

(2011) 07 KAR CK 0289

In the Karnataka High Court

Case No : Criminal Revision Petition No. 2195/2009

Abdul Hameed Khan Savanur

APPELLANT

Vs

State by State Public Prosecutor, High Court of Karnataka,
Circuit Bench Dharwad

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2011) 07 KAR CK 0289

Hon'ble Judges : A.S. Pachhapure, J.

Bench : Single Bench

Judgement

Hon'ble Mr. Justice A.S. Pachhapure

1. The petitioner has challenged his conviction and sentence for the offence punishable under Section 498(A) of Indian Penal Code on a trial held by J.M.F.C., Hubli and confirmed in Criminal Appeal No. 179/2008 by the Sessions Judge, Dharwad. Sans unnecessary details, the prosecution version unfolded during the trial is as under:-

The complainant-Asma-P.W. 1 is the wife of the petitioner-the accused before the trial Court. Their marriage took place on 24.11.1985 and through the wedlock, they have a son and a daughter i.e., P.W. 9-Fahimdanish and P.W. 10-Fahreenkausar, respectively. On the date of the complaint, both the son and daughter were aged approximately 18 years and 16 years, respectively. Asma-P.W. 1, complained that since from the marriage, she was subjected to mental and physical cruelty at the hands of the petitioner herein, who was insisting her to pay money and asking for the salary that she was earning. She claims that on some occasions for filthy reasons, the petitioner used to beat her and assault her with footwear and boots. Though she informed about this ill treatment to her parents-in-law, they did not advice the petitioner. She complained to her father-P.W. 4-Dr. Mohinuddin, the Vice Chancellor and he had cautioned the petitioner, both through the letter and in person. 2. She claims that her husband is a greedy and insisted her to get her half of the property gifted to her by her father

(P.W.4) and threatened that in case, if the share is not given that he would divorce. He insisted her to take the loan and when the loan was availed, he did not pay the installments and threatened that he would marry another lady, in case, if she does not discharge the loan amount. In the circumstances, she gave half share in the property gifted to her. He is also said to have suspected the conduct and alleged that she is not mentally well and to that effect, he has complained to the Police also. She explained all her problems to the elders and others and as per their advice, she continued to live with him with the sole purpose of looking after her children. Though she approached Jamat people, she claims that her husband threatened the Jamat people and they therefore did not co-operate in solving the dispute.

3. It is on 14.07.2005 at about 07:45 a.m., she claims that when the milk vendor asked for the price of the milk supplied, she refused to pay the amount to the milk vendor, she claims that her husband beat her and threatened to take her life. It is in these circumstances, that she approached the Police and submitted her complaint-Ex. P-1, on the facts stated above, which came to be registered.

4. During the course of the investigation, the Police held the spot mahazar-Ex. P-2, in the presence of the witnesses, collected the marriage records and other relevant documents. Recorded the statements of the witnesses and on completion of the same, they filed the charge sheet against the petitioner before the J.M.F.C.

5. During the trial, to prove the guilt of the petitioner, the prosecution examined P.Ws. 1 to 10 and got marked the documents Exs. P-1 to P-19. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. He has taken the defence of total denial. He got marked Exs. D-1 to D-14. No defence evidence is lead. The trial Court after hearing the parties, on appreciation of the material on record, convicted the petitioner for the offence punishable under Section 498(A) of the Indian Penal Code and ordered to undergo simple imprisonment for one year and to pay a fine of Rs. 3,000/-, in default to undergo simple imprisonment for three months.

6. Aggrieved by the conviction and sentence, he preferred an appeal before the Sessions Court in Criminal Appeal No. 179/2008 and the appeal also came to be dismissed on merits, vide judgment and order dated 16.09.2009. Aggrieved by the orders of the Courts below, the present revision petition has been filed.

7. I have heard the learned counsel for the petitioner and the learned High Court Government Pleader.

8. P.W. 1-Asma, is a Steno in the Syndicate Bank at Hubli, whereas the petitioner is an Advocate by profession. They have spent 20 years of married life by the date when the complaint came to be filed. Through the marriage they have a son-P.W. 9 and daughter-P.W. 10, who were aged 18 years and 16 years respectively on the date of the complaint.

9. To prove the ingredients of Section 498(A) of the Indian Penal Code, the prosecution relies upon the evidence of P.W. 1-the wife, P.W. 4-her father, P.Ws. 9 and 10, the son and daughter, P.W. 5-the Junior Assistant who was working under P.W. 4, P.W. 6-the driver of the car of the petitioner and P.W. 7-the driver of the car of P.W. 4.

10. As claimed by P.W. 1-the wife that on 14.07.2005 at about 07:45 a.m., when the milk vendor came and asked for the price of the milk sold, the accused insisted her to pay the money and when she refused, he said to have abused and assaulted her on that day. The prosecution has not examined the milk vendor who is a material witness and as could be seen from the evidence of P.W. 1, she does not speak to the presence of P.Ws. 5 to 7, 9 and 10 at the time of incident dated 14.07.2005, P.W. 5 was working as a Junior Assistant in the University at Shimoga of which P.W. 4 was the Vice Chancellor and admittedly, he is a person interested in the prosecution, being a subordinate official of P.W. 4. In the chief-examination, he states that on 24.07.2005, when he had been to Hubli to celebrate Ramzan festival, the milk vendor asked for the money from the petitioner who abused his wife and beat her. But as could be seen from the contents of the complaint-Ex. P-1, the evidence of P.Ws. 1, 9 and 10, this incident is said to have been taken place on 14.07.2005. Whereas P.W. 5 states that it was on 24.05.2005, as P.W. 7 has not been re-examined to state that there is a mistake in the evidence relating the date of the incident, his evidence cannot be accepted, as the incident pertaining to the milk vendor did not occur on 24.07.2005. He states that P.W. 4-the Vice Chancellor use to tell him about the harassment meted by his daughter in the hands of the petitioner. This is hearsay evidence and is not acceptable in law. Even in the cross-examination, so far as the date of assault is concerned, the date 24.07.2005 is repeated and nowhere he states that it is a mistaken date. So he cannot be a witness to the incident dated 14.07.2005 and as so far as the cruelty and harassment is concerned, he heard it from P.W. 4 and it is also hearsay evidence and cannot be accepted to prove the cruelty and harassment.

11. P.W. 6 was the driver of the car of the petitioner and he has turned hostile to the prosecution and his statement has been got marked in the cross-examination by the Additional Public Prosecutor at Ex. P-18. P.W. 7 is the driver of P.W. 4 and he states in his evidence that he used to come to the house of the petitioner along with P.W. 4-the Vice Chancellor and on 14.07.2005 he had been to the house of the complainant and at about 08:00 p.m., there was a quarrel for payment of the dues and at that time, the petitioner beat her once. But it is relevant to note that P.W. 1 does not refer to these persons i.e., either father-P.W. 4, the driver P.W. 7 or her children, P.Ws. 9 and 10. He admits in the cross-examination, that he has high regards for P.W. 4 and his relation with P.W. 4 are cordial and therefore, he could be a person interested in the prosecution so as to safeguard the interest of P.W. 1-the daughter of P.W. 4. So far as P.W. 9-the son of the petitioner and P.W. 1 is concerned, though they speak about the incident dated 14.07.2005, in the cross-examination, P.W. 9 admits having made a

statement before the Police that the incident dated 14.07.2005 was informed to him by his mother. This contradiction has been marked as Ex. D-14. So, it is evident from material contradiction from which it could be said that P.W. 9 was not present at the time of the incident and that he came to know about this incident through his mother. Hence, this hearsay evidence is not acceptable in law, P.W. 10 in the chief-examination states that he was not present at the time of the incident dated 14.07.2005, this itself cuts the case of the prosecution at the root.

12. The cruelty contemplated under Section 498(A), which is extracted here under reads:-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Explanation: For the purpose of this Section, "Cruelty" means:-

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

13. The learned counsel for the petitioner has placed reliance on the decision of Apex Court reported in Girdhar Shankar Tawade Vs. State of Maharashtra, . A woman succumbed to the burns in her nuptial home, both the trial Court and the High Court ruled out the suicide holding that it is an accidental death. It is in these circumstances, that the Apex Court held that Section 498(A) is not attracted, as there is no cogent evidence to bring home the charge under Section 498(A). To justify the conviction for the offence punishable under Section 498(A) of the India Penal Code, there must be material on record and the evidence has to be consistent and cogent. The Apex Court also held that causing some torture and a request to treat her well itself would not bring home the charge under Section 498(A) of the Indian Penal Code. So also, he places reliance on the decision of High Court of Himachal Pradesh reported in State of H.P. Vs. Suvinder Kumar, , wherein the facts reveal that the accused-husband, was addicted and used to beat the complainant and used to take money away whatever the complainant used to earn and the High Court held that these acts of the accused would not attract the provisions of Section 498(A) of the Indian Penal Code. It is held that beating a wife would constitute cruelty under the provisions of the Hindu Marriage Act. This cruelty provided under the provisions of the Hindu marriage Act, though may be a ground for divorce is not sufficient to attract the provision of Section 498(A) of the Indian Penal Code, as the cruelty under the said provision is of such a nature as is likely to drive a woman to

commit suicide. In the context of these principles, now the evidence of the prosecution witnesses will have to be assessed.

14. On one end, the wife states assault with boots and chappals and for insisting share in the property gifted to her by her father and harassing her to raise the loan in her name, are the circumstances narrated by Asma-P.W. 1 in her chief-examination. She would admit in the cross-examination that the petitioner paid an amount of Rs. 68,800/- on 31.03.2006 that he was supposed to pay towards the loan amount. Though she states that all the installments are paid by her only, to endorse the payment, no documents have been produced. She admits that whenever she was suffering from any ailment, her husband used to take her to the hospital and used to pay the medical expenses. She also admits that when they were to go to Hujj, it is the petitioner who incurred the expenses for stay and journey to Hujj. Further more, the petitioner is an advocate by profession and he used to mobilise the deposits in the bank in which his wife was working. In the cross-examination, she admits about the letter said Exs. D-1 to D-12. Ex. D-1 is the letter written to P.W. 1-Asma, by the Syndicate Bank, expressing their happiness having canvassed depositing of Rs. 1,00,000/- and it was placed on her record by way of appreciation. So also the letters at Exs. D-2 to D-12, the appreciation letters are issued by the Syndicate Bank and in the cross-examination, P.W. 1 admits that these funds were mobilised by her husband by getting the deposit to the Bank and he must have did so to seek appreciation of the duties of his wife in the bank and to see that she gets promotion. Otherwise than this purpose, the petitioner had no other purposes to fulfill.

15. There are many incidents admitted by Asma-P.W. 1 in her cross-examination to show her husband's affection for his wife and children. As admitted by P.W. 1, it is the petitioner who took his wife and children for all India tour, after the marriage on five occasions. Though she claims that it was under her L.T.C. facility provided by the bank, she has not produced any such documents to prove the said fact. Though the husband used to incur the medical expenses from his own pocket, P.W. 1 used to get the reimbursement of the same. It is relevant to note that he incurred the cost of construction of the building at Keshwapur in Hubli by raising loan and in respect of the properties at Navanagar and Keshwapur, wherein his name does not appear as owner. She admits that her husband never requested to get his name entered in the records of these properties, which stood in the name of P.W. 1. So, in this context incurring huge amount for construction over the site owned by his wife would show, that he was not a greedy man and if really he wanted the property, he could have asked his wife to transfer it in his name.

16. Further more, apart from the profession as an advocate, he owns 24 acres of agricultural land, a farmhouse and a green house. It has been suggested in the cross-examination of P.W. 1 that he never demanded any property gifted to her by her father and that on her own, she has given 50% of the share to the petitioner.

17. Further, so far as the care for the children is concerned, P.W. 1 incurred an amount of Rs. 1,17,000/-, the fees payable for his daughter's education. She admits that the petitioner also looked after the medical expenses of the children, P.W. 9, in the cross-examination admits that all the educational expenses were looked after by the petitioner. The expenses of repairs of the motor cycle were also paid by the petitioner. Further he admits that the insurance amount was deposited after the day of the alleged incident dated 18.07.2005. He paid Rs. 5,000/- for the repairs of the engine of the vehicle. He was celebrating the birthdays of his children. So also P.W. 10 admits that the petitioner had given good education to them and her father accompanied her whenever she used to come to Bangalore and when there was some problem in the C.E.T. counseling, she admits that the petitioner filed a writ petition before the High Court. She also states that whenever she was in need of money, she was taking from her father. When she was studying medical course, the monthly expenses of Rs. 2,500/- was being paid by her father till 2008. The expenses were looked after only by the petitioner himself, when a suggestion is put to P.W. 10 that her father has got affection for his children, she pleads ignorance.

18. Now to consider the conduct of P.W. 1, it is relevant to note that when the petitioner had applied for anticipatory bail, after the complaint by P.W. 1, she engaged a private counsel to oppose the bail application. She had also filed an affidavit requesting to reject the bail. She had also made a prayer to prohibit the entry of the petitioner in her house. Though a suggestion was made putting an offer to join the petitioner on condition that he would look after her affectionately, she refuses the said offer. So this conduct and attitude of P.W. 1 is not bonafide. So from looking through the material placed on record, there appears to be incompatibility amongst the spouses. It is because of this reason that there used to be the quarrel between them and may be that on some occasions went to an incident of abuse and assault. Accept the incident dated 14.07.2005, the rest of the allegations are vague and general. Rest of the witnesses except P.W. 1, have no personal knowledge, so far as the day-to-day affairs between the spouses, P.W. 4 used to visit the house casually and even after the retirement and the marriage of the children. Though P.W. 1 is residing separately, her father has chosen to join an old age home. The scrutiny of the evidence reveals only the incompatibility of mind and no willful intention on the part of the petitioner to cause any cruelty to an extent, which is likely to drive a woman to commit suicide.

19. Both the Courts below have given extreme importance about the demand of 50% of the share in the property gifted to P.W. 1. But considering the above said circumstances, and the fact that the petitioner as well incurred lakhs together money for putting up construction, education of the children etc. the allegation against the petitioner demanding 50% of the property gifted by P.W. 4 does not appear to be true. So in the light of the decision referred to supra and the appreciation of the evidence of the material witnesses reveal that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The cruelty

contemplated under the provisions of Section 498(A) of the Indian Penal Code has not been proved. It is only the difference of opinion and incompatible mind of the spouses, which has lead to the quarrel, the abuses and on rare occasions, an act of beating. There is no couple in the world, which has compatibility in everything and at all the times, God is yet to create such a couple The instances are insufficient to conclude cruelty envisaged under Section 498(A) of the Indian Penal Code. In that view of the matter. I proceed to pass the following:-

ORDER

The petition is allowed. The conviction and the sentence ordered by the trial Court confirmed in Criminal Appeal No. 179/2008 for the offence punishable under Section 498(A) is set aside. The petitioner is acquitted of the charge. The bail bonds are cancelled.

The fine amount, if any deposited shall be refunded to the petitioner.