
(1998) 09 KL CK 0004
In the High Court Of Kerala
Case No : Criminal R.P. No. 890/95

Chacko

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1998) 09 KL CK 0004

Hon'ble Judges : S. Marimuthu, J

Bench : Single Bench

Advocate : P. Vijayabhanu, for the Appellant; P.N. Sukumaran, Public Prosecutor, for the Respondent

Judgement

S. Marimuthu, J.—This revision is directed challenging the confirmed judgment of the II Additional Sessions Judge, Palakkad Division delivered in Crl. Appeal No. 91 of 1992. That appeal arose against the conviction under Sections 498A and 306 I.P.C. delivered by the Assistant Sessions Judge. Ottapalam in S.C. No. 69 of 1990.

2. The crux of the prosecution case and also the evidence which lead to conviction in the trial Court, in short, are as follows: The revision Petitioner married the deceased, Mary, the daughter of P.W. 4 and the sister of P.Ws. 1 and 2 on 30th April 1984. After the marriage, they did not live happily and on the other hand, she was subjected to physical and mental cruelty by the revision Petitioner. In one occasion, the revision Petitioner assaulted her, as a result of which, she sustained bodily injury and therefore, she was admitted in the hospital and even after that, revision Petitioner continued his act of assaulting her and treating her cruelly. When that be the situation, on one occasion a mediation had been held in the leadership of P.W. 11 (some 6 months prior to the occurrence on 22nd March 1988) and in that mediation, Ext. P-3 agreement was entered into. As per Ext. P-3 agreement, the revision Petitioner should not subject his wife to cruelty or to any mental or physical torture in future and in

case she was subjected to cruelty by the revision Petitioner, that ought to be brought to the notice of the mediators including P.W. 11. After Ext. P-3, they lived happily for some time and during that period, the revision Petitioner and his wife built a house. On the date of completion of the construction of the building on 22nd March 1988, at about 2.30 p.m., the revision Petitioner assaulted his wife, as a result of which, she consumed poison and met her death. Therefore, it is the revision Petitioner, who abetted her to commit suicide and hence he is liable to meet the charges under Sections 498A and 306 I.P.C.

3. Since the revision Petitioner denied the charges, the prosecution let in evidence before the Asst. Sessions Judge, who after assessing the evidence found the revision Petitioner guilty u/s 498A I.P.C. and thereby sentenced him to undergo rigorous imprisonment for one year and also guilty u/s 306 I.P.C. and sentenced him to undergo rigorous imprisonment for five years and also to pay a fine of Rs. 10,000 and he also ordered to pay the entire fine amount of Rs. 10,000 as compensation to P.W. 4, the mother of the deceased. That conviction and sentence were totally confirmed by the Sessions Judge.

4. Mr. Vijayabhanu, counsel appearing for the revision Petitioner submitted that the reasons set forth by the prosecution to establish that the deceased Mary was subjected to cruelty are not cogent as seen in the evidence of the prosecution witnesses and also the first information statement. Hence in no stretch of imagination, it can be concluded that the deceased was treated with cruelty by the revision Petitioner and in fact, the witnesses, particularly, the brothers and mother of the deceased examined as P.Ws. 1, 2 and 4 would swear that deceased was treated very cordially by the revision Petitioner and after Ext. P-3, they lived happily. It is also his submission that the contention of the prosecution that once the revision Petitioner assaulted his wife, as a result of which, she was admitted in the hospital, was not established by the prosecution by producing the relevant records from the hospital. Hence that aspect of the prosecution can be certainly taken as not established. Ext. P-3, in fact, has no evidentiary value since the prosecution has not explained as to what happened to its original (Ext. P-3 is a carbon copy). The contents of Ext. P-3 thus need no consideration and the evidence on that footing given by P.W. 11 has also to be discarded. The case of the prosecution that P.W. 4, just prior to the occurrence, on hearing the noise of quarrel, entered the house and there, P.W. 4 saw her daughter, deceased, sitting on a bench and then the revision Petitioner asked P.W. 4 to go out of the house and immediately, she left the house, is totally unnatural and unbelievable. In short, according to him, there is no piece of evidence that the revision Petitioner added or abetted or goaded his wife by act of cruelty to commit suicide.

5. The above submissions of Mr. Vijayabhanu were replied by Mr. Sukumaran, learned Public Prosecutor on the ground that the solitary evidence of P.W. 4 is natural, convincing and legal in respect of cruelty meted out to the deceased lady, just a few minutes prior to the occurrence and that cruelty alone pushed her into a desperate situation and finally goaded her to commit suicide. No

doubt, it is the evidence of P.W. 1, one of the brothers of the deceased, who lodged the complaint in the police station, that once his mother, P.W. 4 went to the house of the revision Petitioner and in his absence, she took some money from his house with the consent of the deceased lady and on account of it, there arose a quarrel between the spouses. But in the F.I. statement marked as Ext. P-1, it is stated that there were often quarrels between the revision Petitioner and his wife since he suspected the fidelity of his wife. It is also the version of P.W. 1 in the cross-examination that on the date of completion of the construction of the residential building of the revision Petitioner, there arose some quarrel between the revision Petitioner and his wife and that might be the reason for suicide. On the above aspects (reasons), Mr. Vijayabhanu insisted that since the reasons for initiating cruelty by the revision Petitioner are not cogent, it is difficult to accept the theory of prosecution that the deceased lady was treated at any point of time with cruelty by the revision Petitioner. But I do not think that any specific reason is necessary for aiming cruelty by the husband on his wife. The cruelty which the husband metes out mentally or physically to his wife might have so many reasons and sometimes, the reasons could not be easily traced out and it also might be without any reason. Therefore, on that score, the arguments of the learned Counsel for the revision Petitioner that the reasons for cruelty must be specific need no consideration. The evidence of P.Ws. 1, 2 and 4 are so clear that once the revision Petitioner assaulted his wife, the deceased, as a result of which she was admitted in the hospital. In this context, as I have pointed out above, the submission of Mr. Vijayabhanu, learned Counsel for the revision Petitioner would be that since no document has been produced from the hospital and since no complaint has been lodged to the police, it is difficult to accept the above case of the prosecution. Normally, when a wife is assaulted by the husband, the wife would not dare to go to the police and give a complaint against her husband. Therefore, on that score, no advantage can be taken by the revision Petitioner. As is seen in the evidence of P.W. 11, there were continuous quarrels, as a result of which, a mediation was held. P.Ws. 1 and 2, both the brothers would also speak of the mediation held some 6 months prior to the occurrence. The marriage, as pointed out above, was solemnised in the year 1984 and the occurrence was in the year 1988. The oral testimony of P.Ws. 1, 2 and 4 and also of P.W. 11 and the circumstances prevailing thereon would go to show that both the revision Petitioner and the deceased did not live happily till Ext. P-3. As pointed out above by the learned Counsel for the revision Petitioner, both P.Ws. 1 and 2 would speak that they lived happily after Ext. P-3 till the date of occurrence. Because of the above evidence of the witnesses, P.Ws. 1 and 2, a conclusion cannot be arrived at that the revision Petitioner would not subject his wife to cruelty, on the relevant date of the occurrence. The gap of 6 months during which they were said to be living happily cannot be taken as a strong circumstance by the revision Petitioner, particularly when the occurrence and the cruelty to which the deceased was subjected to just a few minutes prior to the occurrence have been established by the oral testimony of P.W. 4. The evidence of P.W. 4 is that she used to go to the house compound of the revision Petitioner

for grazing her goat and the house of P.W. 4 is at a distance of half a kilometre from the house of the revision Petitioner. On the relevant day also, P.W. 4 had gone there with the goat. While she was in the compound, she heard the noise of quarrelling from the house and therefore, she rushed into the house and there she saw the deceased sitting on a bench and then, the revision Petitioner asked her to go out of the house and therefore, she left the house. Of this evidence of P.W. 4, the attack of the learned Counsel for the revision Petitioner is that if really, there was a quarrel like beating the deceased when P.W. 4 had entered the house, would have immediately told that she was beaten by her husband. P.W. 4 also would have asked either her daughter or the revision Petitioner as to what happened. But no such thing happened inside the house. Hence it is unnatural to accept the evidence of P.W. 4 in this regard. It is also his submission that if the revision Petitioner had assaulted the deceased, there ought to be external injury on her body. But the post-mortem certificate did not show any ante-mortem external injury. Therefore, the theory of the prosecution that P.W. 4 went inside the house on hearing the noise is totally false. On the other hand, the learned Public Prosecutor would submit that soon after P.W. 4 entered the house of the revision Petitioner, she was upset by the revision Petitioner by putting a question as to why she entered the house and aggrieved by the above conduct of the revision Petitioner, P.W. 4 left the house without putting any question either to her daughter or to the revision Petitioner. In this context, the conduct of P.W. 4, revision Petitioner and the deceased inside the house can be judicially interpreted in two ways, viz. P.W. 4 remained in the house only for a short while and hence she had no occasion of questioning either her daughter or the revision Petitioner. When the deceased herself was keeping silent, P.W. 4 did not magnify the matter and therefore, she had left the house immediately. Silence of the deceased at that time might also be due to the reasons, that she did not like to tell her mother that she was quarrelled by her husband. And further the quarrel might be due to the suspicion in her fidelity by the revision Petitioner. The first information statement as pointed out above, states that the revision Petitioner suspected the fidelity of his wife, the deceased. When the revision Petitioner suspected the fidelity of his wife, by express or implied, speech or deed, no doubt, that also would amount to mental cruelty. The silence of the deceased when P.W. 4 entered the house seems to be an indicative that her chastity and fidelity had been questioned by her husband and on account of it, there arose the noise of both the spouses. No doubt, the other witnesses, P.Ws. 5 and 6 who are the neighbours are not supporting the prosecution. According to the prosecution, P.W. 5 is an eye witness to the occurrence. Naturally, when they are the neighbours of the revision Petitioner, they could not be expected to support the prosecution theory. In fact, to that extent, proper suggestions have been put by the prosecution to both P.Ws. 5 and 6. It is the evidence of P.Ws. 1 and 2 that their sister, the deceased was a strong-willed lady and she was not a lady of hyper sensitiveness. When the above testimony of P.Ws. 1 and 2 are examined with the dulled and gloomy situation inside the house when P.W. 4 entered the house, it is evidently clear that the deceased had been subjected to cruelty at

the spur of the moment prior to the occurrence.

6. Regarding the death, the doctor who conducted the post-mortem has been examined as P.W. 12 and the post-mortem certificate has been marked as Ext. P-6 where ne has reserved the opinion. He did not give his opinion since the report of the chemical analysis was not obtained by him. The report of the Chemical Analyst is marked as Ext. P-10 through P.W. 16, the Circle Inspector of Police, Agaly. Some comment was made upon on the marking of Ext. P-10 through P.W. 16. Ext. P-10 report is received by P.W. 16 and therefore, through him, the receipt of the document can be marked as per law. The Court can exercise its discretion and act upon Ext. P-10. A comparative study of the oral testimony of P.W. 12, the doctor who conducted the autopsy, the post-mortem certificate, Ext. P-6, issued by him and the contents of the certificate of the Chemical Analyst, Ext. P-10, makes it clear that the death had occurred on account of taking poison. The evidence of P.Ws. 4 and 8 would go to show that the deceased invited her death by taking poison due to the quarrel. As I have pointed out above, a few months prior to the occurrence, she had been subjected to mental cruelty by the revision Petitioner. Hence both Sections 498A and 306 I.P.C. are attracted. One more important circumstance in this case is the presence of the revision Petitioner alone at the time of occurrence in that house. It is the definite version of the prosecution that the deceased and the revision Petitioner alone were in the house on that day. It is not disputed by the revision Petitioner also. When the revision Petitioner alone had been with his wife in his house, the occurrence had happened and therefore, it can be normally inferred that there could not be any other reason for the wife to commit suicide, particularly, when it is the evidence of the prosecution that she is not a lady, hyper sensitive in character. Both the trial Court and the Appellate Court, on my examination, have properly appreciated and assessed the evidence and recorded a correct finding of conviction under both Sections 498A and 306 I.P.C. and therefore, I find no justification to upset the findings as to the conviction under the above two penal sections. It is in evidence that at the time of occurrence, the revision Petitioner had a daughter and a son aged 3 years and 1-1/2 years. It is also in evidence that after the occurrence, there is none to look after the children except the revision Petitioner. The revision Petitioner is looking after them and bringing them up and the revision Petitioner is not re-married. It is also the submission before this Court that till today, both the children are properly nursed by the revision Petitioner and there is no other relation to take care of them. In that situation, I am of the opinion that at least for the welfare and protection of the children, in the matter of avoiding punishment, a leniency has to be necessarily extended to the revision Petitioner and it is also a point to be noted that this litigation has been pending from the year 1988. On account of the above premises, I feel that the sentence of imprisonment awarded to the revision Petitioner as one year and 5 years under Sections 498A and 306 I.P.C. respectively can be reduced to the period already undergone by the revision Petitioner and the fine amount of Rs. 10,000 imposed in addition to the sentence

of imprisonment u/s 306 I.P.C. can be reduced to Rs. 5,000. No compensation needs to be paid to P.W. 4, the mother of the deceased. Accordingly, this revision is dismissed holding the conviction rendered by both the Courts under Sections 498A and 306 I.P.C. are proper, legal and correct and in respect of the sentence of imprisonment and fine, the sentence of imprisonment for one year u/s 498A I.P.C. and the sentence of imprisonment of 5 years u/s 306 I.P.C. awarded by the Courts below are reduced to the period already undergone by the revision Petitioner in judicial custody for this case. The fine amount of Rs. 10,000 additionally imposed by the Court below for the offence u/s 306 I.P.C. is reduced to a sum of Rs. 5,000, in default in payment of fine, to undergo imprisonment for 6 months. The revision Petitioner is directed to deposit the fine amount in the trial Court within a period of 15 days from the date of receipt of a copy of this order.

This Crl. R.P. is disposed of accordingly.