

Bail Slip

The Appellant/Accused, namely 1. Dinesh Kumar S/o. Sampath 2. Sampath S/o. Srinivasan 3. Vasanthi W/o. Sampath Accused in SC .NO.446/11 on the file of the Sessions Judge, Magalir Neethimandram , Chennai dated 10.08.2012 were enlarged on bail vide this Court order dated 27.08.2012 in MP.NO.1/12 IN CRL A.NO.504/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.504 of 2012

1. Dinesh Kumar
2. Sampath
3. Vasanthi ... Appellants/Accused

Vs.

State represented by
The Assistant Commissioner of Police,
Villivakkam Range,
V-4, Rajamangalam Police Station,
Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 10.08.2012 passed in S.C.No.446 of 2011 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mr.R.C.Paul Kanagaraj

Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

For Respondent :

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 10.08.2012 passed in S.C.No.446 of 2011 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

2. The concentrated facts of the case distilled from the evidence on record flow as under:

2.1 The deceased Vijayalakshmi was the daughter of Leelavathi (PW1) and younger sister of Shanmugakumar (PW2) and Balasubramanian (PW3). Their family hails from Parapalayam

village in Tirupur District. Vijayalakshmi studied B.C.A. and was employed in Infosys.

2.2 Dinesh Kumar (A1) is the son of Sampath (A2) and Vasanthi (A3). Their family hails from Villikakkam in Chennai. Dinesh Kumar (A1) is also a software professional.

2.3 Both families arranged the marriage of Vijayalakshmi with Dinesh Kumar (A1) and it was solemnized on 30.08.2009 in Tirupur. At the time of marriage, the family of Vijayalakshmi gave fifteen sovereigns of gold to Vijayalakshmi and five sovereigns of gold to Dinesh Kumar (A1) and a sum of Rs.10,000/- (in cash). After marriage, Vijayalakshmi and Dinesh Kumar (A1) lived in joint family with Sampath (A2) and Vasanthi (A3) at door no.38, 1st Floor, B-Block, Flat No.A/1, 6th Street, North Jaganathan Nagar.

2.4 While so, it is alleged that, after marriage, Dinesh Kumar (A1) and his family members demanded a four wheeler and Rs.1,00,000/- and harassed Vijayalakshmi. Vijayalakshmi committed suicide by hanging on 27.02.2010 around 9.00 p.m. in her matrimonial home when none was there. Dinesh Kumar (A1) had gone to his friend's house and on return, he found that the door was locked and there was no response from inside. Therefore, he (A1), along with his father (A2) staved in through the window and found Vijayalakshmi hanging down from the ceiling fan with her dupatta (M.O.1). They lowered her body and rushed her to the Kilpauk Medical College and Hospital, where, she was declared "brought dead". Information was conveyed to Vijayalakshmi's family. Her mother (PW1) and brothers (PWs.2 & 3) came to Chennai.

2.5 On the written complaint (Ex-P1) given by her mother (PW1), John Sundar (PW10), Inspector of Police, registered a case in Crime No.196 of 2010 on 28.02.2010 at 13.00 hours for the offence under Section 304-B IPC and prepared the printed FIR (Ex-P12).

2.6 Natarajan (PW11), Assistant Commissioner of Police, took up investigation of the case and went to the place of occurrence and prepared the observation mahazar (Ex-P5) and rough sketch (Ex-P13) in the presence of witnesses Gnanavel (PW4) and Arumugam (PW5).

2.7 Since the death of Vijayalakshmi was within seven years of marriage, Chokkan (PW7), Revenue Divisional Officer, conducted inquest, in which, he examined and recorded the statements of Leelavathi (PW1), Shanmugakumar (PW2) and Balasubramanian (PW3) and their statements were marked as Exs-P2, P3 and P4, respectively. He (PW7) also examined Dinesh Kumar (A1) and his parents (A2 & A3). Based on the enquiry, Chokkan (PW7), submitted his report (Ex-P10), opining that the suicide of Vijayalakshmi was on account of harassment by the accused relating to dowry. The accused were arrested by the police on 02.03.2010.

2.8 Dr.Haris Santhaseelan (PW9) performed autopsy on the body of Vijayalakshmi and sent the samples of visceral organs to the Tamil Nadu Forensic Sciences Laboratory for medical examination. After receiving the viscera report, Dr.Haris Santhaseelan (PW9), issued postmortem certificate (Ex-P11), opining that Vijayalakshmi would appear to have died of asphyxia due to hanging.

2.9 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.172 of 2010 before the X Metropolitan Magistrate Court, Egmore, Chennai, for the offences under Sections 498-A, 304-B alternatively Section 306 IPC, against Dinesh Kumar (A1), Sampath (A2) and Vasanthi (A3).

2.10 On appearance of the accused, 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.446 of 2011 and was made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.11 The trial Court framed charges for the offences under Sections 498-A, 304-B alternatively Section 306 IPC against Dinesh Kumar (A1), Sampath (A2) and Vasanthi (A3). When questioned, they pleaded "not guilty".

2.12 To prove the case, the prosecution examined eleven witnesses and marked seventeen exhibits and one material object.

2.13 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the allegations. Dinesh Kumar (A1) examined himself as DW1 and marked two important exhibits viz., bank account statement of Vijayalakshmi (Ex-D1) and her notebook containing the suicide note (Ex-D2) purportedly left by Vijayalakshmi.

2.14 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.08.2012 in S.C.No.446 of 2011, convicted and sentenced the accused as follows:

Accused	Provision under which convicted	Sentence
Dinesh Kumar (A1) Sampath (A2) Vasanthi (A3)	Section 498-A IPC	Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

Accused	Provision under which convicted	Sentence
Dinesh Kumar (A1) Sampath (A2) Vasanthi (A3)	Section 306 IPC	Ten years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo one year simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.15 Aggrieved by the above conviction and sentences, the accused have preferred the present appeal.

3. Heard Mr.R.C.Paul Kanagaraj, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. This Court began hearing of this case on 22.11.2019. At that time, Mr.R.C.Paul Kanagaraj, learned counsel for the accused, took this Court through the suicide note (Ex-D2) left by Vijayalakshmi and submitted that the trial Court had not placed any credence on this and had rejected it on the short ground that the accused had not taken any steps for having it examined by an handwriting expert for proving that it was written by Vijayalakshmi.

5. This Court perused the original notebook, containing the suicide note (Ex-D2) and passed the following order on 22.11.2019:

"This is a case, in which, all the three appellants/accused have been convicted and sentenced to undergo ten years rigorous imprisonment, for abetment of the suicide of Vijayalakshmi.

2. While this Court was hearing the appeal, this Court noticed that Dinesh Kumar (A1), husband of Vijayalakshmi, examined himself as DW1 and marked a notebook, in which, Vijayalakshmi has left a suicide note as Ex-D2. However, no handwriting expert's opinion was obtained to show that the handwritings and the signature in the suicide note (Ex-D2) was that of Vijayalakshmi.

3. A reading of the suicide note (Ex-D2) shows a different reason for Vijayalakshmi's suicide and the benefit of the same should accrue to the accused. Therefore, in the interests of justice, this Court is constrained to exercise its power under Section 391 r/w 173 (8) Cr.P.C. to conduct further investigation on this aspect by the police.

5. On the directions of this Court, G.Augustine Paul Sudhakar, Assistant Commissioner of Police, Villivakkam, is present before this Court.

6. This Court directs the Registry to hand over

the original notebook (Ex-D2) to G.Augustine Paul Sudhakar, Assistant Commissioner of Police, Villivakkam, under proper acknowledgement.

7. G.Augustine Paul Sudhakar, Assistant Commissioner of Police, is directed to conduct further investigation in order to ascertain whether the suicide note (Ex-D2) was indeed left by Vijayalakshmi or concocted by the accused to set up a defence.

8. This Court is aware that, at this distant point of time, it may be very difficult for the police to gather evidence. Nevertheless, this exercise has become imperative.

Post the matter on 29.11.2019, under the caption "for orders".

6. Pursuant to the aforesaid order passed by this Court, G.Augustine Paul Sudhakar, Assistant Commissioner of Police, Villivakkam Range, collected the original notebook from the Registrar of this Court and also collected the admitted handwritings and signatures of Vijayalakshmi from Infosys, ICICI Bank and from her brother Balasubramanian (PW3). In fact, Vijayalakshmi's brother (PW3) handed over a notebook to the Assistant Commissioner of Police on 12.01.2020, in which, Vijayalakshmi had written notes on tailoring subject.

7. The disputed suicide note (Ex-P2) and the admitted handwritings and signatures of Vijayalakshmi were sent to the handwriting expert in the Tamil Nadu Forensic Sciences Laboratory, where, S.Jayanthi, M.Sc., Assistant Director and Document Expert, Forensic Science Department, examined them and gave her report dated 05.02.2020 together with the reasoning sheet opining that the questioned and the admitted signatures and handwritings were written by the same person.

8. Based on his further investigation, G.Augustine Paul Sudhakar, Assistant Commissioner of Police, submitted a report dated 13.02.2020 to this Court.

9. This Court examined G.Augustine Paul Sudhakar, Assistant Commissioner of Police as CW1 and marked the report of the handwriting expert as Ex-C1.

10. G.Augustine Paul Sudhakar (CW1), Assistant Commissioner of Police, in his evidence, has stated about the further investigation he had conducted pursuant to the order passed by this Court and the steps he had taken to collect the signatures and the handwritings of Vijayalakshmi from Infosys, where, she was employed, from ICICI Bank, where, she was having her bank account and from Balasubramanian (PW3), her brother.

Forensic Science Department, was examined as CW2, for the purpose of proving her report (Ex-C1). S.Jayanthi (CW2), in her evidence, has stated as follows:

"I am at present working as Assistant Director, Document Expert, Forensic Sciences Department. I have overall 21 years of experience and I have examined hundreds of documents and given opinion as handwriting expert in the course of the my service. I received the documents related to Crime No.196 of 2010, V-4, Rajamangalam Police Station on 21.1.2020 from the Assistant Commissioner of Police, Villivakkam Range, Chennai through Women Grade-I PC 27799 by name Mrs.M.Geetha and were examined by me and the Deputy Director. After examining the questioned document with the admitted document. In the result of the examination is furnished as follows:

I read, enclosed signature and writings stamped and marked Exs-A1 to A18 and Q1 to Q4 have all been written by one and the same person. The examination report dated 05.02.2020 along with the reasoning sheet has been marked as Ex-C1. The Doc.No.16/2020 dated 05.02.2020 is reasoned as follows:

Both the admitted and the questioned signatures and writings have been freely written and they agree cumulatively in the handwriting characteristic agreements include among other things following:

- (1) the skill of writing;
- (2) the alignment between the letters and the words 'Vijayalakshmi'; 'All'; 'the'; 'pril'; 'for'; 'I' ; 'to'; 'ill'; "மேல்" "தெரியாம" "கனம்" "டீச".
- (3) the location and manner of crossing of letters
- (4) the relative sizing between the letters
- (5) the manner of connecting the letters
- (6) the manner of terminating the letters
- (7) in the detailed design such as the beginning and formation of loops and curves of the letters

I have explained it in detail in the reasoning sheet Ex-C1."

12. Neither the prosecution nor the defence cross-examined these two Court witnesses.

13. Leelavathi (PW1) and her two sons Shanmugakumar (PW2) and Balasubramanian (PW3), in their evidence, have stated that they gave Vijayalakshmi in marriage to Dinesh Kumar (A1) on 30.08.2010; at the time of marriage, they gave fifteen sovereigns of gold to Vijayalakshmi and five sovereigns of gold to Dinesh Kumar (A1) and Rs.10,000/- (in cash) and performed marriage in Tirupur; at the time of marriage, Vijayalakshmi was working in Infosys, Hyderabad and she later got transfer to Chennai; after marriage, the couple lived in joint family with Sampath (A2) and Vasanthi (A3) in

Villivakkam; after marriage, the accused started demanding a four wheeler and cash of Rs.1,00,000/- and were continuously harassing Vijayalakshmi; Vijayalakshmi conceived; since she was very weak, the foetus got aborted; on 27.02.2010, Vijayalakshmi spoke to Leelavathi (PW1) and at that time also, she complained that the accused were harassing her; the accused did not even permit Vijayalakshmi to attend the naming ceremony of Shanmugakumar's (PW2) daughter in Tirupur; on the night of 27.02.2010, they received information that Vijayalakshmi was admitted to the hospital and therefore, they rushed to Chennai and learnt that she was dead; they suspected foul play in her death; therefore, Leelavathi (PW1) gave the complaint (Ex-P1) and they were enquired by Chokkan (PW7), Revenue Divisional Officer, during inquest.

14. In the cross-examination of Leelavathi (PW1), Shanmugakumar (PW2) and Balasubramanian (PW3), they denied the defence suggestion that the suicide of Vijayalakshmi was not on account of any dowry harassment or cruelty allegedly meted out by the accused.

15. In this case, the prosecution has proved the following facts beyond a peradventure:

- (a) the inter se relationship of the parties;
- (b) Vijayalakshmi was a B.C.A graduate and was employed in Infosys and Dinesh Kumar (A1) was also a software professional;
- (c) their marriage was solemnized in Tirupur on 30.08.2010 and at the time of marriage, the family of Vijayalakshmi voluntarily gave her fifteen sovereigns of gold and five sovereigns of gold as gift to Dinesh Kumar (A1) and cash of Rs.10,000/-;
- (d) after marriage, the couple lived in joint family with Sampath (A2) and Vasanthi (A3) in Chennai;
- (e) Vijayalakshmi conceived, but underwent abortion;
- (f) Vijayalakshmi committed suicide by hanging on 27.02.2010 in her matrimonial house when none was there;
- (g) Dinesh Kumar (A1) and his father (A2) broke open the door and took Vijayalakshmi to the hospital, where, she was declared "brought dead";

16. The point for determination in this appeal is, whether the suicide of Vijayalakshmi was abetted by the accused. The evidence of three witnesses viz., PWs.1, 2 & 3 alluded to above, are to the effect that the family members were demanding a four wheeler and cash of Rs.1,00,000/-. They also alleged that the entire salary of Vijayalakshmi was being used by the accused. It is their specific allegation that the accused did not permit Vijayalakshmi even to come for the naming ceremony of Shamugakumar's (PW2's) daughter.

17. In order to rebut this evidence, Dinesh Kumar (A1) examined himself as DW1 and marked the bank passbook (Ex-D1) of Vijayalakshmi to show that she was herself using her salary and ATM card. Dinesh Kumar (A1), in his evidence, has stated that he was arrested by the police and was in prison for twenty three days; after he was released from the prison, he came home and searched the rack of Vijayalakshmi and found a long record notebook, in which, she has written a suicide note (Ex-D2). He has further stated that, when he showed the suicide note (Ex-D2) to the police, they did not accept it.

18. As stated above, the trial Court has not placed any reliance on the suicide note (Ex-D2) on the ground that the accused did not confront it to Leelavathi (PW1), Shanmugakumar (PW2) and Balasubramanian (PW3) and did not take any steps to have it examined by the handwriting expert.

19. This Court read the suicide note (Ex-D2) and was initially prima facie satisfied by its genuineness. However, it is indeed very disturbing to note that, with a gold mine of evidence in hand, the defence did not properly use it during trial. In the interests of justice, the trial Court itself could have done the exercise that was done by this Court. The suicide note (Ex-D2), which is in Tamil with free mixture of English (complete English translation) reads as follows:

"Dhinu Maama,

"Sorry da.....," I am doing without informing you, and I am causing much difficulty to you. Only one thing, I wanted to see that "Pappa". That is all. Since I spoke about this, you have seriously misunderstood me....It is ok.

Apart from that, I am not the ideal wife for you. "Am going Bye.....". When go I, you will feel my absence only for a few days. Thereafter, "Everything will change. Don't worry. I love U....." If I am alive, some problems would always crop up. I have lots of love and affection towards you. That is why, I am taking this kind of a decision. If I am alive, I have to be happy with you. But it is not possible. I can also not be estranged from you.

"All the Best"

(Viji.D)

(D.Vijayalakshmi)

Even you have not understood my heart.

I have no wish to trouble you.

"I Truly Luv' U"

I want you to be happy, this is it. I do not want to leave you. At the same time, if I am alive, it will be difficult for you.

"By

Urs Loving Wife

Viji Dhinu"

I am sorry for having spoken wrongly. You are very Super am not fit for U"

Take good care of "Amma, Mama".
See a good bride for brother unlike me..
By coming into your life, I have wasted your life.
"I know 'U' won't forgive me....."

"Dei Poruki, Rowdee....." I am sorry to have argued back to back with you. "I won't do this anymore".

Take care of your health..... "Don't go night shift.....Take care of Ur health..."

"Sandhya Kapilesh, Madhini, Ana, take care of them too....."

"Amma, Anna & Anni, Balu, Dhana"

Don't create any problem for this reason. The husband I got is a good person only. "So Don't blame on him," Everything will happen according to my fate only. So please, do not get Dhinu into any problem.

'Pls da', the only thing I did without his knowledge is in relation to that land. Please give that document to him. That is all I could to, let it be of use to him.

Out of my settlement, please given Gold "Kappu" to Jasvani,
"Mangalyam" to Balu Anna's wife and Gold "Kappu" to all the children (upcoming).

Please give Rs.1,000/- to an Orphanage on Dad's birthday on the 11th April. Take good care of Mother.

You did not visit here until I was alive, at least do it hereafter.

I am not angry on anyone. "Tata Good Bye".

"By

Urs Luvng

Viji

("Appava pakka Poren")

(I am going to see Dad)

Teju

I, your Aunt, am going without seeing you. My only worry is that I am leaving without seeing you..... "Sorry da..." See Aunt in Photographs. You should study well and come up good in your life.

"All the best da. Thangam, Mayilu, and my Chellam"

"Teju Kutty Bye...."

20. A reading of the suicide note (Ex-D2) shows that Vijayalakshmi loved Dinesh Kumar (A1) intensely and there were ordinary quarrels between them, in which, both of them had abused each other. That is why, she has stated that she was feeling very sorry for having called him "Porukki.. Rowdee". She was badly wanting to attend the naming ceremony of her brother's child and they seem to have quarrelled on that issue. She has also stated that she had concealed from him the fact that she had purchased a land and has asked her parents to give the land document to her husband. There is no inkling of material in the suicide note (Ex-D2) to infer that Vijayalakshmi was subjected to harassment by any of the accused for a four wheeler or for cash of Rs.1,00,000/- as

alleged by Leelavathi (PW1), Shanmugakumar (PW2) and Balasubramanian (PW3). The suicide note (Ex-D2) is relevant under Section 32 (1) of the Evidence Act.

21. Admittedly, the couple lived together hardly for about six months after marriage and both of them were well employed. In the complaint (Ex-P1), Leelavathi (PW1) has not only implicated Dinesh Kumar (A1), Sampath (A2) and Vasanthi (A3), but also, Dinesh Kumar's (A1's) sister and her husband. Fortunately, the police did not include them as accused in the final report.

22. On a conspectus of the evidence on record, this Court is of the view that the conviction of the accused as set out in paragraph no.2.14 (supra) cannot be sustained.

23. In the result, this criminal appeal is allowed by setting aside the judgment and order dated 10.08.2012 passed in S.C.No.446 of 2011 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

24. Ex consequenti, Dinesh Kumar (A1), Sampath (A2) and Vasanthi (A3) are acquitted of the charges under Sections 498-A and 306 IPC. The bail bond executed by accused 1 to 3 shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded.

This Court places on record its appreciation to Mr.G.Augustine Paul Sudhakar, Assistant Commissioner of Police, Villivakkam Range, for the alacrity and methodicity in collecting further materials from various sources and for aiding this Court in administering justice. This appreciation may be entered in his service register.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Commissioner of Police,
Chennai.

2. The Assistant Commissioner of Police,
Villivakkam Range,
V-4, Rajamangalam Police Station,
Chennai.

3. The Sessions Judge,
(Mahalir Neethimandram),
Chennai.

4. The Deputy Registrar,
(Crl.Side)
the
Madras High Court,
Chennai - 104.

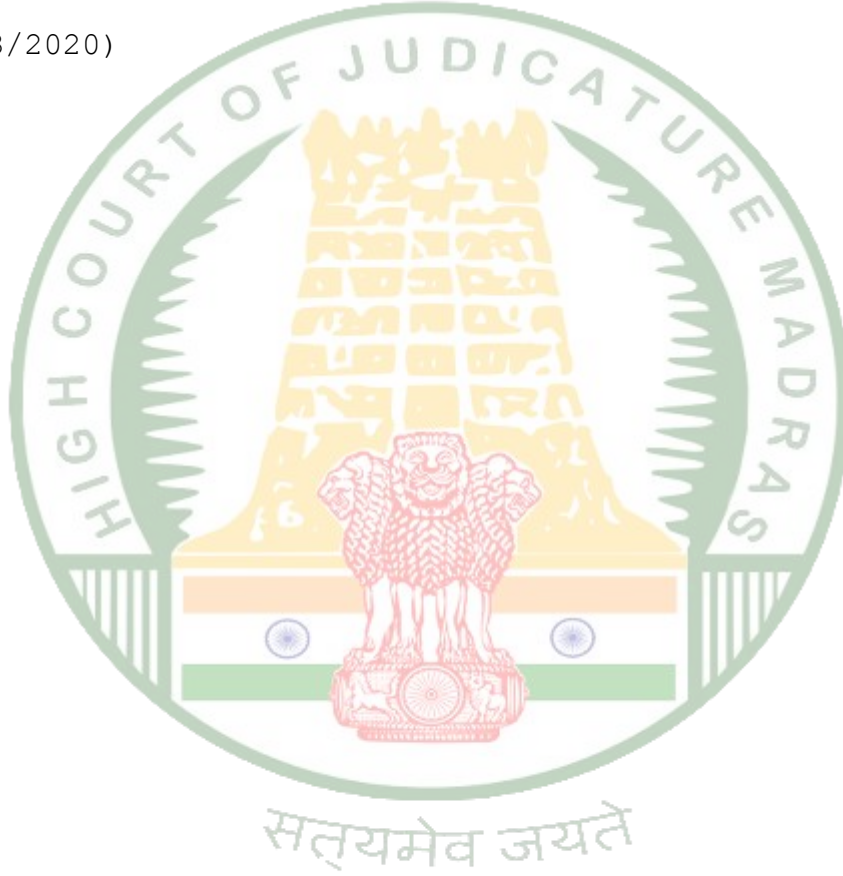
with a direction to return
the original records to

Court below concerned

5.The X Metropolitan Magistrate Court, Egmore, Chennai
6. The Superintendent,Central prison, Puzhal,Chennai

Crl.A.No.504 of 2012

A.SK(23/03/2020)



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