
(2014) 02 KL CK 0154
In the High Court Of Kerala
Case No : Crl. A. No. 2174 of 2006

Rosamma Kurian

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

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

Citation : (2014) CriLJ 2666 : (2014) 2 ILR 132 : (2014) 2 KHC 64 : (2014) 2 KLJ 233

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, Senior Advocate, Thomas J. Anakkallumkal, Prasun S. and S. Muhammed Haneeff, Advocate for the Appellant; Rajesh Vijayan, Public Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The sole accused in Session Case No. 237/2005 of Additional District and Sessions Court, Pathanamthitta, who was convicted and sentenced for offences u/s 498A of IPC, is the appellant. Charge-sheet was laid for offence u/s 306 of IPC as well. But the learned Sessions Judge acquitted the accused of that offence. For the offence u/s 498A, she was sentenced to rigorous imprisonment for three years and to pay fine of Rs. 10,000/- and in default to simple imprisonment for six months. This appeal is directed against the said conviction and sentence. Deceased Joby was married by Reji, the son of the appellant, on 16/05/2002. She was given gold ornaments and a sum of Rs. 1,00,000/- at the time of marriage. She was staying happily in her matrimonial home till her husband Reji left for Saudi Arabia. He told her that he will return within one year and then it was stated that he will come after one and a half years and ultimately he was to return on the expiry of two years. However, the husband (Reji) could not come back within two years. The deceased was staying in the matrimonial home along with the mother (appellant), father and sister of Reji.

2. According to the prosecution, the appellant subjected the deceased to mental cruelty by making her do all the household work by herself. She was to collect grass for the cow; they also asked her to bring water from the "Oli". She was also made to wash the cloths of her father-in-law, mother-in-law and sister-in-law, who were residing in the house. The appellant used to find fault with the deceased for all works and actions done by her. She was not allowed to have free phone calls to her husband stating that phone bill would increase and that if she wanted to talk more, she should bring more money from her house. Thus, according to the prosecution, the mental cruelty meted out to the deceased was intolerable and because of the cruel treatment mentioned above, she committed suicide by hanging.

3. Inquest was conducted by the Tahsildar as per the instruction given by the RDO. Thereafter, post-mortem examination was conducted. The gold ornaments worn by the deceased were seized. The inquest report and mahazar were produced before the Sub Divisional Magistrate Court, Thiruvalla. The F1 Statement was given by the brother of the deceased's father. Based on the statement given by the mother of the deceased and others, a report was filed before the Judicial First Class Magistrate, Ranny. A report was filed subsequently incorporating commission of offences under Sections 498A and 306 of IPC. After conducting investigation, charge-sheet was laid alleging commission of offences as mentioned above.

4. P.Ws. 1 to 14 were examined and Exts. P1 to P17 were marked. Ext. D1 is the marked portion of the contradiction in the statement given by P.W. 5. MO 1 and MO 2 series were also produced and marked.

5. The Trial Court, after considering the entire evidence, found that the appellant, who is the mother-in-law of the deceased, subjected the deceased to cruelty and that it was because of that cruelty the deceased committed suicide. However, the Trial Court found the appellant not guilty of the offence u/s 306 of IPC, but found guilty only of the offence u/s 498A of IPC. That is challenged in this appeal.

6. The point for consideration is:

Whether there was any willful conduct on the part of the appellant which was of such a nature as was likely to drive the woman (deceased Joby) to commit suicide or whether there was any harassment of deceased Joby with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security?

7. The prosecution has mainly relied upon the evidence of P.Ws. 1 to 5 to sustain the charge of mental cruelty imputed against the deceased. Besides, the prosecution relied upon Ext. P2 letter which was found on the bed of the deceased at the time of her death; which has to be treated as a suicide note and also the diary (Ext. P3).

8. The learned counsel for the appellant, Mr. Thomas J. Anakkallumkal, has

vehemently argued that even if the entire evidence given by the prosecution is accepted as true, there is nothing to show that there was any sort of harassment so as to coerce the deceased or any person related to her to meet any unlawful demand for any property or valuable security. Though, there is allegation that whenever the deceased used to make phone call, the appellant used to tell her that the telephone bill will increase and that if she wanted to talk for a long time she should bring more money from her house, that cannot be treated as harassment so as to coerce her to bring money from her house, the appellant contends.

9. The prosecution mainly relies upon the entries in Ext. P3 Diary to prove that she was subjected to mental cruelty. It is vehemently argued by the learned counsel for the appellant that there is no report of the expert to prove that the handwritings in Ext. P3 are that of the deceased. The Court below found, on acceptable evidence, that the writings in Ext. P3 diary are that of the deceased. That book was seized from the almirah, which was used by the deceased and kept in the house of the appellant. There is evidence to show that, after about 5 days, the other gold ornaments belonging to the deceased which were in the almirah kept in the house of the appellant were given to the parents of the deceased. There was no dispute regarding that fact. Of course, it was disputed that a sum of Rs. 1,00,000/-, stated to have been given to the deceased at the time of marriage, was not returned. It is stated that there is a civil suit pending with regard to the same.

10. Now comes the crucial question; whether the writings/entries in Ext. P2 letter and Ext. P3 diary would prove whether the deceased was subjected to cruelty. Ext. P2 is not a single letter, but three pieces of letters. In the last page, the date is shown as 24/06/2003. There is no dispute regarding the fact that it was written by the deceased. At the top of the letter it was stated by her that nobody was responsible for her death. She wanted everybody to forgive her for the wrong, if any, committed by her to all persons, including the father, mother etc. It was stated that it was for the good of her husband, (who was addressed by her as "Rejichayan") that she is leaving this world. It was also stated in the last page that she had looked after and helped the father and mother, (presumably the father-in-law and mother-in-law), and that they will forgive her. It was also stated that she had done all the works as directed by them. It was further stated that her husband will get another educated, intelligent, employed and beautiful girl and that after marrying such a girl, he should live happily.

11. The learned Public Prosecutor submits that these words would clearly indicate that she was told by the appellant and other inmates of that house that the deceased was not so beautiful and because of her, the inmates of the matrimonial house were not happy. A reading of the diary would show that she had that much love and affection towards her husband "Rejichayan". So many aspects are seen written which would show her love towards her husband Rejichayan.

12. In Ext. P3 it was written by her that Rejichayan should not have married her. Had he married a nurse, he could have lived happily. It was mentioned that the mother-in-law (the appellant) used to tell that Reji could have married a very good, educated, employed and intelligent girl. It was also stated that when her husband -- Rejichayan used to talk to her over phone, the appellant was unhappy to have talks for more than one minute. The appellant used to find fault with her. The deceased had also complained that she was made to do all work in that house. It is also contended by the prosecution that the writings in Ext. P3 would show that the inmates were not living happily and peacefully after the deceased was brought to that matrimonial home. The learned Public Prosecutor has relied upon these entries in Ext. P3 to contend that those entries in the diary made by her will certainly prove that she was subjected to mental cruelty by the appellant.

13. The learned counsel for the appellant submits that the appellant and her family members belong to an agricultural family. They used to go for collecting grass for cow, for taking latex from their own rubber estate and also used to collect water from the natural stream flowing by the side of their house. It is also submitted that the evidence would show that the deceased used to go for work along with the appellant and her husband and therefore, it cannot be said that she alone was made to work. Asking her to do work along with the father-in-law and mother-in-law can only be a natural thing that happens in any agriculturist's family.

14. Though it was contended that oli (natural stream of water) was far away, the evidence given by the prosecution witness (P.W. 6) would show that oli is situated only 15 metres away from the house. It is situated on the other side of the road. A road passes by the side of the appellant's house. Therefore, that also cannot be stated to be an act of cruelty.

15. Yet another cruelty, according to the prosecution, is that she was made to do all domestic work by herself. She was also made to wash cloths of all the inmates of the house; namely father-in-law, mother-in-law and sister-in-law. The learned counsel for the appellant submits that in rural areas the daughter-in-law used to wash cloths of husband's father and mother. It is further submitted that such complaints, alleged to have been orally made by the deceased to her mother, did come out only after the post-mortem examination was conducted.

16. The learned Public Prosecutor would submit that no married woman would tell about all those factors even to her own parents lest they should feel desperate or dejected and therefore, that those factors were not earlier complained of, cannot be a reason to say that the deceased was not subjected to such ill treatments or mental torture.

17. Only because it was stated in Ext. P3 series that the appellant was not happy when the deceased used to continue her talk with her husband over phone for more time, it cannot be said that it would actually amount to mental cruelty. It is

further argued that the learned trial Judge made some suppositions that the deceased might have been subjected to mental cruelty. The scribblings in Ext. P3 can be construed and understood in different ways, the learned counsel for the appellant submits. Unless there are materials to show that the deceased was subjected to mental cruelty, the Court cannot jump to a conclusion on such suppositions that she was subjected to cruelty simply relying on such non-specific and elusive statements. The fact that she had written that it was for the happy and peaceful life of her husband that she is leaving this world cannot be construed to hold that she was subjected to cruelty. Not only that in Ext. P3, she had stated so many things showing her love towards her husband.

18. The usual and common domestic discord in any matrimonial home cannot amount to "cruelty" within the meaning of Section 498A of IPC. Such act or willful conduct must be one which must drive the woman to commit suicide. The standard of tolerance of a woman may vary from person to person. One woman may be so hyper sensitive that even a simple innocuous and harmless statement may be taken by her as a serious one. Similarly, the directions, instructions or comments made by an elder member of the family to do or not to do a particular work or showing or stating about the mistakes may not be taken in the proper or right sense. Therefore, it all depends upon the person to whom it was said.

19. The learned counsel for the appellant would submit that the writings in Ext. P3 would clearly show that the deceased was very hypersensitive. The life she had in her imagination may not have been the one she had to live with. It seems, she had high expectations but it was found to be otherwise. Usually, it cannot be so in real life.

20. It was held by a Division Bench of this Court in *Kunchu v. State* 1986 KLT SN 17 (Case No. 33) as follows:

When ladies are faced with disappointments in life or find their environment so unhealthy or unhappy, it is possible that they become desperate and decide to end their life forgetful of the consequences. Suicide is a means of handling aggressive impulses generated by frustration. Feelings of revenge can also be associated with it Sensitive and sentimental women when they are tired of life due to unexpected behavior from relations can become desperate to any extent. The spirit of revenge can even force them to commit suicide with a view to destroy those who are considered responsible for their maladies in life. The feeling of helplessness in future life and the gloomy future are factors which would prompt a lady to do the extreme.

21. It is argued by the learned counsel for the appellant that the entries in the diary allegedly written by the deceased would show that she was having desperation and frustration. She was eagerly waiting for her husband to join her. So much fascination she was having towards the husband. When she realised that her husband will not come she thought that she would not get the happiness as she desired. It caused so much of emotional disorder. That frustration must

have, in all probability, forced to end her life. It is also argued that Ext. P1 letters and the entries in Ext. P2 diaries would also show that she was a hypersensitive and sentimental woman and was extremely impassioned. It is also submitted that she had a wavering mind having so many conflicting ideas and in that factual scenario when she realised that she cannot join her husband as he was not coming as promised she did realise that there was no meaning in her life.

22. People with a psychotic philosophy or bent of mind would dream of an ideal life and if such a woman feels that she cannot have that life dreamt of by her she would not be hesitant to end her life when she felt that there was no charm left in her life. There is also merit in the contention advanced by the learned counsel for the appellant that the complaints made by the deceased as could be seen from the entries in the diary are only trivial because such bickerings usually occur in every matrimonial home. Every such domestic discord cannot be characterised as matrimonial cruelty. Even if what are seen stated in the dairy are accepted as true, it can only be said that some innocuous or unsavouring remarks were made by the parents and sister of her husband. But such remarks or comments cannot in the normal course persuade a woman to have such disappointment or dejection so as to end her life. It cannot be said that there was any such objectionable or willful conduct of such a magnitude which can be imputed against the accused so as to hold that such imputations or comments were sufficient to drive a woman of normal standard of tolerance to take the extreme step of ending her life. There would be usual stresses and strains in any matrimonial home.

23. The First Information Statement was given by P.W. 1 who is the brother of P.W. 2. P.W. 2 is the father of deceased Joby. P.W. 3 is the wife of P.W. 2. P.W. 6 and 7 are neighbours who were examined to prove that deceased Joby used to tell her tale of woe but did not support the prosecution. The prosecution has relied upon the evidence of P.W. 5 who is the neighbour of P.Ws. 2 and 3. It was stated that whenever Joby used to go to her parental house she also used to go to his (P.W. 5's) house. Then she used to have discussions or pleasantries and on such occasions she used to tell P.W. 5 about the ill-treatment she was subjected to at the hands of the appellants.

24. But even the instance of ill-treatment alleged to have been spoken by Joby to P.W. 5 was only about the collection of grass for cow, latex from the rubber estate and bringing of water from the Oli (natural stream or pond). Of course, there was another allegation that the appellant was not permitting her to have a free conversation with her husband over phone. Those ill-treatments, according to the learned counsel for the appellants can at no stretch of imagination be termed as "cruelty" which was likely to drive the victim to commit suicide. According to the learned counsel, the evidence let in by the prosecution would only show that deceased Joby was so hypersensitive to ordinary petulance and domestic discord and differences that it was not possible for her to bear even innocuous comments or jokes. The contention put forward by the prosecution

that it was because of unbearable torments, haunts and taunts that she decided to end her life cannot be accepted. It is also argued that since the Trial Court has found that the allegations made against the appellants are not sufficient to hold that such acts amounted to abetment to commit suicide, it has to be found that such comments or remarks made by the appellants are not acts of cruelty so as to attract the offence u/s 498A of IPC as well. Such ordinary petulance, domestic discord and differences in the ordinary course cannot induce or provoke an ordinary woman to end her life.

25. There was no specific allegation that the appellant had made demands or coerced the deceased to bring more money or gold ornaments from her parental home. On the other hand, it can be seen that a few days prior to the incident her own parents had reached there and some comments were made by her mother that the house is stated in such a remote area that it was very difficult for them to reach there. In fact, the deceased was not happy about the comments or remarks so made by her own mother. The fact that she was also made to work along with her father-in-law and mother-in-law in doing agricultural works, cutting or collecting grass or taking latex are not matters which can be said to be an unjust, cruel or maltreatment.

26. The learned counsel for the appellant would submit that the evidence would clearly show that the husband of the deceased expressed his inability to reach home at the end of the second year. The deceased was longing for joining him. The spirit of hope and desire became overshadowed by a sense of disappointment and frustration that she who was so hypersensitive or sentimental found it unbearable and thus it made her to suddenly change her mind so as to end her life. There is no evidence to show that any specific instance of such a mental cruelty was disclosed by the deceased to her parents. The usual comment or criticism made by the accused that if the deceased wants to have a lengthy conversation over phone she should bring that much money from her house cannot be characterised as a cruel or unjust treatment towards the daughter-in-law. It can as well be treated as an advice to be more practical or economical.

27. It is also in evidence that whenever she went to her parental home she was eager to return to her matrimonial home. If there was any cruel or unbearable treatment, certainly she would have told her parents her disinclination or reluctance to return to the matrimonial home. From the evidence given by P.W. 2 and P.W. 3, (her parents) it cannot be said that any specific instance was made by the deceased which would in the normal course drive a woman to commit suicide. The three complaints namely; that she was asked to bring water from "Oli", a natural stream which is only about 15 metres away from her house; that she was asked to wash the clothes of her parents and that she was also not allowed to have a lengthy conversation with her husband over phone are not instances which can by themselves constitute acts of cruelty. As has been stated earlier, the entries in the Diary and the letters would clearly show that she was

hypersensitive. The acts imputed against the appellant even if true, cannot amount to cruelty. It is also submitted by the learned counsel that there was no allegation that there was any quarrel, even a petty quarrel, between the deceased and the appellant or any other allegation of physical torture. There was no immediate incitement or provocation on the part of the appellant to drive the victim to commit suicide. Hence, on an overall assessment of the evidence, I find that the appellant is entitled to be given the benefit of reasonable doubt. Consequently, the conviction and sentence passed against her are set aside.

In the result, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant are set aside. She is set at liberty. The bail bond executed by her will stand cancelled.