

(2024) 06 KL CK 0146
In the High Court Of Kerala
Case No : Criminal Appeal No. 1578 Of 2007

N.Ansari

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 174, 313
Indian Penal Code, 1860 — Section 34, 304B, 306, 498A
Evidence Act, 1872 — Section 113B

Citation : (2024) 06 KL CK 0146

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : Biju Hariharan, Sanal. P. Raj

Final Decision : Dismissed

Judgement

Johnson John, J.

1. This appeal is filed by the accused in S.C. No. 1282 of 2006 on the file of the Additional District and Sessions Judge, Adhoc-II, Kollam and he is challenging the conviction and sentence imposed on him for the offence under Section 498A IPC.

2. The prosecution case is that the accused contracted marriage with Vinitha @ Remya, daughter of PW11, by registering an agreement of marriage before the Sub Registry Office, Kulathupuzha on 30.10.2000. While the deceased was living with the accused in his house at Kulathupuzha, she was subjected to physical and mental cruelty in connection with demand for dowry and on 16.02.2002, she consumed formic acid and subsequently, died on 29.05.2002.

3. On the basis of Exhibit P1, First Information Statement of PW1, the stepfather of the deceased, Exhibit P5 FIR was registered under Section 174 Cr.P.C on 29.05.2002 and subsequently, investigation for the offence under Section 304B r/w 34 IPC was conducted and after completing the investigation, PW14, Circle

Inspector, filed final report for the offence under Section 304B r/w 34 IPC against the accused/appellant and his sister and since the second accused was a juvenile, a separate charge was filed against her before the Juvenile Justice Board.

4. After the appearance of the accused before the trial court, charge was framed under Section 304B IPC and from the side of the prosecution PWs 1 to 14 were examined and Exhibits P1 to P11 were marked. After questioning the accused under Section 313 Cr.P.C., and after considering the evidence on record, the trial court found that there are grounds for presuming that the accused had committed the offences punishable under Sections 306 and 498A IPC and therefore, the charge was amended on 24.07.2007 and the amended charge was read over and explained to the accused and when the accused pleaded not guilty to the amended charge, opportunity was given to the prosecution and the accused to adduce evidence. PWs 1 and 11 were examined again and no evidence was adduced from the side of the defence.

5. After hearing both sides and considering the oral and documentary evidence on record, the learned Additional Sessions Judge, as per the impugned judgment dated 31.07.2007, found the accused not guilty of the offence under Sections 304B and 306 IPC and found him guilty of the offence under Section 498A IPC. The accused is convicted and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for a further term of one year for the offence under Section 498A IPC.

6. Heard Sri. Biju Hariharan, the learned counsel for the appellant and Sri. Sanal P. Raj, the learned Public Prosecutor and perused the records.

7. The learned counsel for the appellant argued that there is unexplained delay in registering the FIR and that the prosecution has not adduced any evidence to prove a valid marriage between the accused and the deceased and apart from the interested testimonies of PWs 1 and 11, there is no other evidence in this case to show that the victim was subjected to any cruelty or harassment in connection with any demand for dowry as contemplated under Section 498A IPC and therefore, the accused/appellant is entitled for the benefit of reasonable doubt.

8. The learned Public Prosecutor argued that the evidence of PW1, who is the stepfather of the deceased and PW11, who is the mother of the deceased, would clearly show that the accused subjected the deceased to physical and mental cruelty to meet the unlawful demand for money and property as dowry. It is also pointed out that the accused is a Mohammedan and the deceased is a Hindu and a registered contract of marriage between a Mohammedan and a Hindu is not void, inasmuch as the marriage under Muslim law is a civil contract and no religious ceremony is essential for the validity of a marriage under the Muslim law.

9. The evidence of PW11, the mother of the deceased, shows that the deceased Vinitha @ Ramya is her daughter who had studied up to 9th standard and when a marriage proposal came for her daughter, the accused along with his friends, came to her house and disclosed that the accused is in love with her daughter and also made a request to marry her. Since the accused is a Muslim, the marriage was registered at the Sub Registry Office, Kulathupuzha on 30.10.2000. and thereafter, there was exchange of garlands in the party office. According to PW11, after the marriage, her daughter resided with the accused in his house and after 5 months of the marriage, the accused started demanding dowry and he used to manhandle the deceased by beating and hitting her.

10. According to PW11, the accused caught on the neck of her daughter and she was driven out of the house for a whole day by the accused and his sister, Jaseena. According to PW11, it was her daughter who told her these facts when she came to her house. PW11 deposed that the accused demanded 5 cents of property and Rs.25,000/- and even though they offered the 4 cents of property and the house where they are residing, the accused was not amenable for the same. PW11 stated that on getting information that her daughter is hospitalized, she reached the Medical College Hospital along with her husband and at that time, her daughter told her that her husband was not amenable for their offer and he insisted for 5 cents of property and Rs. 25,000/- and also told her that she will be allowed to reside there only after producing the property and money demanded by him and hence, there occurred a quarrel and the accused beat her daughter and thereafter her daughter consumed acid. PW11 deposed that her daughter had undergone treatment in the hospital for about 3½ months and there was nobody else other than PW11 and her husband to look after their daughter. The evidence of PW11 shows that her daughter died on 25.09.2002.

11. PW1 is the stepfather of the deceased Vinitha @ Ramya and his evidence also shows that the accused and the deceased were in love and subsequently, the accused and his friends came to their house with the marriage proposal and thereafter, a marriage agreement was registered at Kulathupuzha Sub Registrar Office and thereafter, garlands were exchanged in the party office. The evidence of PW1 shows that while the accused and the deceased were residing as husband and wife in the house of the accused, the accused demanded Rs.25,000/- and 5 cents of property as dowry. PW1 stated that the deceased Vinitha @ Ramya informed them about the demand of the accused when she came to his house and according to PW1, the accused told the deceased that she will not be allowed to reside in the matrimonial home, if she fails to bring Rs. 25,000/- and 5 cents of property as dowry and that the accused used to push her out of the house and close the door during night and she also told him that the accused and his sister Jaseena used to beat her. According to PW1, on 16.02.2002, he came to know about the hospitalization of the deceased after consuming acid in the house of the accused. PW1 would say that his daughter told him that the accused and his sister subjected her to cruelty demanding dowry and hence, she consumed acid to commit suicide.

12. PW2 deposed that it is known to him that the accused and the deceased Vineetha are husband and wife and he came to know about the hospitalization of the deceased on the next day. PW3 is a neighbour of the accused and the deceased. But, he is not aware about any demand for dowry from the side of the accused. PW4 is also a neighbour of the accused and the deceased. According to PW4, the accused is a Muslim and the deceased Vinitha @ Ramya is a Hindu and he heard about their register marriage.

13. PW6 is the doctor who examined the injured Vinitha @ Ramya at St. Joseph Hospital, Anchal on 24.05.2002 and issued Exhibit P2 certificate stating that Vinitha @ Ramya was admitted on 24.05.2002 at 7.15 p.m. with vomiting and breathlessness and that it was a known case of corrosive poisoning.

14. PW7 was the Sub Registrar of Kulathupuzha, who issued Exhibit P3 certificate stating that a marriage agreement was registered in the Sub Registrar Office, Kulathupuzha between the accused Ansari and the deceased Ramya. PW10 was the Associate Professor of Forensic Medicine at Medical College Hospital, Trivandrum, who conducted the postmortem examination of the deceased on 30.05.2002 and issued Exhibit P7, postmortem certificate. According to PW10, the death was due to consolidation of lungs. PW10 deposed that consumption of formic acid can subsequently lead to obstruction of oesophagus and small intestine and this can reduce absorption and swallowing of food and it can lead to ill health and prone to infection. In cross examination, PW10 stated that consolidation of lungs was caused due to ill health of the patient and sudden death due to intake of formic acid is very rare.

15. In this case, there is no serious dispute that Vinitha @ Ramya died otherwise than under normal circumstances and the evidence of PWs 1 and 11 that the deceased died due to consumption of acid on 16.02.2002 is supported by clear medical evidence. It is clear from the treatment records and postmortem certificate that the deceased suffered corrosive poisoning due to consumption of formic acid. The evidence of PW10 clearly shows that consumption of formic acid can subsequently lead to obstruction of oesophagus and small intestine causing deterioration of health and subsequent death due to consolidation of lungs.

16. The trial court acquitted the accused of the offence under Section 306 IPC as the prosecution has not adduced any reliable evidence to prove the alleged abetment of suicide and since there is no satisfactory evidence to prove that the victim was subjected to cruelty or harassment soon before her death, the accused was also found not guilty of the offence under Section 304B IPC.

17. The learned counsel for the appellant argued that in the absence of a valid marriage between the accused and the deceased, the offence under Section 498A IPC is not attracted. But, the learned Public Prosecutor pointed out that the evidence of PWs 2 to 4 will clearly show that the accused and the deceased resided together as husband and wife and the evidence of PWs 1 and 11 would show that apart from registering a marriage agreement at the Sub Registrar

Office, the accused and the deceased exchanged garlands in the party office and that it is not in dispute that the accused is a Muslim to whom the Mohammedan law is applicable.

18. It is pertinent to note that the trial court has elaborately considered the provisions of Mohammedan law and arrived at a finding that marriage of a Mohammedan male with a Hindu female is not void, but it is only irregular according to Sunni Law and in the absence of any plea that the accused belonged to the Shia community, the presumption under Rule 23 has to be drawn and therefore, the marriage of the accused with the deceased Vinitha @ Ramya as per Exhibit P10 contract is valid and I find no reason to disagree with the findings of the trial court in this regard. In this connection, it is also pertinent to note that the Honourable Supreme Court in *Reema Aggarwal v. Anupam* [(2004) 3 SCC 199] held as follows:

"18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue, further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 (for short "the Evidence Act") were introduced, cannot be lost sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with a certain element of realism too and not merely pedantically or hypertechnically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person

whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be 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 or for any of the purposes enumerated in the relevant provisions — Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

19. In *A. Subash Babu v. State of Andhra Pradesh and another* (AIR 2011 SC 3031), the Honourable Supreme Court reiterated the aforesaid law laid down in *Reema Agarwal's* case that a person who enters into marital arrangement cannot be allowed to take shelter behind the smokescreen of contention that since there was no valid marriage, the question of dowry does not arise and therefore, I find that the contention of the appellant that an offence punishable under Section 498A IPC will not lie against him for want of a proper legal marriage, is not sustainable.

20. The learned counsel for the appellant argued that there is delay in the registration of the FIR and even though PWs 1 and 11 have deposed that they came to know about the demand for dowry and harassment of Vinitha @ Ramya by the accused before her death, there was no complaint by Vineetha or by her parents prior to her death and the explanation offered by PWs 1 and 11 in this regard is not at all reliable. The evidence of PWs 1 and 11 shows that there was nobody else to help them while the deceased was undergoing treatment in the hospital. The evidence of PW1 shows that the deceased was undergoing intensive treatment in the hospital involving huge expenditure and that he had to meet the expenses from the small income that he received as a mason.

21. The evidence of PW11 shows that the deceased was treated continuously in the hospital under the supervision of different medical officers and that she had to remain at the veranda of the hospital and she could not find any time to make a complaint to the police. I find no reason to disagree with the observation of the trial court that considering the weak social and economic background of PWs 1 and 11 and the facts and circumstances, their explanation regarding the delay is to be accepted.

22. In *Tara Singh v. State of Punjab* [1991 Supp (1) SCC 536], the Honourable Supreme Court held thus:

"It is well settled that the delay in giving the FIR by itself cannot be a ground to

doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.”

23. The delay in lodging the FIR by itself cannot be regarded as sufficient ground to draw an adverse inference against the prosecution case. In this case, it is in evidence that PWs 1 and 11 were attempting to ensure adequate treatment to the victim during the period of her hospitalisation and considering the social and financial background of PWs 1 and 11 and the circumstances of the case, I find that their explanation regarding the delay is to be accepted, especially in the absence of any effort to concoct a version for the false implication of the accused.

24. The learned counsel for the appellant argued that the trial court found that there is no evidence to prove that the victim was subjected to cruelty or harassment soon before her death and that harassment simpliciter is not cruelty and it is only when harassment is committed for the purpose of coercing a woman or any other person related her to meet an unlawful demand for dowry, it will amount to cruelty punishable under Section 498A IPC, as held by the Honourable Supreme Court in *State of A.P. v. M. Madhusudhan Rao*, (2008) 15 SCC 582.

25. Section 498A IPC reads thus:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—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 purposes of this section, “cruelty” means—

(a) any wilful 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.”

26. Clause (b) of the explanation provides that 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, would also constitute cruelty for the purpose of Section 498A IPC. In this case, the evidence

of PWs 1 and 11 clearly shows that the accused demanded 5 cents of property and a sum of Rs.25,000/- as dowry and the deceased was severely beaten and driven out of the house and she was told that she will be allowed to reside with the accused only after meeting his demand for dowry. The decision of the Honourable Supreme Court in *G.V. Siddaramesh v. State of Karnataka*, [(2010) 3 SCC 152] shows that cruelty can either be mental or physical and it is difficult to straitjacket the term cruelty by means of a definition, because cruelty is a relative term. In this case, there is clear evidence to show that there was pressure on the deceased to arrange Rs.25,000/- and 5 cents of property as dowry. There is also evidence to show that she was manhandled by the accused in this connection.

27. The decision of the Honourable Supreme Court in *Kaliyaperumal v. State of T.N.*, (2004) 9 SCC 157] shows that a person charged and acquitted under Section 304B can be convicted under Section 498A. In the said decision, it was held as follows:

"7. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty". But having regard to the common background to these offences, it has to be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See *Akula Ravinder v. State of A.P.* [1991 Supp (2) SCC 99 : 1991 SCC (Cri) 990 : AIR 1991 SC 1142]) Section 498-A IPC and Section 113-B (sic 113-A) of the Evidence Act include in their amplitude past events of cruelty. The period of operation of Section 113-B (sic 113-A) of the Evidence Act is seven years; presumption arises when a woman committed suicide within a period of seven years from the date of marriage."

28. It is well settled that Section 498A IPC and Section 113A of the Indian Evidence Act include in their amplitude past events of cruelty. In this case, even

though there is no evidence to show that the accused subjected the deceased to cruelty or harassment soon before her death, it is in evidence that the accused subjected the deceased to cruelty and harassment by demanding 5 cents of property and Rs. 25,000/- as dowry and when she failed to meet the unlawful demand of the accused, she was beaten and driven out of the house and the deceased has disclosed all these facts to PWs 1 and 11 before her death and I find that the evidence of PWs 1 and 11 in this regard is reliable and trustworthy and in spite of serious cross examination, the defence has not succeeded in establishing any serious contradiction or omission amounting to contradiction in their evidence and therefore, I find that the trial court rightly convicted the accused for the offence under Section 498A IPC and considering the nature of the offence and the facts and circumstances of the case, there is also no reason to interfere with the sentence imposed by the trial court.

In the result, this appeal is dismissed confirming the conviction entered and the sentence passed by the learned Additional Sessions Judge in S. C. No. 1282 of 2006. Interlocutory applications, if any pending, shall stand closed.