

(2025) 06 KL CK 0919
In the High Court Of Kerala
Case No : Criminal Appeal No. 2913 Of 2008

Sajudheen And Others

APPELLANT

Vs

Sub Inspector Of Police And Another

RESPONDENT

Date of Decision : 30-06-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 209, 227, 232, 235(1), 313
Indian Penal Code, 1860 — Section 34, 313, 406, 498A, 506(i)
Evidence Act, 1872 — Section 134

Citation : (2025) 06 KL CK 0919

Hon'ble Judges : Jobin Sebastian, J

Bench : Single Bench

Advocate : T.G.Rajendran

Final Decision : Allowed

Judgement

Jobin Sebastian, J

1. The accused Nos. 1 to 3 in SC.No.299/2006 on the files of the Additional District and Sessions Judge, Fast Track (Adhoc II), Kozhikode have preferred this appeal challenging the judgment of conviction and order of sentence passed against them in the said case for the offence punishable under Section 498-A IPC.

2.The case of the prosecution in brief is as follows;

PW1 and the accused belong to the Muslim community, and their marriage was solemnized as per their religious rites and ceremonies on 28.03.2004. After the marriage, while both of them were residing together in the matrimonial home, the 1st accused, as well as his parents and sister, who are arrayed as accused Nos.2 to 4 in this case started to ill-treat and harass PW1 alleging that she lacked beauty and the dowry brought by her is insufficient. Furthermore, the accused misappropriated 45 sovereigns of gold ornaments and cash amounting to Rs.1.5 lakhs given by her parents at the time of her marriage and used it for their own purposes. When PW1 became pregnant, the 1st accused, at the

instigation of the 2nd and 3rd accused, compelled her to abort the fetus, which she resisted. Despite her resistance, the accused forcefully administered two pills with an intention to abort the fetus and caused PW1 to miscarry without her consent. Hence, the accused are alleged to have committed the offences punishable under Section 313, 406, 506(i), 498-A r/w 34 IPC.

3. After the completion of the investigation, the final report was filed before the Judicial First Class Magistrate Court.-V, Kozhikode. On being satisfied that this case is one triable exclusively by a court of Session, the learned Magistrate, after complying with all the necessary formalities, committed the case to the court of Session, Kozhikode, under section 209 of Cr.P.C. The learned Sessions Judge, after taking cognizance made over the case for trial and disposal to the Additional Sessions Court, Kozhikode. On the appearance of the accused before the trial court, the learned Additional Sessions Judge, after hearing both sides under section 227 of Cr.P.C. and perusal of records, framed a written charge against the accused for offences punishable under Section 313, 406, 506(i), 498-A r/w 34 IPC. When the charge was read over and explained to the accused, all of them pleaded not guilty and claimed to be tried.

4. During the trial, from the side of the prosecution, PW1 to PW6 were examined and marked Exts.P1 to P5. After the completion of the prosecution evidence, the accused were questioned under Section 313 of Cr.P.C. On questioning, the accused denied all the incriminating materials brought out in evidence against them. Thereafter, both sides were heard under Section 232 of Cr.P.C., and as it was not a fit case to acquit under the said section, the accused were directed to enter on their defence and to adduce any evidence they may have in support thereof. Thereupon, one witness was examined from the side of the accused as DW1 and marked Exts.D1 to D4. Thereafter, both sides were heard in detail, and finally, the learned Additional Sessions Judge found the 4th accused not guilty for the offences charged against her and she was acquitted under section 235(1) of Cr.P.C. Accused Nos.1 to 3 were also found not guilty of offences punishable under Section 313, 406, 506(1) of IPC and acquitted on the said charges. However, accused Nos. 1 to 3 were found guilty for the offence punishable under Section 498-A r/w 34 IPC, and they were convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/-. In default of payment of the fine, they were ordered to undergo imprisonment for six months each. Aggrieved by the said finding of guilt, conviction, and order of sentence passed, the accused have come up with this appeal.

5. I heard Sri. T.G.Rajendran, the learned counsel for the appellants and Sri. Alex M. Thombra, learned Senior Public Prosecutor.

6. The learned counsel for the appellants submitted that the learned trial judge convicted the accused without any evidence to prove an offence under Section 498-A IPC. According to him, the ingredients to attract an offence under Section 498-A IPC are lacking in this case. The counsel further urged that it is unsafe to rely upon the solitary evidence of PW1 to record a conviction, especially when

her evidence is marred by contradictions and omissions of a serious nature. It is further contended that the acts alleged by the prosecution to attract an offence under Section 498-A IPC remain unproven. The learned counsel further urged that the acquittal of the accused for the offence punishable under Section 313 of IPC itself indicates that the prosecution failed to prove the alleged forced abortion and in the absence of such proof, convicting the accused under Section 498-A IPC could be unjustified, especially since the other alleged acts of cruelty remain unsubstantiated by convincing evidence. Per contra, the learned Public Prosecutor would submit that the ingredients to attract an offence under Section 498-A of IPC are fully established in this case, and hence there is nothing to interfere with the impugned judgment. According to the learned Public Prosecutor, the incidents of domestic violence and ill treatments often occur inside the four corners of a house and hence it is not prudent to look for corroboration by other independent evidence and in those sort of cases, the solitary evidence of victim would suffice to enter into a conviction if the same inspires the confidence of the court.

7. This is a case where a married woman alleges ill treatment and harassment by her husband and in-laws. The law was set in motion in this case on the strength of a statement given by the victim of this offence to the Police. When the defacto complainant who gave the FIS was examined as PW1, she deposed that the first accused married her on 28-03-2004 as per religious rites. Accused Nos. 2 to 4 are the father, mother, and sister of the first accused, respectively. At the time of marriage, she was given 60 sovereigns of ornaments and cash of Rs. 1.5 lakhs as her family share. The cash was handed over by her uncle to the 2nd accused. After marriage, she resided with her husband's family. On the next day of the marriage itself, the 1st accused obtained most of her gold ornaments, leaving her with only about 15 sovereigns. The 45 sovereigns of gold ornaments obtained by the 1st accused are still with the accused persons. About two weeks after the marriage, the accused persons told her that they agreed to the marriage only because they were in need of money, and that the gold brought by her was not up to their expectations, and hence they required an amount of Rs. 50,000/-more. The accused found fault with her cooking and household work. They regularly quarrelled with her, asking her to bring more cash from her house. Accused Nos. 1 to 3 used to beat her, alleging that the cash brought by her was inadequate. The 4th accused, her sister-in-law, did not permit her to sleep with her husband and instead insisted that she should sleep with her. Furthermore, the accused persons did not permit her to contact her parents over the phone. She became pregnant in the 7th month of her marriage. Upon knowing about the same, the 1st accused told her that, he did not need a child at that time and asked her to abort the pregnancy. When she refused, the first accused threatened to kill her. On 20.11.2004, in the evening, the 1st accused brought two pills and asked her to take them to abort the fetus. When she refused to take the pills, he threatened her, caught hold of her neck, and forcibly administered the pills to her. That night, she was locked in a room, and she felt

severe abdominal pain. On the next morning, she had bleeding and hence she was taken to Malabar Hospital, Kozhikode, where she was given medication. On 22.11.2004, the bleeding increased and she was taken to National Hospital, Kozhikode, where Dr. Bindu Mukherjee (PW4) examined her and she was admitted in the said hospital, saying that the child is not alive. D&C procedure was done on the next morning, and she was discharged from the hospital in the evening. Thereafter also the accused persons repeated their demand for more cash. She has even thought of committing suicide due to the trauma she faced. The 1st and 3rd accused even asked her to go and die in the river. While so, she went to the house of the brother of the 2nd accused for a feast and stayed there for two days. During this time, she contacted her mother over the phone and told her about the harassment she faced. After attending the feast, she returned to her husband's house. Then the 1st and the 3rd accused beat and ousted her from the said house. On getting information about this incident, when her mother (PW2) and brother came there, the 1st and 2nd accused beat her again in the presence of her mother and brother. Then her mother took her to her paternal house. On 12.05.2005, she went to Nallalam Police Station and gave Ext.P1 F1 Statement. The delay in giving a statement to the police was caused due to her inability to go outside the house and also due to the ongoing discussions between the mosque's authorities in this connection.

8. Apart from the evidence of PW1, the evidence that the prosecution is banking on to prove the incidents alleged in this case is the evidence of PW2 and PW3, who are none other than the parents of PW1. However, their evidence reveals that both of them had only hearsay knowledge regarding the incidents in this case. However, both of them deposed that at the time of marriage, they had given 60 sovereigns of gold ornaments to their daughter and entrusted an amount of Rs.1.5 lakhs in the hands of the 2nd accused in the presence of the 1st accused. Virtually, the evidence that the prosecution relies on to prove the acts of cruelty is the sole evidence of PW1. While considering the question whether the solitary evidence of PW1 can form basis for a conviction in a cases of this nature, it is to be noted that, in cases relating to domestic violences, it is not prudent to look for independent corroboration for the evidence of a victim, particularly when the incidents of domestic violence including ill-treatments and harassments often occur within the confines of a house. Therefore, I am of the view that there is nothing wrong in relying on the solitary evidence of PW1 in entering into a conviction, provided the evidence is convincing and reliable. Moreover, as spelt out under Section 134 of the Indian Evidence Act, no particular number of witnesses is required to prove any fact. This underscores the principle that the quality of evidence matters more than its quantity. However, when a court is called upon to rely upon the solitary evidence of a witness, the court must act with much care and circumspection.

9. Keeping in mind the above, while reverting to the evidence of PW1, it can be seen that she has a definite case that the accused misappropriated her 45 sovereigns of gold ornaments and Rs.1.5 lakhs. However, neither PW1 nor her

parents, who were examined as PW2 or PW3, stated that the possession of those gold ornaments was obtained by the accused through coercion or force. But what the said witnesses deposed is that the same were entrusted with the accused, voluntarily. Notably, PW1 in her evidence did not state that the accused persons had dishonestly misappropriated or converted the cash or ornaments for their own use. But what she stated is that the gold ornaments are still with the accused. Likewise, there is no evidence to show that at any point of time, PW1 or her parents demanded the accused person to return the gold or cash belonging to PW1, and the accused person retained the same despite such a demand. It was for the above reason, the trial court acquitted the accused of the offence punishable under Section 406 of IPC. Therefore, I have no hesitation in holding that the prosecution failed to prove that the accused misappropriated the gold ornaments or cash of PW1.

10. Before delving into a discussion on the question whether an offence under Section 498-A is made out in this case, it is worthwhile to extract the said Section of law;

498-A. 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 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.]

11. In essence, Section 498-A of IPC deals with the subjection of a woman to cruelty by her husband or his relatives. The explanation to Section 498-A makes it clear that any willful conduct that has the capacity to likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or the physical or mental health of the woman amounts to an act of cruelty. Likewise, the second limb of the explanation to the term 'cruelty' clarifies that the act of harassing a woman with a view to coerce 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 persons or related to meet such demand also amounts to cruelty.

12. In essence, not every instance of harassment and ill-treatment amounts to cruelty. Only those acts that fall within the 1st and the 2nd limb of the explanation to Section 498-A, defining cruelty, would qualify as acts of cruelty for

the purpose of Section 498-A of IPC.

13. Petty quarrels between spouses in a family do not amount to cruelty. Such disagreements are inherent to family life, as husbands and wives, being human, are prone to differences of opinion and trivial verbal altercations. These natural occurrences, by themselves, do not amount to cruelty. Likewise, a single instance of harassment generally does not constitute an offence under Section 498-A of the IPC. However, it cannot be said in absolute terms that a series of acts of cruelty is always needed to prove cruelty. A single act may suffice for a conviction under Section 498-A of IPC, if it is severe enough to meet the legal definition of cruelty.

14. Keeping in mind the above, while examining the evidence of PW1, it can be seen that during her chief examination, she deposed that the accused Nos.1 to 3 physically assaulted her, demanding dowry. However, during cross-examination, when a specific question was put to her by the defence counsel, she stated that she could not remember whether she had stated about the said incident to the police while giving the FIS. Anyhow, no attempt was made by the defence counsel to prove such an omission, if any, at the time of examination of the police officer who recorded the FIS in this case. Nevertheless, it cannot go unnoticed that, apart from the oral evidence of PW1, no materials whatsoever have been produced from the side of the prosecution to show that any of the accused physically assaulted PW1 during her stay at the matrimonial home. Even PW1 is not having a case that she had sought any medical care or undergone any inpatient treatment in connection with the alleged physical assault. Moreover, when PW1's parents were examined, they too did not state that PW1 had ever complained about any sort of physical assault by the accused. Therefore, I have no hesitation in holding that the case of the PW1 in this regard cannot be believed.

15. The main incident that the prosecution relies upon to prove the accused subjected the victim to cruelty is the one allegedly occurred after the victim became pregnant. During examination before court, PW1 categorically deposed that after her pregnancy was confirmed, her husband compelled her to terminate it at the instigation and persuasion of 2nd and 3rd accused. She further stated that when she was not amenable to the said demand, on 20.11.2024, the 1st accused forcefully administered two pills to her with the intention to abort the fetus. According to PW1, she experienced severe abdominal pain that night. The following day, she was taken to Malabar Hospital, Kozhikode, and she was bleeding then. Since the bleeding could not be controlled, on 22.11.2004, she was shifted to National Hospital, Kozhikode, where Dr. Bindhu Mukherji (PW4) examined her in detail and admitted her for treatment. On the next day, D&C procedure was done, stating that the fetus was dead, and she was discharged from the hospital. However, while analyzing the above evidence of PW1, it is significant to note that no documentary evidence, whatsoever, was produced from the side of the prosecution to prove that on 21.11.2004, PW1 was taken to

Malabar Hospital, Kozhikode. It raises serious suspicion as to why the prosecution failed to examine the Doctor who allegedly treated PW1 at that hospital, if such a treatment had indeed been given.

16. Moreover, what PW1 deposed is that it was on 22.11.2004, she was examined by Dr. Bindhu Mukherji (PW4) at National Hospital, Kozhikode, and she underwent D&C procedure on the next day. However, PW4, the Doctor who examined PW1 and did the D&C procedure, testified that it was actually on 20.11.2004 that PW1 had approached her with a scan report. The prescription given by PW4, marked as Ext.D4, corroborates this and clearly establishes that PW1 consulted PW4 with a scan report on 20.11.2004. Thus, the case of PW1 that it was on 22.11.2004, she consulted PW4 is demonstrably false.

17. At this juncture, it is relevant to note that the case of PW1 is that it was on 20.11.2004, the accused forcefully administered some pills to abort her pregnancy. PW1 is having a further case that after administering the pills, she was locked inside a room on that day, and it was on the next day, she was taken to Malabar Hospital, Kozhikode. As already stated the oral evidence of PW4, the doctor, and the D4 prescription card clearly establishes that it was on 20.11.2004, PW1 approached PW4 with a scan report and on examining PW1, and on verifying the scan report, PW4 found that it is a case of missed abortion i.e., the fetus is already dead. Hence, it is apparent that PW1 purposefully suppressed the fact that she met PW4, the doctor, on 20.11.2004. Moreover, referring to Ext.P2 case sheet, PW4, the Doctor testified that at the time of examination, although the patient was bleeding, she was stable. The Doctor further opined that missed abortion can occur due to various reasons, and one of the reasons is genetic defect. When a definite question was put to PW4 that whether missed abortion could be caused by administering pills or tablets, PW4 replied that it may not always be possible. During cross-examination, PW4 stated that the patient was examined by her in private, in the absence of any bystander, and on any occasion, the patient had not complained to PW4 of having been administered any pills by anyone. PW4 added that the patient was perfectly calm and cool, and exhibited no symptoms of having taken pills. PW4 further stated that the fetus was already dead before the examination of the patient on 20.11.2004. The evidence of PW4 to the effect that PW1 made no complaint about the administration of any pills during medical examination assumes much significance, particularly when PW4 deposed that she examined the patient in private in the absence of any bystander. If any pills had been administered, naturally, PW1 would have stated the same to the Doctor. At this juncture, it is noteworthy that when the mother of PW1 was examined as PW3, she stated that while her daughter was admitted in the hospital in connection with D&C procedure, he visited her daughter. But her daughter then did not state about the administration of pills by the accused, but the same was disclosed to her by her daughter only when she came to her house later. The non-disclosure about the said incident by PW1 to her mother when the latter visited PW1 in the hospital also creates doubt in the mind of this court regarding the occurrence of such an

incident.

18. As mentioned earlier, the definite version of PW1 is that it was in the evening of 20.11.2004, the 1st accused administered pills to abort the fetus. However, the evidence of PW4, the Doctor, and the medical records marked in evidence clearly show that it was in the daytime of 20.11.2004, PW4 examined PW1, and in the said examination itself, the missed abortion was diagnosed. Therefore, the prosecution cannot be heard to say that the abortion was due to the administration of any pills by the accused in the evening of 20.11.2004. Hence, I have no hesitation in holding that the prosecution miserably failed to prove that the accused administered pills forcefully, and this act led to a miscarriage. As the main act of cruelty alleged by the prosecution is unproven, convicting the accused under Section 498-A IPC would be unjustified, especially since the other alleged acts of cruelty remain unsubstantiated.

Resultantly, the appeal is allowed and the judgment of conviction and order of sentence passed against the appellants/accused for the offence punishable under Section 498-A of IPC is set aside, and they are acquitted. Fine amount, if any, has been deposited by the appellants/accused; the same shall be refunded to them in accordance with law.