

Bail Slip

The Petitioner/Accused namely Shanmugam S/o. Mookan Chettiar released on bail as per order dated 02.11.2012 made in M.P. No. 1/2012 in Crl.A. 784/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2020

PRONOUNCED ON : 22.01.2020

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CRL.A.No.784 of 2012

Shanmugam

... Appellant/
Accused

Vs.

State rep. by
The Inspector of Police
Arumbavoor Police Station
Perambalur District
Crime No.33/2004

... Respondent/
Complainant

Criminal Appeal filed under Sections 374(2) and 382 Cr.P.C., to set aside the judgment and order dated 05.10.2012 passed by the Sessions Judge (Mahila Court), Perambalur in S.C.No.117 of 2010.

For Appellant : Mr.C.Jayaprakash
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 05.10.2012 passed by the Sessions Judge (Mahila Court), Perambalur in S.C.No.117 of 2010.

2.The prosecution story is as under :

2.1.Chandra (D1) married the appellant 16 years prior to her suicide on 29.02.2004 and they had three children Manjupriya (D2-aged 17 years), Madhusudhanan (D3-aged 15 years) and Ranjithkumar (D4-aged 12 years). The couple was in joint family with the parents-in-law of Chandra (D1) and were residing in Arumbavoor village in Perambalur District. Chandra's (D1's)

natal village was Kilarium in Nagapattinam District. The appellant was a sculptor by profession. To augment the family income, Chandra (D1) was part of a women self-help group.

2.2.It is alleged that the appellant suspected the fidelity of Chandra (D1) and tortured her, resulting in Chandra (D1) administering insecticide to her three children and consuming it herself in the wee hours of 29.02.2004. Her last child Ranjithkumar (D4) managed to alert his paternal grandfather Mookan Chettiar. Mookan Chettiar woke up the appellant and together, they went to the first floor portion and saw Chandra (D1) and the other two children lying on the floor. All the four were rushed to the Government Hospital, Attur, where they were examined by Dr.Dhamayanthi, who declared that Chandra (D1), Manjupriya (D2) and Madhusudhanan (D3) were brought dead and their accident register copies are Exs.P18, P16 and P17 respectively. Since, Ranjithkumar (D4) was alive, he was referred to the Government Hospital, Salem, where Dr.Prabagar (P.W.14) examined him and declared him as brought dead vide accident register copy (Ex.P6).

2.3.On the statement (Ex.P23) given by Mookan Chettiar, Rajendran (P.W.24), Inspector of Police registered a case in Crime No.33 of 2004 on 29.02.2004 at 10.00 a.m. under Section 174 Cr.P.C. and Section 306 IPC against the appellant.

2.4.Even in the said statement (Ex.P23), Mookan Chettiar had stated that his son (appellant) suspected the fidelity of his daughter-in-law and that was the reason for her to commit suicide. The Investigating Officer went to the place of occurrence and prepared the observation mahazar (Ex.P25), rough sketch (Ex.P26) and seized the following items under mahazar (Ex.P27) :

- "1.Hildan 35% EC Endosulphan empty tin contained 500 ml.
- 2.Speed 35% EC Endosulphan empty tin contained 250 ml.
- 3.Stainless steel tumbler - 4nos."

Inquests were conducted over the bodies of the deceased and the inquest reports were marked as follows :

Name of the deceased	Inquest report
Chandra (D1)	Ex.P28
Manjupriya (D2)	Ex.P29
Madhusudhanan (D3)	Ex.P30
Ranjithkumar (D4)	Ex.P31

2.5.Dr.Ashok Kumar (P.W.13) performed autopsy on the body of Ranjithkumar (D4) and the post-mortem report is Ex.P4 and bone case report is Ex.P5. Dr.Prabagar (P.W.14) performed autopsy on the body of Chandra (D1) and the post-mortem

report is Ex.P7, viscera report is Ex.P8 and bone case report is Ex.P9. Dr.Prabagar (P.W.14) also performed autopsy on the body of Manjupriya (D2) and the post-mortem report is Ex.P10, viscera report is Ex.P11 and bone case report is Ex.P12. Dr.Rathinakumar (P.W.15) performed autopsy on the body of Madhusudhanan (D3) and the post-mortem report is Ex.P13, viscera report is Ex.P14 and bone case report is Ex.P15.

2.6.The material objects that were seized at the place of occurrence were sent to the Tamil Nadu Forensic Science Laboratory for examination and the Chemical Examiner's report is Ex.P32. On 02.03.2004, Pappathi [P.W.3-mother of Chandra (D1)] and Kaliyaperumal (P.W.21-cousin brother of Chandra (D1)) handed over two letters (Exs.P20 and 21) to the Investigating Officer, which were obtained under mahazar (Ex.P22). The entire prosecution case rests on the letter Ex.P20, which has been treated as a suicide note.

2.7.After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.62 of 2004 before the Judicial Magistrate, Perambalur under Section 306 IPC against the appellant.

2.8.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with. For some reasons, the committal proceeding was delayed from 2004 to 2010. Ultimately, the case was committed to the Court of Session in S.C.No.117 of 2010 and was tried by the Mahila Court, Perambalur. The trial Court framed a charge under Section 306 IPC and when questioned, he pleaded "not guilty".

2.9.To prove the case, the prosecution examined 25 witnesses, marked 32 exhibits and 3 material objects. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same and set up a defence that his wife (Chandra-D1) was into money lending and on account of debts incurred by her, she committed suicide. The appellant examined one Ganesan as D.W.1, in support of his defence.

2.10.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 05.10.2012 in S.C.No.117 of 2010, convicted the appellant of the charge under Section 306 IPC and sentenced him to undergo 3 years rigorous imprisonment and pay fine of Rs.2,000/-, in default to undergo 6 months simple imprisonment. Challenging the conviction and sentence, the appellant is before this Court.

3.Heard Mr.C.Jayaprakash, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4.Learned counsel for the appellant contended that the police had searched the place of occurrence immediately, after the registration of the F.I.R., but did not recover any suicide note, whereas, Pappathi (P.W.3), Kalaiselvi (P.W.4) and Kaliyaperumal (P.W.21) handed over the suicide note (Ex.P20) to the police only on 02.03.2004. The police also did not send the suicide note (Ex.P20) to the handwriting expert for opinion. At the most, the appellant can be appellant of harassment and not for abetment of suicide. He further contended that in the absence of a charge under Section 498-A IPC, the appellant ought not to have been convicted under Section 306 IPC. He placed strong reliance on the following rulings:

- i. Mahendra Singh and another Vs. State of M.P. [1995 SCC (Cri) 1157]
- ii. Kishori Lal Vs. State of M.P. [2007 (4) CTC 158]
- iii. Arokiasamy Vs. State rep. by Inspector of Police, Tuticorin South, Tirunelveli District [2014(3) CTC 404]

5.Per contra, learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the appellant.

6.This Court gave its anxious consideration to the rival submissions.

7.Before advertng to the submissions made by the learned counsel for the appellant, a very disquieting feature that obtains in this case needs to be stated. The incident in this case occurred on 29.02.2004. The investigation was completed and charge sheet was filed in 2004 itself, but the case was committed to the Court of Session, only in the year 2010. That is why, perhaps, the neighbours viz. Sivakumar (P.W.5), Ganesan (P.W.6), Sivasankari (P.W.7), Chinnaponnu (P.W.8) and Malarkodi (P.W.9) turned hostile. That apart, the prime witness in this case, Mookan Chettiar, the father of the appellant, on whose statement the F.I.R. was registered, died in the meantime.

8.Mookan Chettiar, in his complaint (Ex.P23), has clearly stated that, his son Shanmugam (appellant) suspected the fidelity of his daughter-in-law and harassed her; on account of

which, there were quarrels between them; in this regard, he advised both of them; 20 days back, his son assaulted Chandra; the village elders, Perumal, Sivakumar (P.W.5) and others counselled both of them and compromised the matter; on 20.08.2004, Chandra and her son Madhusudhanan were waiting in the bus stand for going to Tanjore; at that time, Shanmugam prevented her and brought her back home; on that night, while all were sleeping, Ranjithkumar (D4) woke him up and told him that his mother had consumed insecticide and had given it to all the three children; Shanmugam was woken up and together, all of them went inside the room, they found Chandra, Manjupriya, Madhusudhanan and Ranjithkumar unconscious; all the four were taken to the Government Hospital, Attur, where Chandra, Manjupriya and Madhusudhanan were declared brought dead; Ranjith Kumar was sent to the Government Hospital, Salem for better treatment, but he died en route.

9. Because of the delay in the commencement of the trial, the evidence of this principal witness was lost and therefore, the complaint statement (Ex.P23) of Mookan Chettiar has no legal sanctity. In this case, the prosecution has proved beyond cavil via medical and forensic evidence that Chandra and her three children died of endosulphan poisoning vide the viscera reports Exs.P8, P11 and P14. The police seized empty tins of insecticides M.O.1 and M.O.2 from the place of occurrence. Insecticide was also detected in the four stainless steel tumblers M.O.3 vide chemical examination report Ex.P32, issued by the Assistant Director and Assistant Chemical Examiner to Government, Forensic Science Department, Tamil Nadu. The report of the chemical examiner is admissible under Section 293 Cr.P.C.

10. The nub of the case is, whether the suicide note (Ex.P20) should be believed. Just because, the police did not secure the suicide note at the time of the search, it cannot be said that the suicide note was concocted. Similarly, the failure of the police to send the suicide note to the handwriting expert for opinion, cannot also be a ground to reject the same, especially, when Kaliyaperumal (P.W.21) has identified the handwriting and signature in it, as that of Chandra (D1).

11. It may be relevant to refer to the judgment in 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."

12. 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."

12. Kalaiselvi (P.W.4) and Kaliyaperumal (P.W.21), sister and brother respectively of Chandra, have stated that, after the body was cremated, they stumbled upon the suicide note in the house and handed it over to the police. In the cross-examination, Kaliyaperumal (P.W.21), he has clearly stated that he knows the handwriting of his sister very well and that Exs.P20 and P21 were written by her.

13. Kalaiselvi (P.W.4), the younger sister of Chandra (D1), has stated that the accused is the husband of Chandra; Chandra had three children and all of them are no more; they died on 29.02.2004; the accused used to suspect the fidelity of Chandra and beat her frequently; Chandra had left a letter before her death, in which, she has stated the circumstance under which, she is committing suicide; whenever there were quarrels between Chandra and the accused, her mother and other villagers could interfere and bring out a compromise between them; her sister Chandra died because of the harassment suffered at the hands of the accused. In the cross-examination, she (Kalaiselvi-P.W.4) admitted that after marriage, she lived with her husband in Chennai and that, she visited her sister in Arumbavoor, when her daughter attained puberty and thereafter, she did not go, but Chandra would speak to her over phone and tell her about the sufferings at the hands of the accused. Ultimately, it was

suggested to her that Chandra committed suicide because, she was in neck-deep debts in her finance business and hence, she committed suicide, which suggestion, she denied. To the same effect is the evidence of Kaliyaperumal (P.W.21).

14.The suicide note (Ex.P20) is handwritten in Tamil and runs to 8 pages of foolscap paper. The suicide note is in three parts. The first two parts contain the same averments and the third part contains accounts showing the amounts Chandra (D1) has to receive from various persons. There is a postscript in the second part, wherein, it is written as "I have written this letter twice because, these people may burke one of it" (free English translation). There is a further postscript which reads as "Our souls will rest in peace only if our properties go to the temple". In the body of the suicide note, it is stated that the property should go to the Karumariamman temple in the village.

15.It may be apposite to give the free English translation of a few excerpts from the suicide note.

"I got married 16 years back; since marriage, I been undergoing untold sufferings; you may ask what suffering I would have undergone; if I stand outside the house, he will scold me; if I go to the neighbour's house, he will scold and also beat me; even while going by bus, he will criticise me and say I should stand properly; I have been putting up this all these years; I used to think that all men were like that; but, it is not so; I hoped that he would change; but, there is no sign of any change; with his earnings, I was finding it difficult to run the family; so, I started Diwali chit to augment the income; If I received beatings for a wrong done by me, then I can correct myself; for no reason at all, for the last 16 years, I have been undergoing this suffering everyday; no women should suffer my fate; all my assets should go to karumariamman temple. I have not lived peacefully even one day, like that, he should also suffer."

16.The third part of the suicide note contains details of the amounts receivable by her and the amounts to be disbursed to various persons. It is also stated as to how those amounts should be settled. She has requested Muthu anni and Chinnaponnu to help in realising the amounts and disburse it to the persons mentioned therein including the amounts due to the grocer, cable T.V. network distributor etc.

17.The appellant examined one Ganesan as D.W.1 to show that Chandra committed suicide because, she was not able to return the amounts collected by her to her chit subscribers. In the cross-examination, he admitted that he is a close relative of the appellant and that, he does not personally know about the financial dealings of Chandra. The trial Court has rightly disbelieved the evidence of Ganesan (D.W.1) and this Court has no reasons to differ. Had the reason for Chandra's (D1's) suicide been the alleged debts as projected by the defence, she alone would have consumed the poison and she would not have administered it to her three children.

18.Coming to the submission of the learned counsel for the appellant that the conviction of the appellant under Section 306 IPC without a charge under Section 498-A IPC is illegal, this Court is of the view that the same can only be irregular and not illegal. It would have been ideal, had the trial Court framed a charge under Section 498-A IPC. But, for the failure of the trial Court to frame such a charge, the entire trial will not stand vitiated.

19.With regard to the rulings relied upon by the defence referred to above, they are all borne out on their facts.

19.1.In Kishori Lal (supra), the alleged act of torture of the wife by husband was 4 to 5 years prior to the occurrence. That apart, there was evidence on record to show that the deceased was disturbed because, she had not conceived. In that context, the Supreme Court held that mere cruelty by the husband will not be enough to convict him under Section 306 IPC for the suicide of his wife.

19.2.In Mahendra Singh (supra), the deceased therein appears to have given a dying declaration, generally implicating her husband, mother-in-law and sister-in-law, which the Supreme Court found was not sufficient to sustain the conviction under Section 306 IPC.

19.3.In Arokiasamy (supra), this Court rejected the letter that is said to have been written by a child (D2) to her uncle alleging that there was dowry harassment. That apart, this Court found that Sheeba (D1), the mother of Josephine (D2) and Monisha (D3), had attempted to commit suicide thrice earlier and were saved. On those facts, this Court acquitted the accused therein.

20.It is trite that the principle of stare decisis has very little application in criminal law and a useful reference can be made to the judgment in Charan Singh and others Vs. State of Punjab [(1975) 3 SCC 39]. In Ude Singh and Others Vs. State of Haryana [2019 (9) SCALE 831], the Supreme Court has discussed in detail all the earlier rulings under Section 306 IPC and has held as follows :

"16.1 But, on the other hand, if the appellant by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC."

The case at hand satisfies the test laid down in Ude Singh (surpa).

In the result, this appeal is dismissed as being devoid of merits. The trial Court is directed to secure the presence of the appellant to undergo the remaining period of sentence, if any. Registry is directed to transmit the original records to the trial Court forthwith.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gya

To

1.The Sessions Court (Mahila Court)
Perambalur

2.The Inspector of Police
Arumbavoor Police Station
Perambalur District

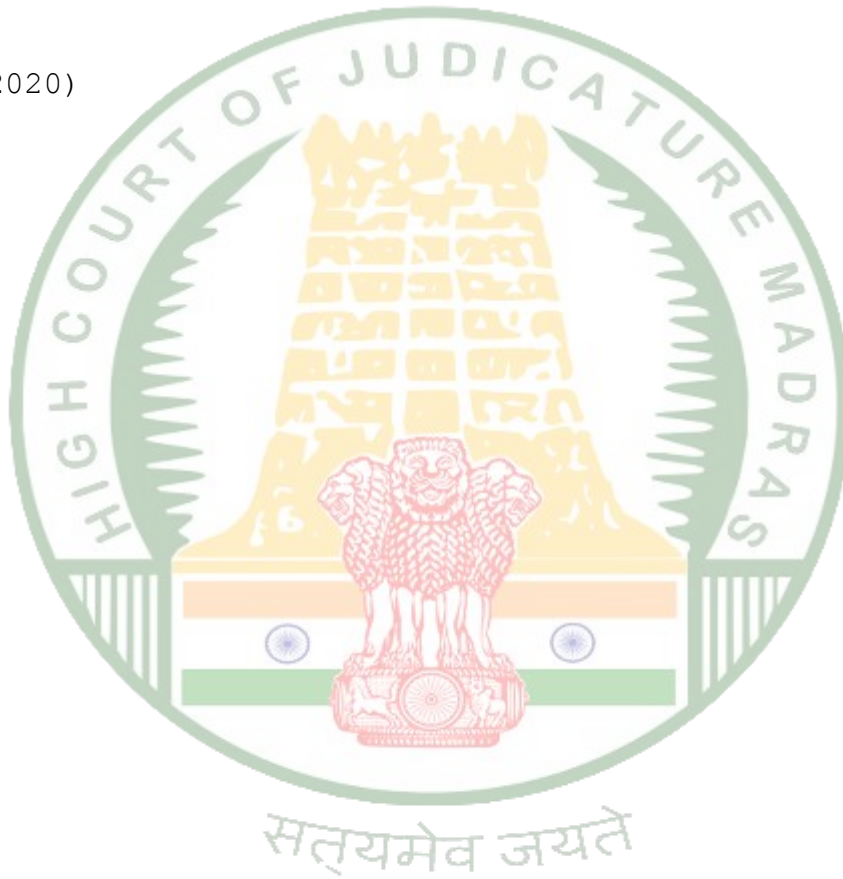
3.The Public Prosecutor
High Court, Madras

4.The Deputy Registrar
Criminal Side
High Court, Madras

(with a direction to transmit the Original records to the trial
Court forthwith)

CRL.A.No.784 of 2012

NMI (CO)
SP(17/02/2020)



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