

(2018) 02 KL CK 0011
In the High Court Of Kerala
Case No : 1882 of 2003

RASHEED

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 14-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 498A](#) - Husband or relative of husband of a woman subjecti

Citation : (2018) 02 KL CK 0011

Hon'ble Judges : P.Ubaid

Bench : Single Bench

Advocate : S.RAJEEV, C.M.KAMMAPPU

Final Decision : Allowed

Judgement

1. The revision petitioner herein challenges the conviction and sentence against him under Section 498A I.P.C in C.C 168 of 1998 of the Judicial

First Class Magistrate Court, North Paravur. The case relates to commission of suicide by his wife Rasiya on 10.10.1996. She was married by

him on 23.4.1995. The prosecution would allege that Rasiya had been subjected to much mental and physical harassment by her husband and the

mother-in-law, and she committed suicide due to the said cruelty and harassment. Accordingly the prosecution brought final report against the

husband and also the mother-in-law, under Section 498A I.P.C. The crime was initially registered as a case of unnatural death on the first

information statement given by a person of the locality. The revision petitioner and his mother appeared before the trial court and pleaded not guilty

to the charge framed against them under Section 498A I.P.C. The prosecution

examined eight witnesses and proved Exts.P1 to P5 documents in the trial court. The accused denied the incriminating circumstances when examined under Section 313 Cr.P.C, and also projected a defence that Rasiya had some mental problems, for which she had been undergoing treatment, and she committed suicide due to the mental problems. The accused did not adduce any evidence in defence.

2. On an appreciation of the evidence, the trial court found the 2nd accused (mother) not guilty, and accordingly she was acquitted, but the 1st accused was found guilty. On conviction, he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/-.

Aggrieved by the judgment of conviction dated 17.1.2002, the 1st accused approached the Court of Session, Ernakulam with CrI.A 95/2002. In

appeal, the learned Additional Sessions Judge, North Paravur confirmed the conviction and sentence, and accordingly dismissed the appeal. Now

the 1st accused has come up in revision, challenging the legality and propriety of the conviction and sentence.

3. On hearing both sides and on a perusal of the entire materials, I find that the prosecution has not been able to prove the case beyond reasonable

doubt. Of the eight witnesses examined in the trial court, PW2 is the father of the deceased and PW3 is her mother. PW5 and PW6 are the

brothers of the deceased. PW1 is a person of the locality who made the Ext.P1 complaint. Of course, he does not know anything about the reason

for the commission of suicide, and he also does not know whether there had been anything wrong between the accused and his wife during their

matrimony. On the basis of what he gathered, that Rasiya accidentally fell in the well, he made the complaint. There is nothing in his evidence in

favour of the prosecution or against the prosecution.

4. PW3 was examined as a witness by the prosecution, but she was immediately given up by the learned Assistant Public Prosecutor. It is not

known why the prosecution gave up PW3. She is a material witness cited by the prosecution. It is quite natural that when a lady has some

problems in her matrimony she would reveal such things first to her mother, and usually the father and the other relatives will get such information

only from the mother. So the mother of the girl would be naturally the first person to come to know of and understand the difficulties of a daughter

and her problems in matrimony. PW3 was cited as a witness by the prosecution on the basis of the definite materials stated by her during

investigation. But just when the examination was started, the learned Assistant Public Prosecutor gave her up. Once a witness is put in the box, the

defence has the right to cross-examine the witnesses. That opportunity was denied to the defence in this case when the prosecution unnecessarily

and for no reason gave up PW3 who is a very material witness. This creates a serious doubt regarding the genuineness of the prosecution case.

5. PW5 and PW6 have nothing material to say against the accused, except that their sister had once complained that her husband had been making

preparation for a second marriage. They also stated that once or twice she had complained that the husband would say that she is not good to look

at. It appears that the main complaint made by the sister to PW5 and PW6 is only that her husband would contract a second marriage. This by

itself will not constitute harassment by a course of cruel conduct, as meant under Section 498A IPC.

6. Then what remains is the evidence of the father, examined as PW2. The defence case is that the deceased had some mental problems, and she

had undergone some treatment also. When asked about this, PW2 indirectly admitted that his daughter had some mental problems, and she had

undergone some treatment by a Psychiatrist. It is here the defence case assumes importance that Raziya committed suicide due to such mental

problems. Though such an aspect is not properly and convincingly proved, I find that there is something in the defence projected by the accused.

7. Even otherwise, the evidence given by PW2 is not very convincing to prove mental or physical harassment by the accused by a course of cruel

conduct. His evidence is also that once or twice, his daughter had complained that her husband would say that she is not good to look at, and that

he would contract a second marriage. There is nothing definite and firm in the evidence of PW2 regarding the grievances and complaints made by

his daughter against her husband, constituting the essentials of the offence under Section 498A IPC. Of course, there is something in the evidence

of PW2 that his daughter had some grievance, that her husband would contract a second marriage. That apart, there is nothing definite to constitute

mental or physical cruelty as meant under Section 498A IPC. In the absence of proper and satisfactory evidence proving the prosecution case

beyond reasonable doubt, I find it unjust to convict the accused. The benefit of the doubts tainting the prosecution case can be given to the accused.

In the result, this revision petition is allowed. The revision petitioner is found not guilty of the offence under Sections 498A IPC, and accordingly,

he is acquitted of the said offence in revision. The conviction and sentence against the revision petitioner in C.C. No.168 of 1998 of the trial court,

confirmed in appeal by the Court of Session, Ernakulam, in CrI.A.No. 95 of 2002, will stand set aside.