
(2004) 11 KL CK 0001
In the High Court Of Kerala
Case No : Criminal A. No. 1060 of 1998

Aravindan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125, 161
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 5, 7
Penal Code, 1860 (IPC) — Section 14, 304B, 34, 498A

Citation : (2005) 2 ILR (Ker) 410 : (2005) 3 RCR(Criminal) 984

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : S. Rajeev, for the Appellant; P.M.A. Kalam, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.M. James, J.—Accused 1 and 2 in SC 45/96 on the file of the First Additional Sessions Judge, Kozhikode are the appellants. Though both of them were charged for the offences punishable under Sections 304B and 498A read with Section 34 of the Indian Penal Code, they were found guilty only u/s 498A read with Section 34 of IPC and were acquitted of the offence u/s 304B of IPC. On conviction, they were sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.5,000/- each and in default, to undergo rigorous imprisonment for six months each. The same is under challenge through this appeal.

2 The brief facts of the case are that both the first appellant, Aravindan, and Reetha were in love. They decided to join in matrimony. Both went to the office of PW.7, the Sub Registrar of the area and executed Ext.P2 agreement dated 1.12.92 in the presence of PW1, a close relative of Reetha and PW.2, her mother, resolving to live as husband and wife. They cohabited as such in the house of the

first accused/ first appellant. But, the life of Reetha was not pleasant there. There was demand for dowry particularly gold ornaments worth 25 sovereigns. She had to face many harassments and cruel behaviour from both the appellants, while living in their house. She complained of the same to PW.1 who was also one of the attestors to Ext.P2 agreement. The father of Reetha is no more. PW2 was not capable of meeting the demands of the accused. She went to the house of the appellants. But, PW2 was not received with the warmth extended to a mother in law. She, hence, returned. The relationship later on went into rough weather. The first appellant took Reetha and left her in the house of PW.2. There was a son born to Reetha by the first appellant, Aravindan. The child was with Reetha. She lived for one month in her house. Though, she repeatedly complained to PW1 he could not meet the appellants and resolve the dispute, as he was unable to meet the demand of dowry. Harassments were meted out to Reetha by the appellants, saying that she had no beauty and also did not possess the stature suitable for the first appellant, comparing her with the wife of the brother of the first appellant, who by then got married and brought a beautiful girl to their house. So, Reetha decided to commit suicide, after leaving a letter to her mother. She poured kerosene oil and accomplished her desire, despite the treatment in the hospital for the burn injuries she suffered.

3. PW1 gave Ext.P1 F.I. Statement to PW9, the Head Constable, who registered Ext.P1(a) FIR. PW4 is also another relative, who speaks of cruelty on Reetha, by the appellants. PW10, Tahsildar, held Ext.P4 inquest. PW6, the doctor, conducted post mortem and issued Ext.P6, post mortem certificate. PWs. 12 and 13 are the Investigating Officers of the case. Later, they have filed a final report in the case.

4. The evidence consists of PW.1 to PW13 and Exts.P1 to P10. M.Os. 3 to 7 were also identified. No defence evidence was adduced, except marking of Ext.D1, a contradiction of Section 161 Cr.P.C. statement of PW2. The learned Sessions Judge found the appellants guilty and convicted and sentenced them, as stated above, u/s 498A.

5. The first contention of the learned counsel, Mr. S. Rajiv appearing for the appellants is that Ext.P2 being only a contract, there is no valid marriage between the deceased Reetha and the first appellant, Aravindan. Hence, Section 498A IPC will not be attracted. The counsel relied on *Surjit Kaur v. Garja Singh* 1994 SCC 259 to emphasise that mere living as husband and wife, without a valid marriage, as per the custom prevalent in the area, would not confer the status of husband and wife. This case came up for the decision of the Supreme Court under Sections 5 and 7 of the Hindu Marriage Act, 1955. A suit was filed by Surjit Kaur, for getting the property of Gulaba Singh, on the ground that she was the legally wedded wife of late Gulaba Singh, who had contracted Karewa form of marriage. She produced Karewa Nama, which was registered. Surjit Kaur was the first defendant in the suit. The plaintiff denied the said contention. While considering this document and the relationship, the Apex Court held that the

mere living of the couple as husband and wife was not sufficient to establish a marriage, unless they had undergone the marriage, performing the ceremonies, as per the custom prevailed in the area of the community". As the facts in Surjit Kaur case is regarding the determination of the right on the property under a specific deed the same cannot be applied to the facts of this case.

6. The counsel further relied on Shivcharan Lal Verma and Another Vs. State of Madhya Pradesh, to emphasise the above point of argument. The facts in this case were that Shivcharan married second time one Mohini who committed suicide by burning herself, at a time when the first valid marriage of Shivcharan with Kalindi subsisted. Shivcharan was prosecuted u/s 498A IPC. Accepting the fact that there was no marriage between Shivcharan and Mohini, as the first valid marriage subsisted, the conviction and sentence were set aside by the Apex Court. In this case, the facts are entirely different and, therefore, Shivcharan Lal Varma's case is not applicable.

7. The counsel also placed reliance on Prasadhkumar v. Ravindran 1992 KLT 729. The facts of this case show that a boy and a girl, who were Hindus, executed a document, declaring themselves as husband and wife, and deciding to live together. Knowing the same, the appellant took the girl into custody. The boy moved a Habeas Corpus petition, under Article 226 of the Constitution of India, to get the custody of his wife. A Division Bench of this Court held that executing a registered document and deciding to live as husband and wife will not confer the status of a husband on the petitioner, because this is not one of the recognised forms of marriage under the law. As there was no valid marriage, the custody of the girl was not given to the boy, as she was under the guardianship of her parents. Hence, the principle in Prasadhkumar case, also cannot be applied to the case at hand.

8. The decision in Sreedharan v. Padmini 1992 (2) KLT 6 P.5 was also relied on by the counsel. Here also, a registered document was executed by the parties, declaring their willingness to live as husband and wife. The Court considered a petition for maintenance filed by Padmini, u/s 125 Cr.P.C. and dismissed it, as she was not the legally wedded wife of Sreedharan. As discussed earlier, the petitioner therein was claiming the right of a wife so as to obtain maintenance from her husband. It may not come within the strict definition of wife. But the Supreme Court later took a liberal view and accepted the husband-wife relationship, if they lived together for long years, and the relatives, friends and Society accepted them as such. Hence, Sreedharan's case also cannot be accepted. I shall discuss this point further in the paragraph below.

9. The learned Public Prosecutor relied on State of Karnataka Vs. Shivaraj and Another, One Shivraj was married with Bhagamma. There was no issue in that relationship. He later married one Vimala Bai. Thereafter, both Shivaraj and Bhagamma demanded gold ornaments and started to harass and torture Vimala Bai in order to force her to secure one Thola of gold as an additional dowry. Unable to bear the torture and cruelty, Vimala Bai ended her life by jumping into

the well. On the complaint of her parents, the police registered crime under Sections 498A and 304B IPC read with Section 14 of IPC and also under Sections 3 and 4 of the Dowry Prohibition Act. A Division Bench of the Karnataka High Court took the view that against the husbands who indulge in atrocities against their spouses, in the absence of evidence to the contrary, all these provisions will have to be applied on the footing that the marriage is presumed to be valid one and the parties are accepted to be husband and wife. The Court also further held that even in cases where a marriage was declared void at a point of time, after the commission of the offences, the Court would still treat the parties as having deemed to be husband and wife as on the date of commission of the offence.

10. The Prosecutor further relied on *Reema Aggarwal v. Anupam* 2004 (2) KLT 822 (SC) In it the Apex Court held that it is appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner, for any of the purposes enumerated u/s 304B and Section 498A. The relationship has to be treated as husband and wife. Further the Court also held that the interpretation of husband and wife should be given in liberal approach in cases of this nature.

11. Reetha went along with Aravindan the first appellant. It was then, according to PW2 that they decided to live together. Both of them went to the Sub Registrar's office and Ext.P2 agreement was executed. PW1 was one of the attestors, and a close relative. Thereafter Reetha lived in the house of first appellant. She was accepted as wife. The problems had arisen when gold ornaments were demanded from Reetha and she was harassed telling that she was not beautiful as compared to the wife of the brother of the 1st appellant. The harassment and cruelty became unbearable after the brother of the 1st appellant got married. Being unable to meet the demand for 25 sovereigns as spoken to by PW.1, she decided to end her life. Even prior to her suicide, she informed her difficulties to PW1. Therefore the evidence of PW1, with that of PWs.2 and 4, clearly shows that the first appellant and Reetha lived as husband and wife. The Apex Court in *Reema Aggarwal*'s case (supra) held as follows :

"...The concept of marriage to constitute the relationship of "husband" and "wife" may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an anathema when the question of curbing a social evil is concerned".

11. All the authorities relied on by the counsel for the appellants are relating to the rights, which were claimed, or rights flowing from the property or attempts to establish rights of persons. Therefore, strict interpretations are necessary in such situations, regarding the relationship of husband and wife. But in a case under Sections 498A and Section 304B IPC unless the approach is liberal, it would create unbearable miseries to the members of the Society. It is without knowing the implications of law that most of the persons, particularly youngsters walk into the office of the Sub Registrars and execute registered documents

declaring themselves as husband and wife and resolving to live as such. They are unaware of the fact that, this is not at all a valid marriage. Consequences that follow because of these relationships will be dangerous to the society. That has happened in this case as well. In such occasions, the Court cannot be a mute spectator allowing the husband or his relatives to harass, torture or behave cruelly on the wife, who is brought to his house. Therefore, the Court has to take a liberal approach. As per the principles laid down in Shivaraj case and Reema Aggarwal's case (supra), I hold that there was a valid husband-wife relationship between Reetha and the first appellant Aravindan. Therefore, I reject all the arguments to the contrary, advanced by the learned counsel for the appellants and accept the arguments advanced by the learned Public Prosecutor.

12. The next point raised by the learned counsel is that PWs. 1 and 2 and other prosecution witnesses have given two versions and their evidence is full of embellishments, which if accepted and acted upon would prejudice the interest of the appellants. Hence, counsel prayed that the same may be rejected. As repeatedly discussed above, PW1 was a person who was not only a close relative of Reetha, but was also a witness, who attested Ext.P2 marriage agreement. He went along with others to the house of the 1st appellant. Reetha was frequently in contact with PW2 her mother, and was complaining about her difficulties and harassment at the hands of the appellants. PW4 is another relative of Reetha. Both of them gave all the required details of the cruelties perpetuated on Reetha, and the demands of gold ornaments from her. PW1 also, stated these facts, while giving Ext.P1 FI statement to PW9, the Head Constable. It is true that he did not speak any specific details as he deposed in the Court. But, the entire facts known to him were stated at the first instance, while giving Ext.P1 F.I. statement. In any prosecution case, the witnesses may speak adding some embroideries here and there and also have come embellishments. But, the Court has to ascertain what exactly is the truth. In the case at hand, the Court below did not accept certain portions of the evidence adduced by the prosecution and therefore, concluded that the case will not fall u/s 304B IPC. But, the acquittal of the accused for the offence under that Section will not entitle the appellants to get a similar acquittal u/s 498A IPC.

14. I have carefully gone through the evidence of the prosecution witnesses, and also the other materials available on record. I do not find any reason to disbelieve the versions given by these prosecution witnesses, which were nothing other than the facts told to them by the deceased on different occasions.

15. In view of the above discussions, I find that the prosecution had established a case u/s 498A IPC. Therefore, I am not intended to interfere with the findings of the Court below. Hence, the conviction of the appellants u/s 498A IPC is upheld.

16. The learned counsel for the appellants submitted that the sentence of rigorous imprisonment for two years is very high and therefore, prayed to modify the same. The counsel also brought to my notice that the second appellant is

aged above 65 years.

17. I have also heard the learned Public Prosecutor. Considering the facts and circumstances of this case, that have been discussed above, I am of the opinion that ends of justice would be met if I modify and reduce the sentence of rigorous imprisonment for two years each to rigorous imprisonment for six months each.

18. In the result, this appeal is partly allowed. The conviction is unpaid. The sentence of rigorous imprisonment for two years each is modified and reduced to rigorous imprisonment for six months each together with a fine of Rs. 15,000/- in default of which, to undergo simple imprisonment for six months each. If the fine amount is realised, an amount of Rs. 15,000/- shall be deposited in the name of the minor child of Reetha and interest thereon will be utilised by the person who is looking after the child for her maintenance and well being till the she attains majority.

The Criminal Appeal is allowed as above.