

(2012) 08 MAD CK 0051
In the Madras High Court
Case No : Criminal Appeal No. 791 of 2005

Palanivel	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 221, 222
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2012) 08 MAD CK 0051

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : V. Srinivasan and Mr. S. Kalyanaraman, for the Appellant; C. Emalias Government Advocate (crl.side), for the Respondent

Judgement

Honourable Ms. Justice R. Mala

1. The criminal appeal arises out of the judgment of conviction and sentence, dated 30.08.2005, made in S.C. No. 187 of 2004 on the file of the Sessions Court, Mahila Court, Salem, whereby the accused was convicted for the offence u/s 498A IPC and sentenced to undergo 30 months rigorous imprisonment and to pay a fine of Rs. 2,000/- in default in payment to undergo five months rigorous imprisonment. The respondent has filed a charge sheet against the appellant/accused stating that 10 months prior to 14.01.2002 (i.e) on the date of occurrence, the marriage was performed between the deceased Jayakodi and her husband Selvaraj, who left the village for attending rig work after leaving his wife with the custody of his maternal uncle viz., Palanivel, the accused. On 10.01.2002, Jayakodi came to her parents house to give send-off to his uncle Arumugam, who was about to go to Sabari mala and stayed there till

14.01.2002. On 14.01.2002, at about 5.00 p.m., the accused came there and abused her in filthy language and had beaten her with his hands. The deceased Jayakodi unable to bear the above humiliation caused by the accused, committed suicide during night hours on 14.01.2002 by consuming ettikottai, which is a poisonous substance. Thereby the accused has committed the offence punishable u/s 306 IPC.

2. The case of the prosecution is as follows:

(i) P.W.1/Sellammal is the mother of deceased Jayakodi. P.W.5/Deivanai is the mother-in-law of deceased Jayakodi and mother of Selvaraj. One

Subramani and the accused Palanivel are P.W.5's brothers. Marriage was performed between the deceased Jayakodi and one Selvaraj, 10

months prior to the date of occurrence (i.e.) on 14.01.2002. After the marriage, they lived together at the house of P.W.5. For avocation, Selvaraj

went to North India to do rig work. Hence, he left his wife under the care and custody of the accused, who is his maternal uncle.

P.W.4/Chinnammal is the sister of P.W.1 and her husband Arumugam was about to go to Sabari mala and that the deceased Jayakodi was

permitted to go to her maternal home and she came there on 10.01.2002. After gave send off to her maternal uncle Arumugam, she stayed in her

maternal home. On 14.01.2002, at 5.00 p.m., the accused came there and abused her in filthy language and assaulted her and dragged her to his

house. On the same day, during night hours, deceased Jayakodi consumed ettikottai, a poisonous substance and informed the same to her mother-

in-law/P.W.5. Immediately, deceased Jayakodi was taken by P.W.5 and two others, before P.W.7/Velayutham, who is the Native Doctor, gave

native treatment to her and declared her dead. Then, P.W.5's brother Subramani intimated the same to P.W.1, who is the mother of the deceased,

rushed to the house of P.W.7 and witnessed her daughter dead.

(ii) On 15.01.2002, at 7.00 p.m., P.W.1 gave Ex.P1 complaint to P.W.12/Mohanraj, the then Inspector of Police, Thalaivasal Police station, who

received the complaint, registered a case in Crime No. 68 of 2002 u/s 174 Cr.P.C. The printed F.I.R. was marked as Ex.P10. Since the

deceased died on the suspicious circumstance within seven years of her marriage, P.W.12 forwarded the same to P.W.10/Arumugam, an R.D.O.

and P.W.11/Sundaram, the then Deputy Superintendent of Police, Attur.

(iii) P.W.10 after receiving original F.I.R. from P.W.12, conducted inquest on the body of Jayakodi in the presence of Panchayatdars. During the enquiry, he came to know that the death is not due to dowry demand and his report was marked as Ex.P6.

(iv) P.W.10 after conducting inquest, sent the body for post-mortem. P.W.9/ Dr.Gurunatha Kandaiya, along with Dr. Nimmi conducted autopsy on the body of the deceased and the Viscera was sent for chemical analysis. Post-mortem certificate was marked as Ex.P3. He opined that the deceased would have appeared to died of probably poisoning 24 hours to 30 hours prior to autopsy.

(v) After receiving F.I.R. copy, P.W.11 took up the matter for investigation. He went to the place of occurrence and prepared Ex.P8 observation mahazar and drew rough sketch Ex.P7 in the presence of the witnesses one Selvam and P.W.8/Adhimoolam. Then he examined the witnesses and recorded their statements. On 16.01.2002, he altered the offence into Section 306 IPC and despatched the alteration report Ex.P9 to the Court.

He sent the case file to P.W.12 for further investigation.

(v) P.W.12 took up the matter for further investigation. He went to the Government Hospital, Athur and examined the Doctors P.W.9 and Nimmi.

After completing investigation, he filed a charge sheet against the accused u/s 306 IPC.

3. The learned trial Judge after following the procedure framed necessary charges against the accused. Since the accused pleaded not guilty, the trial Court examined P.W.1 to P.W.12 and marked Exs.P1 to P10. The trial Court placed the incriminating evidence before the accused, the accused denied the same in toto. After considering the oral and documentary evidence, the trial Court acquitted the accused/appellant for the offence u/s 306 IPC and convicted him for the offence u/s 498A IPC and sentenced him as stated above, against which, the accused/appellant preferred an appeal.

4. Challenging the conviction and sentence passed by the trial Court, learned counsel appearing for the appellant would submit that conviction itself is vitiated, since no charge has been framed against the accused/appellant for the offence u/s 498A IPC and no opportunity has been given to him for defending that offence. He also relied upon the decision reported in 1995 I

L.W. (Crl.) 57 (2) (Baskaran v. State by Inspector of Police, Cuddalore N.T. Police Station) and 2010 (1) Cri. 769 (Mad.) (Murugesu Pandian and others v. State by Inspector of Police, Tirupur, Coimbatore District) and submitted that cruelty defined u/s 498A IPC is a continuous harassment. He also relied upon the decision of Apex Court reported in Mohd. Hoshan and Another Vs. State of A.P., and submitted that whether one spouse has been guilty of cruelty to the other is essentially a question of fact. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. He further submitted that if the Court comes to the conclusion that the accused is guilty of the offence u/s 498A IPC, some leniency may be shown to him by reducing his sentence. Hence, he prayed for allowing of this appeal.

5. Resisting the same, Mr.C.Emalias, learned Government Advocate (Crl. Side) submitted that even though charge has been framed against the accused/appellant u/s 306 IPC, the accused was acquitted u/s 306 IPC and he was convicted for the offence u/s 498A IPC. As per the evidence, on 14.01.2002, deceased Jayakodi was subjected to physical cruelty by the accused, who is none other than the maternal uncle of her husband.

So the offence u/s 498A IPC is made out. As per the dictum of the Apex Court, cruelty is to be decided in the facts of each and every case.

6. He relied upon the Full Bench Judgment of Apex Court reported in K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, and submitted that even though the accused convicted u/s 498A IPC for the offence of cruelty on same evidence, he can be convicted for abetment of suicide u/s 306 IPC with aid of Section 221 Cr.P.C. So in the case on hand, Section 306 IPC is converted into Section 498A IPC by invoking Sections 221 and 222 Cr.P.C. It is further submitted that in respect of quantum of sentence is concerned, he leaves it to the Court's discretion.

Hence, he prayed for dismissal of the appeal.

7. Considered the rival submissions made on both sides and the materials available on record.

8. Now this Court has to decide as to whether the trial Court convicted the appellant/accused u/s 498A IPC is sustainable? In the charge framed against the accused, it was mentioned that on 14.01.2002, the accused abused the deceased Jayakodi in filthy language and slapped on her cheek

and thereby the accused committed physical and mental cruelty, which forced her to commit suicide and hence, the charge u/s 306 IPC was framed against the accused.

9. It is appropriate to incorporate Section 498A IPC, which is extracted hereunder:

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 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 meet such demand.]

In this case, Explanation(a) of Section 498A IPC, is applicable to the facts of the present case.

10. Now this Court has to decide that if no charge has been framed u/s 498A IPC, whether the accused can be convicted for the said offence? At

this juncture, it is appropriate to consider the decision of this Court relied upon by the learned counsel for the appellant 1995 I L.W. (CrL.) 57 (2)

(Baskaran v. State by Inspector of Police, Cuddalore N.T. Police Station), in which, it was held that without framing of charge u/s 498A IPC, the

accused would be highly prejudiced as he was not given opportunity for defending that offence, though cruelty is the common element for both the

offences under Sections 306 and 498A IPC. It is necessary to extract para-5 of the above judgment, which read as follows:

5..... As there was no charge against him for Section 498A I.P.C., we cannot anticipate his defence for that section pleading the absence of

cruelty. Therefore, now, if he is convicted u/s 498A I.P.C., as there is evidence, the revision petitioner would be highly prejudiced as he was not

given opportunity for defending that offence, though cruelty is the common

element for both the offences. The learned counsel Mr. S.

Balasubramaniam refers to a decision in Smt Shanti and Another Vs. State of Haryana, wherein the Supreme Court has taken the view that to

avoid any technical defects, it is necessary to frame separate charges for Sections 304B and 498A I.P.C. under both the sections and if the case is

established, they can be convicted under both Sections, but the sentence can only be u/s 304B IPC. In view of the difficulty, which the accused

would face if he is convicted u/s 498A IPC without being a charge for the said offence, the Supreme Court has observed that separate charges are

necessary for these two different categories of offence, though the punishment can be either for Section 304B or Section 498A IPC, according to

the conviction. So, I also feel that the revision petitioner cannot be convicted u/s 498A without a charge for the said offence. The result would be,

acquittal of the revision petitioner.

11. Per contra, the learned Government Advocate (Crl. Side) relied upon the decision of Apex Court reported in K. Prema S. Rao and Another

Vs. Yadla Srinivasa Rao and Others, and submitted that even though the accused convicted u/s 498A IPC for offence of cruelty on same

evidence, he can be convicted for abetment of suicide u/s 306 IPC with aid of Section 221 Cr.P.C. So it is appropriate to incorporate the

following portion in the above judgment.

.. Mere omission or defect in framing charge does not disable the Criminal Court from convicting the accused for the offence which is found to

have been proved on the evidence on record...

12. At this juncture, it is appropriate to incorporate Sections 221 and 222 of Cr.P.C., which read as follows:

221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the

accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be

charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might

have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor

offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was

not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence,

although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately

charged.

(4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of

proceedings in respect of that minor offence have not been satisfied.

13. Considering the above decisions, even though the accused was not charged u/s 498A IPC, as per the dictum of the Apex Court reported in K.

Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, I am of the view, the appellant may be convicted for the offence u/s 498A IPC,

even no separate charge has been framed u/s 498A IPC. In my opinion, the available evidence are sufficient to convict the accused for the offence

u/s 498A IPC.

14. Insofar as Section 306 IPC is concerned, the offence is grave in nature, but whereas, Section 498A IPC is concerned, the offence is lesser in

gravity. So the argument advanced by the learned counsel for the appellant that without framing separate charge u/s 498A IPC, the appellant was

convicted, moreover the appellant was not given any opportunity to defend his case, does not merit acceptance.

15. Now this Court has to decide as to whether the trial Court is correct in convicting the accused for the offence u/s 498A IPC and whether the

cruelty has been proved. The prosecution has examined P.W.1 to P.W.4 to prove

the same. P.W.2/Kasiammal and P.W.3/Venkatesan are independent witnesses and during the trial, they were turned hostile. P.W.1/Sellammal is the mother of the deceased Jayakodi. P.W.4/Chinnammal is the sister of P.W.1. The deceased Jayakodi was given marriage to one Selvaraj, who is the son of P.W.5/Deivanai, 10 months prior to the incident (i.e.) on 14.01.2002. Their marriage was love marriage. After the marriage, both were lived happily. P.W.5's brothers are one Subramani and the accused herein. Because of avocation, Jayakodi's husband Selvaraj left her under the custody of his maternal uncle, who is the accused herein. The above facts are not disputed.

16. On 10.01.2002, the deceased Jayakodi went to her maternal home to send off her junior maternal uncle, who is the husband of P.W.4, was about to go to Sabari mala. But she did not return back and stayed in her maternal home. On 14.01.2002, at 5.00 p.m., the accused came to P.W.1's house and abused her in filthy language and slapped on her cheek and forcibly took her to his house. On 14.01.2002, during night hours, the deceased Jayakodi consumed poisonous substance (i.e.) ettikottai. When she intimated the same to P.W.5/her mother-in-law, she immediately took her to P.W.7/Velayutham, who is the Native Doctor in their village. P.W.7 gave glucose to wash her stomach, but she died. Then the brother of accused viz., Subramani intimated the fact to P.W.1, who rushed to the house of P.W.7, witnessed her daughter's dead body.

17. While perusing the evidence of P.W.1 and P.W.4, they deposed that the accused had assaulted the deceased Jayakodi and abused her in filthy language. She also mentioned the vernacular word used by the accused, which is a filthy language. On the date of occurrence, the deceased was

18 years old. Since she unable to bear the above humiliation and torture caused by the accused, she gone to the extreme step of committing suicide

by consuming ettikottai. At 12 o'clock on 14.01.2002, she intimated the fact to P.W.5 and then, she was dead. As per the ingredients of Section

498A IPC, the "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave

injury by the husband of the women or any relatives of the husband. Admittedly, the accused/appellant is the maternal uncle of her husband

Selvaraj. Therefore, the ingredients of Section 498A IPC is proved by the

prosecution.

18. Now this Court has to decide as to whether the deceased was subjected to cruelty. On 14.01.2002, at 5.00 p.m., the accused slapped the

deceased and abused her in filthy language and took her to his house, since she was not returned back to his house. In such circumstances, the

deceased Jayakodi was subjected to both mental and physical cruelty made by the accused and unable to bear the same, she committed suicide.

Therefore, I am of the view, the accused is guilty of the offence u/s 498A IPC, which defines cruelty.

19. Learned counsel for the appellant relied upon the decision of Apex Court reported in Mohd. Hoshan and Another Vs. State of A.P., and

submitted that cruelty has been depended upon the facts and circumstances of each and every case. In para-6, it is held as follows:

6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a

person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the

environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage

or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty

was established or not.

Considering the above decision, the mental cruelty depends upon varies factors like sensitivity of the individual victim concerned, the social back

ground, the environment, education. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not.

20. He also relied upon the decision reported in 2010 (1) Cri. 769 (Mad.) (Murugesu Pandian and others v. State by Inspector of Police, Tirupur,

Coimbatore District). It was held that after perusing the evidence of P.W.1 to P.W.4, it is clearly seen that many of the above said allegations have

not been stated by them to the investigating officer at the time of the investigation and stated before the Court for the first time. Since the cruelty has

not been proved, in the above case, the accused were acquitted for the offence u/s 498A IPC. But the above decision is not applicable to the facts

of the present case.

21. Considering the facts and circumstances of the case, there is no reason for discarding the evidence of P.W.1 and P.W.4. Since the accused

assaulted and abused the deceased in filthy language and dragged her on to his house, unable to bear the humiliation, the deceased committed

suicide. So the trial Court considered all the aspects and came to the correct conclusion. I do not find any infirmity or illegality in the conviction u/s

498A IPC passed by the trial Court.

22. Learned counsel for the appellant submitted that the trial Court sentenced the accused to undergo 30 months rigorous imprisonment and

imposed a fine of Rs. 2,000/- and at the time of occurrence, he was aged about 32 years and he prayed for some leniency in his sentence and

ready to pay compensation to P.W.1. Considering the age and family circumstances of the accused, this Court is inclined to reduce his sentence.

On perusal of record, it shows that the accused was sentenced on 30.08.2005 and he was released on bail on 5.10.2005 and he was in the prison

for nearly 35 days. Therefore, the period already undergone by the accused is treated as his sentence. Instead of imprisonment, the fine amount is

enhanced from Rs. 2,000/- to Rs. 55,000/-, in default in payment, the accused is directed to undergo one year simple imprisonment. The fine

amount of Rs. 50,000/- is ordered to be paid as compensation to P.W.1, who is the mother of the deceased Jayakodi. In fine, The Criminal

Appeal is partly allowed.

Judgment of conviction passed by the trial Court u/s 498A IPC is hereby confirmed. Sentence alone has been modified as follows:

(i) The period already undergone by the accused/appellant is treated as sentence of imprisonment; and

(ii) Fine amount is enhanced from Rs. 2,000/- to Rs. 55,000/-, in default in payment, the appellant/accused is directed to undergo one year simple

imprisonment

(iii) Out of the fine amount of Rs. 55,000/-, a sum of Rs. 50,000/- is ordered to be paid as compensation to the mother of the deceased Jayakodi

viz., P.W.1.

Bail bond, if executed by the appellant/accused shall stand cancelled.