
(1997) 12 MAD CK 0017
In the Madras High Court
Case No : Criminal R.C. No. 158 of 1996

P. Periasamy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1998) 1 LW(Cri) 161

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : V.K. Muthusamy, for the Appellant; R. Karthikeyan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

R. Balasubramanian, J.—The revision Petitioner is the accused in S.C. No. 87 of 1994 on the file of the Principal Assistant Sessions Judge,

Erode and the appellant in C.A. No. 62 of 1995 on the file of the Court of Sessions, Periyar District at Erode. The Petitioner was tried for

offences under Sections 306 and 498 A of the Indian Penal Code. The learned trial Judge chose to acquit him of the offence u/s 306 of the Indian

Penal Code but sentenced him for the offence u/s 498-A of the Indian Penal Code to undergo rigorous imprisonment for one year and imposed a

fine amount of Rs. 1,000/- carrying a default sentence. The appeal filed by him was also dismissed. Hence the present revision.

2. I heard Mr. V.K. Muthusamy, learned Senior Counsel, appearing for the revision Petitioner and Mr. R. Karthikeyan, learned Government

Advocate on the criminal side for the Respondent. The learned Senior Counsel Mr. V.K. Muthusamy argued that the evidence let in by the

prosecution do not establish the guilt of the accused at all and therefore the conviction of the accused is bad in law. The learned Senior Counsel

would further submit that even according to the prosecution, the marriage between Saraswathi, the first deceased in this case and the accused took

place about fifteen years before the date of death of the first deceased, and therefore it cannot be said that the accused did anything which is the

immediate and proximate cause for Saraswathi to commit suicide along with her daughter and son and that the immediate cause on the previous

night to the date on which the death occurred put forward by the prosecution is not established by the prosecution and therefore the entire version

of the prosecution case has to be doubted. The learned Senior Counsel would also state that Ex.P.24, the letter stated to have been written by

Saraswathi is not the letter written by her, but it is a concocted document brought about at the instance of P.W.1, who is the brother of the first

deceased Saraswathi. The learned Senior Counsel also argued that the first deceased Saraswathi is proved to be a lady of grit and determination

and was in a position to maintain herself and therefore the question of she being exposed to such amount of cruelty which drove her to commit

suicide along with her children cannot be easily accepted. On the contrary, Mr. R. Karthikeyan, learned Government Advocate on the criminal

side submitted that the evidence of P. Ws. 1 and 2 clinchingly establish the manner in which the accused was treating his wife and children and that

the first deceased Saraswathi was subject to such amount of cruelty all these years by her husband, namely the accused, which ultimately resulted

in frustration in her life and that is the cause why Saraswathi committed suicide along with her children.

3. In the light of the arguments advanced by the learned Counsel on either side, I perused the judgments under challenge as well as the records.

Even before I analyse the prosecution case, I am of the opinion that it is better to extract hereunder the judgment of the Honourable Supreme

Court of India reported in Sobavarani v. Madhukar Reddi (AIR 1988 SCC SC 121) to understand what is meant by "cruelty" as found in Section

498-A, of the Indian Penal Code:

The word "cruelty" has not been defined and could not have been defined. It has been used in relation to human conduct or human behaviours. It

is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal, then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. A new dimension has been given to the concept of cruelty. Explanation to Section 498-A of Indian Penal Code provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable property would also constitute cruelty.

4. This is a case of a tragedy resulting in the death of the mother and her two young children; one daughter aged thirteen and the other, a boy aged about 10, both going to school. The tragedy occurred at 5:45 A.M. on 10.6.1993. PW1 is the brother of Saraswathi, who is the wife of the accused. PW1 got information over phone from the accused that his wife and children are found dead in his house in the morning of 10.6.1993. PW1 arrived at the scene immediately and thereafter he lodged a complaint with the police which is marked as Ex.P1 in this case alleging that the death of his sister and her two children was directly attributed to the course of conduct adopted by the accused over a long period of years which made them to commit suicide. Thus the law was set in motion and ultimately a final report came to be filed. It is seen from Ex.P1 that the accused is addicted to liquor for over ten years. Though Saraswathi used to correct the accused in his habit of taking liquor, yet the accused always used to come home under the influence of alcohol and picked up quarrel with his wife and did not provide money to her for meeting both ends. Frustrated

at die sustained conduct of the accused being addicted to liquor, Saraswathi committed suicide.

5. The evidence of PW1 shows that for about two or three years after marriage, the accused was taking care of the family well and thereafter he

started taking liquor and that too arrack. The accused would not give any money out of his salary to his wife to meet both ends. The accused is

employed in the diesel shed of the Southern Railway at Erode. Finding that he is not able to meet his expenditure on liquor, the accused used to

sent his wife Saraswathi to her parents house demanding money which was often provided by them. The accused had sold all the personal jewels

of his wife and he spent the entire money on his liquor. The accused did not even bother to meet the surgery expenses of his wife which was in fact

taken care of by PW1. Not able to tolerate the torture, whenever Saraswathi used to go to her parents house, the accused used to follow her up

and gave her enough pin pricks and troubles commanding her to come back home. He would state that he knows Saraswathi's hand writing very

well and that she had studied upto S.S.L.C. and he identified the handwriting in Ex.P.24 as that of his sister and the signature found therein as also

that of his sister.

6. Ex.P.24 is the letter dated 10.6.1993 that is addressed to higher police officials at Erode. The letter on the face of it shows that it has been sent

by the deceased Saraswathi. It bears the postal seal of clearance as 10.6.1993 and also endorsements made by the police officers on the following

date. A criticism is made by the learned Senior Counsel on Ex.P.24 that when Saraswathi died at 5:45 A.M. on 10.6.1993 itself, how could there

be a possibility of this letter being posted subsequent to her death. This has been answered by the learned Government Advocate on the criminal

side that the seal dated 10.6.1993 in Ex.P.24 would only show that it was cleared on that date and the deceased Saraswathi herself would have

posted the letter in the previous evening. This appears to be a reasonable explanation. To my mind, the prosecution has clinchingly established that

Ex.P.24 is the letter written by the deceased Saraswathi to the police. A reading of this letter shows the sad state of affairs in which the deceased

Saraswathi and her children were placed. This letter is concluded by deceased Saraswathi stating that she finds no other way except to end their

lives and that the persons responsible are those who are in the matrimonial abode. This statement is clearly admissible u/s 32 of the Evidence Act.

The statement of the deceased Saraswathi in this letter, namely Ex.P.24, is fully corroborated by the evidence of P. Ws. 1 and 2. Under these

circumstances, I am of the opinion that no criticism whatsoever can be levelled against the genuineness of Ex.P.24 and according to me it nails the

accused to his death bed.

7. I perused the evidence and cross examination of PW1 very carefully. No answers worth-mentioning had been elicited in that evidence to

discredit him. P.W.2 is the mother of the deceased Saraswathi and the grandmother of the other two deceased. She would also categorically state

about the accused taking to liquor continuously and he always failed to provide any money to his wife to meet the household expenses. Often the

accused used to pick up quarrels with his wife and demand her to part with her jewels. Whenever his wife refused he used to beat her and torture

her. Unable to bear the torture Saraswathi used to remove her jewels and give it to him. On the night of 9.6.1993 PW2 was with her daughter

Saraswathi in her house. The accused came around 8:00 P.M. under the influence of alcohol. Saraswathi called him to dinner. However, the

accused threw the plate to a distance and scolded his wife indiscriminately. The accused even beat her and asked her to give her gold chain with

the Mangala Sutra. Saraswathi refused to give the same and immediately the accused slapped her twice. The children came running on hearing the

noise of beating their mother and that when they questioned their father as to why he is beating their mother, the accused beat them as well. When

PW2 asked him about that, the accused replied that he is beating only his wife and none else has got any right to question the same. Therefore,

fearing further assault PW2 went to her house. P.W2's evidence establishes that the deceased Saraswathi was wearing a gold chain around her

neck on 9.6.1993 with the Mangala Sutra. However on the next morning when PW2 reached the house on hearing the news of the death, she

found that the said gold chain was not around her daughter's neck and the Mangala Sutra was on her neck only on a sacred thread. The inquest

report of the deceased Saraswathi also establishes the absence of the gold chain around her neck. On the whole, the evidence of PWs.1 and 2

clearly establish that the accused was addicted to liquor and he used to take liquor at any part of the day and under the influence of alcohol, the

accused subjected his wife to considerable cruelty and even beat her on various occasions.

8. On the side of the defence Ex.D.1 series is marked which establishes the fact that the deceased Saraswathi was a member of a Cooperative

Society. As a member it appears some loans have been disbursed in her name and these loans roughly amount to Rs. 50,000/-. From this, the

learned Senior Counsel wanted this Court to conclude that the deceased Saraswathi is a lady of means by herself and therefore she was not

depending on the earnings of the accused for meeting the house hold expenses. However, the evidence of PW1, who appears to be in a sound

position, shows that the deceased Saraswathi has been provided funds at all times by PW1 to meet not only the house hold expenses, but also to

repay the loan borrowed by her under Ex.D1 series. From the circumstances available in this case it is clear that the deceased Saraswathi was

subjected to a sustained course of cruelty and that cruelty was both physical and mental. It appears that Saraswathi had reached a desperate stage

of frustration in her life and reached a point from where she did not want to come back. All these ten years of her married life appears to be a

misery for her and the fact that she decided to commit suicide along with her school going children itself gives an indication about the extent to

which her mind has been affected by the course of conduct adopted by the accused. The argument advanced by the learned Senior Counsel that at

best the conduct of the accused could be termed only as highly reprehensible and that conduct falls short of cruelty does not appear to be well

founded on the facts and circumstances of this case. Under these circumstances I am of the opinion that the judgments of the Courts below are

based on sound, legal acceptable evidence and the Courts below have not committed any error either in law or on facts warranting interference at

the hands of this Court.

9. As such, I find no merits in this revision and it is accordingly dismissed. Learned Senior Counsel for the Petitioner stated that there are a number

of Government remission orders in force from the date of conviction of the accused and therefore the benefit arising therefrom may be extended to

the accused. In this context, I only say that the authorities may find out whether there are any Government remission orders in favour of the accused and if so consider extending the benefit arising therefrom the accused.