injury was recorded by Dr.Mathiharan on the body of Durgambika, as could be seen from the post-mortem certificate (Ex.P13). Mallika (P.W.8) also examined the Nycil Powder Tin (M.O.1) and in her report (Ex.P12), she has stated that Monocrotophos was detected in the washings of the said container.

6.It may be necessary to state here that Exs.P10 and P12 are admissible under Section 293 Cr.P.C., since they have been given under the hand and seal of the Assistant Director and Assistant Chemical Examiner to Government, Forensic Science Department, Chennai.

7.During the course of investigation, the police seized eight sheets, in which, Durgambika had written out her heart on various dates, in Telugu. These documents were marked as Ex.P3 series through her father Krishna Rao (P.W.1), who stated that he knows his daughter's handwriting and that they were written by her.

8.The appellant was arrested on 04.11.2006. After recording the statements of witnesses, collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.52 of 2007 before the XVII Metropolitan Magistrate,

Saidapet, Chennai, for the offences under Sections 498-A and 306 IPC, against the appellant.

9.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.445 of 2007 and was made over to the Magalir Neethimandram, Chennai, for trial.

10.The trial Court framed charges for the offences under Sections 498-A and 306 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

11.To prove the case, the prosecution examined 12 witnesses, marked Exs.P1 to P18 and one Material Object.

12.When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked from the side of the appellant.

13.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.05.2012, in S.C.No.445 of 2007, convicted the appellant of the offences under Sections 498-A and 306 IPC and sentenced him as follows :

Provision under which convicted	Sentence
Section 498-A IPC	Rigorous imprisonment for three years and also a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months
Section 306 IPC	Rigorous imprisonment for ten years and also a fine of Rs.20,000/-, in default, to undergo simple imprisonment for six months

14.Challenging the aforesaid conviction and sentence, the appellant is before this Court.

15.Heard Mr.P.Suresh, learned counsel appearing for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side), appearing for the respondent.

16.In this case, the prosecution has proved beyond cavil, the following facts :

- i. the inter se relationship of the parties;
- ii.the marriage of the appellant with Durgambika on 15.06.2006 in Balanthram Village;
- iii.at the time of marriage, the appellant was working in a

Software Company in Bangalore; after marriage, the appellant stayed in the house of his in-laws and thereafter, left for Bangalore alone;

iv. thirty days prior to 02.11.2006, the appellant got a new job in a Software Company in Chennai and took a house at Door No.39/19, Rameswaram Street, T.Nagar, Chennai, on rent;

v. on 26.10.2006, Krishna Rao (P.W.1) dropped Durgambika in the house of the appellant at Chennai and left after two days;

vi. Durgambika consumed poison in the evening hours of 02.11.2006 and died on 03.11.2006 at SRM Hospital, Chennai.

Thus, effectively, the appellant had lived with Durgambika for not more than 10 days. The prosecution case rests on the evidence of Krishna Rao (P.W.1), his younger brother Nageswara Rao (P.W.2), and a relative by name Lakshmana Rao (P.W.6).

17. The nub of the prosecution case is that the appellant was in love with one Srilakshmi prior to the marriage and was thinking only about her even after marrying Durgambika. There is absolutely no material on record to show that the appellant had inflicted physical violence on Durgambika. Krishna Rao (P.W.1), Nageswara Rao (P.W.2) and Lakshmana Rao (P.W.6) have stated that they came to know about the appellant's earlier love affair from Durgambika and that they attempted to bring about a reconciliation, but to no avail. The appellant, in his statement to Sundari (P.W.10), Tahsildar, during inquest, has stated that he was in love with Srilakshmi and after marriage, he had not spoken to her at all. This statement of the appellant is not hit by Section 162 Cr.P.C., since it was not recorded by a Police Officer, but by an Executive Magistrate. In the opinion of this Court, this is an admission relevant under Section 21 of the Evidence Act and can be used against the maker.

18. Learned counsel for the appellant contended that the letters (Ex.P3 series) that were allegedly written by Durgambika in Telugu were not sent to a handwriting expert for opinion. In the opinion of this Court, the failure of the police to send the letters to the handwriting expert cannot, by itself, be a reason to exclude them from consideration, if they are otherwise relevant. *Gulzar Ali Vs. State of Himachal Pradesh* [(1998) 2 SCC 192] is a locus classicus on the law relating to proof of handwriting and signature. The sapient words of K.T.Thomas, J., speaking for the Bench, are worth extracting.

"9. It must be remembered that expert evidence regarding handwriting is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the

person concerned. In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such handwriting to be regarded as relevant evidence. Those and some other provisions are subsumed under the title "Opinion of third persons, when relevant". Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that identity of handwriting of a document can be established only by resorting to one of those two sections. There can be other modes through which identity of the handwriting can be established. Citing an example, if a letter is seized from the possession of 'A' and the letter contains the name of the sender as well as the name of the sendee and if such sendee happens to be 'A' himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that the author or even scribe of that letter is the sender and 'A' is the sendee of it.

10. Reference can be made to two decisions of a three-Judge Bench of this Court. First is Ram Chandra v. State of U.P. [AIR 1957 SC 381 : 1957 Cri LJ 559] wherein authorship of some questioned letters has been found on the strength of "various items of external and internal evidence". The same three-Judge Bench has observed in Mobarik Ali Ahmed v. State of Bombay [AIR 1957 SC 857 : 1958 Cri LJ 1346] thus:

"The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of

considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject-matter of the chain of correspondence, to speak to its authorship."

11. We find much support from the aforesaid observations to formulate the legal position that the modes of proof envisaged in Sections 45 and 47 of the Evidence Act are not exhaustive for proving the genuineness or authorship of a document."

As stated above, Krishna Rao (P.W.1), the father of Durgambika, has clearly stated that the letters (Ex.P3 series) were written by his daughter.

19. Learned counsel for the appellant further contended that the letters were not seized under Mahazar by the police and therefore, they are doubtful.

20. On a perusal of the letters, it is seen that the Assistant Commissioner of Police, has endorsed on each page that they were recovered from the place of occurrence. This Court read Ex.P3 series with the help of a Telugu Interpreter attached to the Translation Section of the Madras High Court. There are totally four letters in Ex.P3 series, of which, three letters have been written prior to the marriage. In all these letters, it is stated that, she (Durgambika) is intensely in love with her husband and will be ever ready to sacrifice her life for his happiness. In fact, in one of the letters, it is stated that she has not had consummation with her husband and that he is not even touching her and is moving away from her. In another letter, it is stated that, if her uncle comes to know about all these, he will take the matter very seriously. In the last letter, it is stated that her father is trying to get her remarried and if that is done, she will end her life. These letters are relevant under Section 32(1) of the Evidence Act. The manner in which the letters have been written, using English words here and there, and replete with love symbols, does not raise suspicion in the mind of this Court that they were doctored. Translated extracts from two letters read as under :

'February 4th :

...

I love you so much.

I am counting days as I am very keen to join him. Because I am unable to live without seeing him. If I join him, nothing can separate me from him, except death. Even if he does not express his love towards me, I can live by seeing him alone. Because, I will have satisfaction that he is with me. I can see him for hours together everyday. But my family members should not get to know about him. Because, if they get to know that he is with me like this, they will not allow him to live.

Though it is 3 months from our marriage, he is not changed. He is still keeping distance from me. He is not even willing to touch me. If it is known to my uncle, he will go to any extent. I am scared. I cannot tolerate if he is hurt. His happiness is important to me. I am unable to live without him. I feel like crying. Oh my god! Why did you give me so much love towards him? Why I am mad of him? Why I have much love on him? Why is he not liking me? What is wrong with me?. He is not even liking to touch me. Where should I go?. I would like to tell one thing that I cannot live without him. My life is with him only, otherwise I cannot live. ...

June 19th:

Today, my life turned upside down. Because, he told me a massive truth. He said that he is in love with a girl by name Srilakshmi; that he loves her very much and that he is unable to forget her. On listening to all these at a time, my heart got broken to pieces. He told me this with much seriousness. I do not understand why he revealed it to me. I am loving him more than my life. Even after knowing it, he told it to me. I became very much angry. I got much anger on him. But I did not say anything. I remained silent ... I can do anything for him. Even after I came to know that he is in love with some other girl, I am loving him. I love him forever.

My first love is with him only. My love will not get faded away at any time until my death. He is my life. I cannot tolerate if someone scolds him. I cannot stay without speaking to him even a day, but I can say one thing, "I love him, I die for him, I leave for him"

Whatever I do is only for him. I can do anything for him. Only his happiness is important for me.'

21.The overall picture shows that the appellant was in love with one Srilakshmi before marriage and he seems to have confided it in Durgambika. After having confided it in her, he appears to

have been aloof from her (Durgambika) and was not having conjugal relationship with her, perhaps, ruling over the fact that he did not marry Srilakshmi. It is true that the letters were not seized under a Mahazar, but, that again, is a remissness of the Investigating Officer, for which, the entire prosecution case cannot be thrown aboard. On a conspectus of the facts obtaining in this case, there are no satisfactory materials to sustain the conviction of the appellant of the offence under Section 306 IPC albeit the presumption under Section 113-A of the Evidence Act, because, admittedly, there was no physical violence, and the appellant had hardly lived for 10 days with Durgambika. However, the conduct of the appellant in continuing to bask in the lost love life with Srilakshmi, even after marrying Durgambika, keeping aloof from her, denying her conjugal relationship and ignoring her intense love for him, would certainly amount to mental cruelty within the meaning of Section 498-A IPC. In fact, Krishna Rao (P.W.1) had gone along with the other relatives to Bangalore to persuade the appellant to bury the past and start a new life with Durgambika, but in vain. The appellant should have had the courage to marry Srilakshmi against all odds or inter alia should have taken her out of his mind after marrying Durgambika. One cannot run with the hare and hunt with the hounds. The suicide notes show that Durgambika was madly in love with the appellant and her heart broke when he confided in her about Srilakshmi. That is why, she committed suicide, for which, the appellant cannot be held liable for abetment.

22. In view of the above discussion, the conviction and sentence qua Section 306 IPC are set aside and the appellant is acquitted of the said offence; the conviction of the appellant of the offence under Section 498-A IPC is confirmed, but the sentence of three years rigorous imprisonment is reduced to 18 months rigorous imprisonment. Fine and default sentence qua Section 498-A IPC shall remain the same.

In fine, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Magalir Neethimandram,
Chennai.
 - 2.The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
 - 3.The Assistant Commissioner of Police,
T.Nagar,
Chennai - 600 017.
 - 4.The Superintendent, Central Prison,
Puzhal, Chennai.
 - 5.The Public Prosecutor,
High Court, Madras.
 - 6.The Section Officer,
(Criminal Section),
High Court, Madras.
 - 7.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
 - 8.The Director General of Police, Mylapore, Chennai.
 - 9.The District Collector, Chennai.
- +1cc to Mr.R.Sreerangan, Advocate, S.R.No.10141

Cr1.A.No.327 of 2012

GMR (CO)
KKV/07/08/2020

सत्यमेव जयते

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