

Kunhiraman Vs. Manoj

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Court : Kerala

Decided On : Feb-27-1991

Reported in : II(1991)DMC499

Judge : Padmanabhan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Crl. R.P. No. 453 of 1990

Appellant : Kunhiraman

Respondent : Manoj

Advocate for Def. : K. Ramakumar, Adv.

Advocate for Pet/Ap. : K. Kunhirama Menon and; P. Ramakrishnan Nair, Adv.

Disposition : Petition dismissed

Judgement :

Padmanabhan, J.

1. Kunhiracoan is a wealthy middle-aged eligible bachelor. Vilasini Is his neighbour. She is a young spinster working as agent of an insurance company. Vilasini became pregnant and gave birth to Manoj. Pregnancy and delivery were cleverly concealed by her because she was unmarried. Delivery was in the

paramba, where the child was abandoned. Matter came to the notice of the police. She was prosecuted, but acquitted. Now the child is happily living with her. In the birth register, KunhIRaman's name appeared as father on her Information. He objected and got his name removed. On behalf of Manoj, she filed M.C. No. 17 of 1988 before the Chief Judicial Magistrate. Thalasserry against KunhIRaman Under Section 125 of the Code of Criminal Procedure for getting maintenance. KunhIRaman denied paternity. Chief Judicial Magistrate found him to be the putative father and awarded maintenance at the monthly rate of Rs. 500/-. KunhIRaman wants to revise that order.

2. Both KunhIRaman and Vilasini hail from families having good antecedents. In the petition and in the box as PW 1, Vilasini said that in her life, she gave sexual access only to KunhIRaman. KunhIRaman denies having had any such access to her and said that the child must have been born to somebody else. But he was not able to pinpoint anybody or say that Vilasini was living a life of bad virtues.

3. Vilasini said that she went to KunhIRaman to canvass a policy and ho readily obliged. Her further case is that KunhIRaman took interest on her and offered to help her by canvassing policies from others and he did so. KunhIRaman admits that himself and his brother took policies from her, but says that it was at the intervention of her grandmother, for which there is no evidence. Vilasini says that KunhIRaman's helping attitude persuaded her to meet him again and one day, when the meeting was at a time when KunhIRaman alone was in the house, he forced her to sexual Intercourse, for which she yielded after initial resistance on account of his promise to marry her. Thereafter, visits and sexual connection became a regular affair and she became pregnant, she said, KunhIRaman flatly denied all these facts. His attitude is that he never met her.

4. As argued by Mr. KunhIRama Menon, on behalf of KunhIRaman, there is the possibility of Vilasini making an attempt to find out a suitable father in him for the child because he is an eligible wealthy bachelor. But, except the alleged act of impregnating her, there is no other motive suggested for false implication. As earlier stated, there is no evidence to show that Vllasini Is a lady of bad virtues, except the alleged connection with KunhIRaman on his promise to marry her.

Attitude of KunhIRaman that he had no occasion to meet Vilasini is falsified by the fact that himself and his brother took policies from her. Intervention of the grandmother was not even attempted to be proved.

5. PW 3 Is the Immediate neighbour of KunhIRaman. He is a venerable old man In his seventies having no axe to grind against KunhIRaman. Only suggestion was that be was giving false evidence because be was a colleague of Vilasini's father. That suggestion was denied by him and there Is no evidence or probability in support of the suggestion. In my opinion, every word he said could be believed. He had occasion to see Vilasini and KunhIRaman together on several days at the residence of KunhIRaman during periods when the child could have been begotten. He said that his opinion and the public opinion in the locality is that KunhIRaman is the person responsible for pregnancy. Court may not be bound to accept that opinion, which need not always be correct. He said that he heard from others, Including the relations of Vilasini. that they met KunhIRaman and he offered to marry Vilasini admitting paternity of the child. That evidence also could be rejected as hearsay. KunhIRaman did not marry her. Therefore, PW 3 himself went to KunhIRaman in the company of some others for a mediation. His evidence is that though KunhIRaman owned paternity of the child, he refused to marry her. When his evidence is considered as a whole in the light of the evidence PW 1, I have absolutely no reason to disbelieve both. Evidence of PW 3 that he saw both together on many days coupled with the extra judicial confession spoken to by him, when considered in the light of the evidence of PW 1, clinches the issue.

6. Presumption is in favour of virtues and not in favour of immorality. Immorality has to be established. I do not mean to say that the mere allegation of Vilasini is capable of throwing the burden on KunhIRaman to prove that he Is not the father and she was impregnated by somebody else. But, in the nature of the evidence in this case, fixing responsibility on him and showing that Vilasini was not of bad virtues, he had a duty to show that Vilasini was living a life of bad virtues, in which the possibility of impregnation by somebody else is there. There is no such evidence.

7. In the light of the evidence of PW3, there is no reason to disbelieve Vilasini when she said that she subjected her body to sex only by Kunhiraman and the circumstances under which she happened to do so. Her conduct in concealing pregnancy and delivery and making an attempt to abandon the child are not inconsistent with the normal human conduct in a society which considers pregnancy of an unmarried lady a sin, which is capable of serious consequences. Her conduct in pinpointing Kunhiraman as father in the birth register spoken to by PW 2 is also a relevant factor. I said so in spite of the cruelty involved in abandoning the child.

8. Conduct of Kunhiraman during trial is also relevant. Even before evidence was adduced, he wanted to make a show of his innocence before Court. Alleging that Human Leucocyte Antigen test (HLA test) is foolproof in the matter of deciding paternity, Kunhiraman applied for the same stating his willingness. Vilasini readily agreed. But he then backed out saying that it is highly expensive and Courts may not be inclined to accept the result. Probably, he only wanted to make a show of his bona fides thinking that it may weigh with the Court. But, unfortunately for him, Vilasini applied for Deoxyribonucleic acid test (DNA) conducted in the Centre for Cellular and Molecular Biology (CCMB), Hyderabad to ascertain paternity of the child on the ground that it is a sure test, Kunhiraman had no other go. He conceded that it is a sure test and agreed to abide by the result. Expenses were shared. Manoj, Vilasini and Kunhiraman went to Hyderabad and submitted to the test by supplying blood. Ext. P 5 report, supported by Ext. P 6 series identification marks, Ex. P 7 photographs and Ex. P 8 negative, is that Kunhiraman and Vilasini are the biological parents of Manoj. Opinion is supported by weighty reasons explaining the details of the procedure for conducting the test. Trial Court by way of abundant caution, sought the expert opinion of CW 1, who is the Forensic Science Advisor to the Kerala Police Department, after examining the Scientist, who conducted DNA test, as PW 4.

9. When Ext. P5 report came, Kunhiraman went out of gear. He ignored his promise to abide by the result. In his objection, he said that even though DNA test conducted in western countries is foolproof, he came to know from the available literature and other information that DNA test conducted by PW4 is not foolproof

because the process and techniques developed by him are in his own way and they are not having the reliability available for the test in western countries. It was thereafter that the parties were permitted to adduce evidence and they let in oral and documentary evidence.

10. Evidence will have to be appreciated in that background also. While appreciating the evidence, we will have to consider the human probabilities also. There is nothing improbable in a spinster yielding to the promises of an eligible bachelor to marry her, especially when she found a suitable husband in him. I do not find anything unusual in the conduct of Vilasini except thinking that she could have had more restraint in postponing sex to a time after marriage. She cannot be fixed with knowledge of the intention of Kunhiraman to use and then abandon on her. Her evidence that when pregnancy was reported, he wanted abortion and she refused lends assurance to her evidence.

11. It is true that in the absence of a legal marriage, presumption of legitimacy under Sec. 112 of the Evidence Act is not available. Even then, proof of access by the putative father and non-access by others are matters which the Court can take into account in evaluating the evidence. Faced with these adverse items of evidence and circumstances, Kunhiraman now wants a remand of the case to have the abandoned HLA test tried. Probably, he wants one test or other to be conducted until he is able to get a result that he is not the putative father. There is no evidence to show the reliability of HLA test in preference to DNA test. Request of Kunhiraman is evidently mala fide. It need be considered only if the Court feels any doubt on the acceptability of the evidence already on record. Therefore, it may not be advantageous to consider the acceptability of the result of the DNA test on the basis of the available data in the light of the other items of evidence and the agreement of the parties to abide by the result of the test.

12. Human body is made up of 60,000 billion cells, which are derived from a single cell. Original cell the mother's ovum fertilized by father's sperm, called 'zygote'. Zygote possesses all informations needed in the form of specific molecular, for construction of human body and its functions. Chemical tape, known as 'DNA (Deoxyribonucleic Acid)' is an organic substance found primarily in the nucleus of

living cells. It is inherited by the zygote from the mother and father through ovum and sperm. It comprises chromosomes within the nucleus and provides the genetic code which determines a person's individual characteristics. DNA is a genetic material which contains the entire blue print of Individual 'structure and function' in the language of just four alphabets, ATCG of letters or bases. These letters grouped into words of three letters and string of words, make up sentences called gene and garland of genes from the genetic material called 'DNA' the stuff of which chromosomes are made of. Every human cell has 23 pairs of chromosomes, one set is contributed by the father and the other by the mother. Every cell in the body contains an exact copy of the DNA of the parental cell, from which it is derived. Only ten per cent of the human DNA constitutes gene and is responsible for governing structure and function of body. Genes have specific arrangements of the letters flanked by junk DNA. Junk DNA has several regions with tandem repeats of letters or bases called 'mini-satellites'. A mini-satellite is a hyper variable region. Junk DNA contains numerous mini-satellites with the same sequence, but of varying length. Analysis of variant DNA (mini-satellites) in human genome is known as 'DNA finger-print'.

13. Two tools of molecular biology are essential in preparation of DNA finger print of an individual. First is a DNA probe, which is simply a short stretch of single stranded DNA like all DNA, which is made of a particular sequence of letters of bases. A probe works as a basic characteristic of DNA structure. It binds with DNA strand having complementary sequences of letters. A probe of known sequence and labelled with a radio-active isotope acts like a bloodhound, seeking out in thicket of DNA, its matching sequence. A DNA probe can be a piece of DNA isolated from an organism or synthesized in laboratory. Pioneer scientist in developing DNA finger print technique, Dr. Alice Jeffrey, used a particular probe in his study of variation in human population and got them patented. M13 probe was discovered and patented by a group of workers capable of identifying a number of hyper variable mini-satellite. BKM is another probe which could be of great application in analysis of DNA variation. Second tool is a group of enzymes called restriction endonucleases. These enzymes work as chemical scissors that cut a length of DNA wherever they see a specific short sequence of letters or bases. This ability is valuable. Hind I and Hae III are the names of chemical scissors used

by Dr. Alec Jeffrey. Vassarteral (1987) also used Have ill enzyme for study of variation of human DNA. In general, a restriction endonuclease enzyme is chosen as per structure of DNA probe to be used.

14. In the preparation of DNA finger print, first stop is isolation of DNA from blood, second step is cutting out all variable regions from DNA by restriction endonuclease enzymes. Then cut DNA is separated according fragment sizes by a technique called 'electrophoresis'. Separated DNA segments are neutralized and transferred on nylon membrane. Then, the different sizes of DNA strands with same core sequence are identified by nyoridizing them with a radio labeled probe. Hybridized DNA bands can be identification by patting men in a contact of an X-ray film by a process called 'autoradiography'. In the end, pattern and the number of DNA bands are analysed and interpreted. Autoradiographs snowing DNA band pattern is the DNA anger print of the individual though no finger print is actually involved. Words finger print are supplemented 10 DNA analysis because finger prints are unique to individuals and in general, it is a familiar term with the finger print. In reality, variation in DNA of individuals are much finger in number than in the pattern of finger impressions, and are similarly individual specific. DNA analysis, though it was nothing to do with finger print - 'digit impression'- is a more powerful tool than the actual finger print in problems of identification.

15. PW 4 is a senior scientist attached to the Centre for Cellular and Molecular Biology, Hyderaoad (CCMB) who, according to CW 1, is an authority on the subject. He had experience in the University of Edinburgh also. In collaboration with him, in the CCMB, a DNA finger print technique is being developed by using a probe isolated by PW4 from the DNA of a poisonous Indian snake (Branded Kratt) and designated as BKm. Results are said to be very much encouraging and fool-proof. PW 4 said that CCMB perfected the technique in 1988 and that it is hundred per cent sure. CW I agreed with him Stating reasons also. Many authoritative articles on the subject were also proved by him.

16. PW4 collected the required blood from KonhIRaman, Vilasini and Manoj. He said that all the tests mentioned above were conducted with perfect accuracy. When the DNA profile of Manoj was compared with those of KunhIRaman and

Vilasini, he found that every band in the DNA profile of Manoj is either derived from the DNA profile of Kunbhiraman or Vilasini. For this reason, he found that they are the biological parents of Manoj. That is the opinion given by PW4 in Ext. P5 and in the box and his opinion was fully confirmed by CW 1 supported by many authoritative articles. Mixed DNA profile of Kunhhiraman and Manoj and the separate profile of Kunbhiraman also confirmed that all the nine bands shown by arrows in Ext. P7 photograph are those bands which Manoj inherited from Kunhhiraman. DNA patterns for BKM probe also developed from Hae 111, Alu 1 and BSTN 1. of these three persons further proved that every band in the DNA profile of Manoj is either derived from Kunhhiraman or Vilasini. From the various DNA profiles developed it was seen that Manoj has inherited total 15 bands, which are not derived from the mother, but derived from Kunhhiraman alone. His opinion is that it is proved, beyond doubt, that Kunhhiraman is the biological father of Manoj.

17. He said that the chance of Kunhhiraman being unrelated to Manoj, but happens to share all -fifteen bands is one in 300 billion, whereas the present world population is less than 5 billion. He also said that prior to DNA tests as a preliminary examination, alleles for ABM, MN, Rh, BSD, BAP, ADA and HB polymorphic systems of the blood of all the three persons were also analysed and the results of all those tests also indicated Kunbhiraman as the biological father of Manoj. These are facts spoken to by PW4 and noted in Ext. P5. PW 4 said that nobody, else in this world could be found with identical pattern which the alleged father has contributed to the child and the only possibility of error is in the case of monozygotic (developed from the same zygote) twins. No such contingency is alleged in the case. It was based on these reasons, supported by the relevant papers produced in the case, that PW4 came to the definite conclusion that Kunhhiraman alone could be the biological father of the child and that his conclusion is hundred per cent fool-proof.

18. Even in his objection to Ext. P5, Kunhhiraman himself conceded that he sticks on to his stand that the test is fool-proof. His objection was only that the way in which the test was conducted is erroneous. In that respect I think I could believe the word of PW 4 and CW 1 supported by various articles.

19. In the light of these items of evidence, I do not think it is necessary to remand the case to enable Kunhiraman to have the HLA test, which was once abandoned by him. His attempt seems to be to postpone the evil day. In that attempt, he is adding insult to injury to the lady and the child. His attempt is to bring about that Vilasini is of bad virtues and the child is a bastard. At least out of fear of God, if not out of moral and legal obligations, had he owned paternity and lived with the child and lady after marrying her; it would have added glory and lustre to him. Even now, it is now too late to forget the past. Let wisdom and morality dawn on him to accept Vilasini and Manoj as his and live with them.

20. In the light of what I discussed above, I am of the view that the result of DNA test by itself could be taken as conclusive in deciding paternity. It is useful in other areas also like hair, semen, teeth, dead bodies, etc. But I used it only for tilting the balance in accepting the other acceptable evidence which may not in themselves be cent per cent conclusive. I have no hesitation in confirming the conclusion of the trial Court that Kunhiraman is the putative father of Manoj.

21. Law allows an illegitimate son also to be maintained by the affluent putative father though the mother, who cannot claim to be the wife, is not entitled to get maintenance. Only the goodwill of Kunhiraman is required to legitimise both of them. On the question of quantum, there was no argument before me. Evidence is that Kunhiraman is sufficiently affluent. Need of so much amount for the child was not and cannot be disputed.

22. Criminal revision petition is dismissed.