

Bail Slip

The Appellant/Accused/Petitioner namely Balakumar alias Kumar S/o. Lakshmanan was directed to be released on bail on this Hon'ble Court dated 25.02.2013 made in CrI. M.P.1/2013 in CrI.A.84/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.A.No.84 of 2013

Balakumar alias Kumar

... Appellant/Accused

Vs.

State Represented by
Inspector of Police,
Vishnu Kanchi Police Station,
Kanchipuram.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 04.01.2013, passed by the Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu, in S.C.No.117 of 2009.

For Appellant : Mr.R.Anbalagan

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 04.01.2013, passed by the Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu, in S.C.No.117 of 2009.

2.The case of the prosecution is as follows :

2.1.The deceased Kanchana was the daughter of Pachaiappan

(P.W.1) and Raniammal (P.W.2), and younger sister of Shanmugam (P.W.3) and Nandakumar (P.W.4). Kanchana's father Pachaiappan (P.W.1) had retired from the Police Department as Constable. They hailed from Sevilimedu Village in Kancheepuram.

2.2.The appellant was a sweet master and was running a sweet stall in Kancheepuram.

2.3.Kanchana was given in marriage to the appellant on 13.03.2005 and at the time of marriage, she was given 25 sovereigns of gold and other household articles, apart from 5 sovereigns of gold given to the appellant. Kanchana and the appellant were blessed with a girl child, namely, Nanditha. The couple was living in a rented house in Door No.34/38-A, Pavadaipettai Street, Small Kancheepuram.

2.4.The appellant ran into losses and had to eventually close down his sweet stall.

2.5.It is alleged that the appellant was addicted to liquor and would spend all his money for it, without giving anything to his wife for domestic expenses. It is also alleged that he used to torture his wife for money and subject her to cruelty.

2.6.08.10.2008 was Ayuda Pooja day, which is a part of Dussehra celebrations. On that day, when the appellant was away, Kanchana hanged her 2 ½ years old child, Nanditha, and also hanged herself in her matrimonial house and committed suicide. The appellant returned home and found the door locked from inside. With the help of the neighbours, he staved in, and was shocked to see his wife and child hanging. He informed his parents-in-law and they rushed to the spot.

2.7.On the complaint (Ex.P1) given by Pachaiappan (P.W.1), Mariappan (P.W.11), Inspector of Police, registered a case in Crime No.541 of 2008 under Section 174 Cr.P.C. and prepared the printed F.I.R. (Ex.P12).

3.Investigation of the case was taken over by Samuthirakani (P.W.12), Deputy Superintendent of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P13) in the presence of witnesses, Gunasekaran (P.W.5) and Venkatesan (not-examined). From the place of occurrence, the police seized the following items under the cover of Mahazar (Ex.P3) in the presence of the same witnesses :

- i.marriage invitation of Kanchana and Balakumaran on 13.03.2005 (Ex.P4)
- ii.a one page suicide note written in Tamil and signed by Kanchana (Ex.P5)

iii.vouchers of the South Indian Bank Limited pertaining to Gold Loan Nos.25876, 26562, 25878 and 25877 (Ex.P6 series) The aforesaid seizure was effected on 09.10.2008 at 11.45 hours.

4.Since the death of Kanchana was within seven years of marriage, Chandran (P.W.8), Revenue Divisional Officer, conducted inquest by examining the family members of Kanchana. The appellant was also examined in the inquest. After completing the inquest, Chandran (P.W.8) submitted his reports (Ex.P10 and P11), opining that the death of Kanchana and the child was not due to dowry harassment, but due to the cruelty inflicted by the appellant on Kanchana.

5.Based on the inquest report, the police altered the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC vide alteration report (Ex.P14).

6.Dr.Tamil Vanan (P.W.7) performed autopsy on the body of Kanchana and the child Nanditha, and issued postmortem certificates, Exs.P7 and P8, respectively. Dr.Tamil Vanan (P.W.7), in his evidence as well in the postmortem certificates (Exs.P7 and P8), has opined that, both of them had died of Neuroasphyxia due to hanging. Apart from the ligature mark around the neck, no other injury was noted on the body of Kanchana.

7.After examining the witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.5 of 2009 before the Court of Judicial Magistrate No.I, Kancheepuram, for the offences under Sections 498-A and 306 IPC, against the appellant.

8.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.117 of 2009 and was made over to the Mahila Court, Kancheepuram District at Chengalpattu, for trial.

9.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'.

10.To prove the case, the prosecution examined 12 witnesses and marked Exs.P1 to P14 and one Material Object.

11.When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the appellant, one Jayakrishnan was examined as D.W.1 and Exs.D1 to D6 were marked.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.01.2013, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 306 IPC	Rigorous imprisonment for five years and also a fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for one year
Section 498-A IPC	No separate sentence

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

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

15.The prosecution has proved the following facts beyond cavil :

- i. the inter se relationship of the parties;
- ii.the marriage of the appellant with Kanchana on 13.03.2005 and the birth of Nanditha;
- iii.the couple was residing in Door No.34/38-A, Pavadaipettai Street, Small Kancheepuram;
- iv.on 08.10.2008, Kanchana and the child Nanditha died by hanging inside the house;
- v. the appellant and his neighbours, including Gunasekaran (P.W.5), broke open the main door on 09.10.2008 and found the mother and child hanging;
- vi.the appellant was not charged of the offence under Section 304-B IPC, but was charged and convicted of the offences under Sections 498-A and 306 IPC.

16.Pachaiappan (P.W.1) and his wife Raniammal (P.W.2), the parents of Kanchana, have stated that, Kanchana was given in marriage to the appellant on 13.03.2005 and at the time of marriage, they gave 25 sovereigns of gold and other household articles to their daughter, apart from 5 sovereigns of gold given to the appellant; the appellant was running a sweet stall in Baba Street and was also residing in the same street with his wife; he suffered losses and closed down the shop; they used to give around Rs.1000/- every month to their daughter for sustenance; on Vijayadasami day, they received news that their daughter and grand-daughter had died, and they rushed to the house of the appellant along with others; the appellant used to harass his wife for money. There is nothing more in the evidence of Pachaiappan (P.W.1) and Raniammal (P.W.2), whereas,

Shanmugam (P.W.3) and Nandakumar (P.W.4), the brothers of Kanchana, have added that the appellant would come drunk and harass Kanchana for money.

17.The appellant, in his statement to the Executive Magistrate, has given his version of the family life and has stated that, he ran into losses while running a sweet stall and that, he had pledged his wife's jewels and had obtained a loan. Of course, the statement is not a substantive piece of evidence and only certain admissions found therein will be relevant under Section 21 of the Evidence Act. The appellant examined one Jayakrishnan (D.W.1), the Branch Manager of South Indian Bank, to show that he (appellant) had pledged the jewels in the name of P.Shanmugam (P.W.3), the brother of Kanchana, and that, they were redeemed on 03.03.2007 and were once again pledged with the Bank in the name of Kanchana. Thus, this witness (D.W.1) was examined to show that the appellant was not greedy of money and he (appellant) wanted money only to eke his livelihood and maintain the family.

18.Shanmugam (P.W.3) and Nandakumar (P.W.4), the brothers of Kanchana, have stated that the appellant used to beat his sister after consuming liquor. The neighbours, namely, Gunasekaran (P.W.5), Krishnasamy (P.W.9) and Varadhan (P.W.10) have stated that there used to be quarrels between the couple. Beyond these, none of them has stated that the appellant used to beat his wife for money.

19.In this background, it now becomes necessary to examine the suicide note (Ex.P5). A free English translation of the suicide note (Ex.P5) is as under :

"I myself am the whole reason for my death. I am suffering from severe leg pain, stomach ache and hip pain. I cannot bear it. Therefore, I die. I take my child with me. I request my father, mother, brother, sister-in-law, aunt, uncle, Chithra and everyone to forgive me. Give my body and my child's body for medical research. This is my last desire. Father and brother, don't get angry on anyone. I will always be there with you."

20.The suicide note (Ex.P5) has been recovered by the police from the place of occurrence and the same has been established through the evidence of the Seizing Officer and the independent witness Gunasekaran (P.W.5). The Observation Mahazar (Ex.P2) shows that the door of the house was broken open on 09.10.2008. To reiterate, Gunasekaran (P.W.5) has stated that, he, along with the appellant, staved in after braking open the main door and found the two hanging. Gunasekaran (P.W.5) signed as witness in the Observation Mahazar (Ex.P2), Rough Sketch

(Ex.P13), and Seizure Mahazar (Ex.P3) under which, the suicide note (Ex.P5) was seized. Therefore, this Court has no reason to disbelieve the recovery of the suicide note (Ex.P5). The trial Judge has rejected the suicide note (Ex.P5) on a short ground that the police failed to send the same for expert's opinion. Samuthirakani (P.W.12), Deputy Superintendent of Police, has, in the cross-examination, stated that, he was not able to obtain the admitted writings and signature of Kanchana. Therefore, for the failure of the police to collect the admitted writings and signature of Kanchana for sending the suicide note (Ex.P5) to the Handwriting Expert for opinion, an inference cannot be drawn that the suicide note (Ex.P5) was not left by Kanchana. Such an inference would militate against common sense. The trial Court has gone one step beyond and has stated that the appellant should have proved the ingredients of the suicide note (Ex.P5) by adducing evidence to show that Kanchana suffered from stomach ache and knee pain. This is against the basic rules of evidence.

21. 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."

22. An accused can discharge the presumption under Section 113-A of the Evidence Act by placing reliance upon prosecution evidence also. The suicide note (Ex.P5) was recovered by the

police at the place of occurrence and the benefit of it cannot be denied to the appellant.

23.By no stretch of imagination, can the appellant be mulcted with any criminal liability for the death of the child Nanditha, because, Nanditha was only 2 ½ years old and she would not have committed suicide, but would have been murdered by Kanchana, before Kanchana hanged herself. In other words, had Kanchana survived, she would have faced prosecution for the murder of Nanditha.

24.In fine, this Criminal Appeal is allowed and the judgment of conviction and sentence, passed by the trial Court, is set aside. The appellant is acquitted of the charges framed against him.

Fine amount, if any paid by the appellant, shall be refunded to him. Bail bond, if any executed by him, shall stand discharged.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

mkn

To

1.The Judicial Magistrate No.1,
Kanchipuram.

2.The Chief Judicial Magistrate,
Chengalpattu.

3.The Sessions Judge, Mahila Court,
Kancheepuram District at Chengalpattu.

4.The Inspector of Police,
Vishnu Kanchi Police Station,
Kanchipuram.

5.The Superintendent,
Central Prison, Puzhal, Chennai.

6.The Public Prosecutor,
High Court, Madras.

7.The Deputy Registrar		with a direction to send back the
(Criminal Section),		original records, forthwith, to the
High Court, Madras.		trial Court

+2ccs to Mr.R.Anbalagan, Advocate, SR.No.11543.

Crl.A.No.84 of 2013

SR(CO)
CSR: 16.03.2020



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