
(2004) 12 KAR CK 0014
In the Karnataka High Court
Case No : Criminal Appeal No. 1499 of 1998

State of Karnataka

APPELLANT

Vs

Anni Poojary

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221, 222, 313
Penal Code, 1860 (IPC) — Section 302, 306, 498A

Citation : (2005) CriLJ 2662 : (2005) 2 DMC 152 : (2005) ILR (Kar) 1835 :
(2005) 3 KCCR 167 SN

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

Advocate : S.R. Rajendra Reddy, for the Appellant; B.V. Pinto, for the Respondent

Final Decision : Allowed

Judgement

N.S. Veerabhadraiah, J.—The accused in the thrust of obtaining consent for the second marriage from his wife subjected her to cruelty and harassment. As a result of harassment and pestering and also due to the willful conduct ended in the ghastly incident where she administered poison to the three minor sons and committed suicide.

2. This is the State appeal assailing the judgment of acquittal of the accused for the offence u/s 306 IPC in SC. No. 41/1994 on the file of Sessions Judge, D.K. Mangalore, dated 8-9-1998.

3. The gist of the prosecution case are as follows:-

The marriage of the deceased Smt. Rathna Poojarthi took place during 1979 with the accused Anni Poojary at Idu Village. Out of their wedlock, the deceased gave birth to 3 sons viz., Anand, aged about 12 years, Raju aged about 10 years and Sadananda, aged about 8 years. Later, they shifted to Mantrady village and were residing at some distance from the house of P.W. 1 Veerappa Poojary, P.W. 2,

Smt. Kamala (the mother of the deceased) and P.W. 3, Vijaya (the sister of the deceased). The avocation of the accused was to play instrumental music whenever he was invited in some functions. It is the case of the prosecution that the accused Anni Poojary was subjecting his wife Rathna Poojarthi to harassment and ill-treatment and was assaulting and pestering her to give consent for the second marriage. That two days" prior to her committing suicide as well as administering poison to her sons, it is alleged that the accused assaulted his wife Rathna Poojarthi to give consent for his second marriage. The deceased Rathna Poojarthi having frustrated in life due to the act of her husband"s harassment took an extreme step of committing suicide on the intervening night of 30/31st March, 1993 as well as administered poison to her three sons namely, Anand, Raju and Sadananda. As a result, all the four died. On the next day morning as the door of the house was not opened and as there was no response, PW1 Veerappa Poojary the brother of the deceased Rathna Poojarthi entered the house by opening the thatched door and saw the dead bodies of the deceased and three of her children. He also noticed a red coloured liquid near that place and parodon packet (pesticide). He sent words to the accused who had gone to Penchar village on his work. On his return he proceeded to Moodabidri Police Station and narrated the incident. His complaint was reduced into writing as per Ex. P1 by PW10 the Sub-Inspector of Police A.K. Nair. PW10 on the basis of the complaint registered a case in Crime No. 35/93 for the offences under Sections 302 and 498A of IPC and issued the FIR Ex. P9. The FIR was sent to Court through PW.8 Neelayya Poojary, Police Constable. He proceeded to the spot and prepared the inquest on the dead bodies as per Exs. P2 to P5 in between 3.30 p.m. to 8.30 p.m. He recorded the statement of witnesses PWs. 2, 3 and 4. He seized parodon powder (poison) from the spot. He also seized red coloured liquid in a vessel and the piece of Amlet and subjected it to PF. No. 54/1993. He sent requisition to Primary Health Center, Moodabidri for conducting autopsy on the dead bodies. The Dr. B.B. Shenoy-PW7 conducted Post Mortem examination on the dead bodies and issued the Post Mortem report as per Exs. P6, 7, 10 and 11. On 31-3-1993 at about 9.30 p.m., he arrested the accused and produced before the Court on 1-4-1993. After collecting the report and other materials and on completion of the investigation, filed charge sheet against the accused for the offence u/s 306 IPC.

4. The learned Sessions Judge secured the presence of the accused, framed charges for the offence u/s 306 IPC. The accused pleaded not guilty and claimed to be not tried. The prosecution in all examined PWs. 1 to 10, marked Exs. P1 to 12, The defence got marked Ex.D1 from the statement of PWs. The statement of the accused was recorded u/s 313 Cr. PC. The defence is one of total denial. The accused did not choose to lead any defence evidence. The learned Sessions Judge for the reasons recorded in its judgment acquitted the accused for the offence u/s 306 IPC. It is this judgment which is questioned by the State.

5. Learned Government Pleader Sri. Rajendra Reddy, contended that the deceased Rathna Poojarthi is the wife of the accused whereas the minor children

namely, Anand, Raju and Sadananda are his sons. They were residing at Karnal Gudde of Mantrady village, Karkal Taluk. The accused and his wife Rathna used to work in the land of PW4 Peter Miranda and PW5 Subramanya Bhat. Since about two years prior to her death, the accused started playing instrument music on piper and that he used to go to various places. Further submitted that PW1 Veerappa Poojary and PW6 Susheela are brother and sisters of the deceased Rathna, PW2 Smt. Kamala is the mother, PW3 Smt. Vijaya is the wife of PW1 Veerappa Poojary. They were all residing in the same village at different places at a distance of about one or two furlongs. Further submitted that the evidence of PW1 Veerappa Poojary, PW2 Smt. Kamala, mother, PW3 Smt. Vijaya and PW6 Smt. Susheela as well as the evidence of PW4 Peter Miranda and PW5 Subramanya Bhat clearly reveals that the accused used to harass the deceased Rathna to give consent for his second marriage, where the deceased did not utter anything. Further submitted that on account of persistent harassment and that due to the willful conduct of the accused, the deceased Rathna took an extreme step of ending her life as well as the life of her three sons, as she was in such a pathetic condition. Further submitted that the evidence of PWs, 1, 2, 3, 4, 5 and 6 goes to show that two days prior to her committing suicide the accused had quarrelled with the deceased. As a result, the deceased came to the house of her brother Veerappa Poojary and narrated the harassment meted out to her death. By that time, PW2 Kamala, PWS Vijaya were also present who speaks of the fact the deceased narrating the harassment meted out to her for giving consent for the second marriage. Learned Counsel further submitted that the evidence of PW6 clearly reveals that as and when she used to come to work in the land of PW4 Peter Miranda that the deceased used to meet her and was telling about the harassment and also about the accused asking for the consent of the second marriage. It is also in the evidence of PWs. 4 and 5 that when the deceased Rathna Poojarthi had come to work in their land, she disclosed the act of the accused harassing and assaulting her. When there is sufficient materials to show for what reason that she has committed suicide, it establishes the fact that on account of the persistent pestering the deceased to give consent, she committed suicide. Thereby the ingredients of Sections 498A as well as 306 IPC proved. Further submitted that the learned Sessions Judge failed to appreciate the testimony of the prosecution witnesses namely PW1 Veerappa Poojary, PW2 Kamala, PW3 Vijaya and PW6 Smt. Susheela elder sister of the deceased. Thereby the testimonies of PWs 1 to 6 have not been appreciated in a proper perspective. The judgment of acquittal is nothing but perverse and has also not given sufficient reasons in discarding the testimony of the prosecution witnesses who have spoken about the harassment meted out by the accused on his wife Rathna. Accordingly, prayed to set aside the judgment of acquittal and to convict the accused for the offences u/s 498A and also for the offence u/s 306 IPC, as there is sufficient material evidence on record.

6. Learned Counsel Sri Pinto submitted that the judgment of acquittal is well founded and does not call for interference. The learned Sessions Judge noticing

the inconsistency in the testimony of the prosecution witnesses held that their evidence cannot be believed. He also submitted that there is no evidence to show any previous harassment or willful conduct of the accused pestering the deceased seeking consent for the second marriage. When there is no evidence for the abatement, the question of convicting the accused for any of the offences does not arise. Accordingly, prayed to dismiss the appeal.

7. In the light of the submissions, the points for consideration that arises are:-

1. Whether the learned Sessions Judge is justified in acquitting the accused for the offence u/s 306 IPC?

2. Whether the deceased Smt. Rathna Poojarthi was so much frustrated on account of willful conduct of the accused in pestering her to give consent for the second marriage as a result of which she administered poison to her 3 minor sons and ended her life by consuming poison and committed suicide?

3. Whether the judgment of acquittal is liable to be interfered with?

8. Initially the case was registered for the offence under Sections 302 and 498A IPC. But after completion of the investigation, the charge sheet was filed for the offence u/s 306 IPC on the allegation that the accused subjected his wife deceased Smt. Rathna Poojarthi to harassment and mental cruelty to obtain her consent for the second marriage and as a result of it, the deceased has become frustrated, administered poison to her 3 minor sons viz., Anand, aged about 12 years, Raju, aged about 10 years and Sadananda, aged about 8 years and ended her life by consuming poison and committed suicide. It is in this context, the Court has to re-examine the evidence on record to find out that due to the willful conduct of the accused, the incident has taken place resulting in the commission of the offence.

Section 306 reads as under:-

"If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

To prove the charge, the ingredients required are:

i) the commission of suicide by a person;

ii) If the act of the accused were to be coupled with cruelty and if the wife were to be the victim of circumstances, such cases are pointing the manner in which harassment has been caused which makes the wife ultimately taking a decision to end her life by committing suicide, it directly points to the guilt of the accused.

9. Time and again the Apex Court and various High Courts have observed that each case has to be decided on its own facts and circumstances and that no case will be of similar in nature.

10. If the testimony of the near relatives of the deceased were to give the series

of incident of such cruelty or harassment it cannot be termed as interested so as to disbelieve them. The Court is required to assess and appreciate the evidence with due care and caution to meet the ends of justice. It is to be noted that where in a given case a tragedy has taken place ending four lives, the testimony of the prosecution witnesses cannot be brushed out saying they are not trustworthy and credible to believe, if the persistent act of the accused were to result, in his wife taking an extreme step of committing suicide, such act of the accused is nothing but cruelly, harassment or as the case may be resulting in the commission of the offence.

11. To attract the ingredients of Section 306 IPC it has to satisfy the ingredients of Section 498A also for what reasons the commission of the Offence resulted. Section 498A thus reads:

"Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relatives 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."

To constitute an offence u/s 498A IPC requires:

- a) the woman must be married;
- b) she must be subjected to cruelty and harassment and
- c) such cruelty and harassment must have been shown by the husband of the women or by the relatives of her husband.

12 There must be clear allegations that the accused husband harassed his wife may be for fulfilling his thrust, by his willful conduct and beaten her which resulted in her committing suicide.

13. One of the main ingredients required to be established is that soon before the death she was subjected to harassment in connection with the demand to give consent for second marriage constitutes the ingredients of Section 498A and 306 IPC. If as a result of such harassment persistently pestering a wife to give consent for second marriage is spoken to by the witnesses, the same is acceptable and acted upon. It is with these principles the evidence on record has to be examined.

14. The accused Anni Poojary (who was playing piper instrumental music) was the husband of Rathna Poojarthy. Their marriage took place during 1979. Out of their wedlock she gave birth to three sons viz., Ananda, Raju and Sadananda. The accused and the deceased were residing at Kamal Gudde, Mantrady Village, Karkala Taluk. P.W. 1 Veerappa Poojary, P.W. 6 Susheela are brother and sister of deceased Rathna Poojarthy. Kamala is the mother of Rathna Poojarthy, whereas P.W. 3 Vijaya is the wife of P.W. 1. P.W. 4 Peter Miranda as well as P.W. 5 Subramanya Bhat are the neighbors residing at a distance of about one furlong. All of them are residing near by the house of the accused at some distance (like

hamlets).

15. That on the intervening night of 30/31-3-1993 resulted in a tragedy that Ratna Poojarthy the wife of the accused administered poison to her three sons and also consumed poison and committed suicide. On the next day morning as the door was not open the neighbours informed P.W. 1 Veerappa Poojary, who came to the house of the accused, forcibly opened the door and found the dead bodies in the kitchen. On a complaint lodged by P.W. 1 the PSI Mudabidri, A.K. Nair P.W. 10 registered a case in Crime No. 35/93 for the offence punishable under Sections 302 and 498A IPC and filed FIR Ex.P-9. The PSI visited the place of incident and noticed four dead bodies in the presence of P.W. 5 Subramanya Bhat and prepared four inquests, panchanamas as per Exs. P-2 to 5 on the dead bodies of Rathna Poojarthy, Ananda, Raju and Sadananda. It is in his evidence, that in the course of the inquest Mahazar seized parodon powder (poison) and some red colour liquid and a piece of omelet from that place. He also sent information to the Doctor to conduct post mortem on the dead bodies to know the cause of the death. P.W. 7 Dr. B.B. Shenoy conducted autopsy on the four dead bodies on 1-4-1993 from 11.15 a.m. to 3.15 p.m. It is in his evidence that in the course of the post mortem examination he collected vital organs like lungs, both kidneys, heart, spleen, liver and brain and sent separate bottles for chemical examination. The post mortem reports are at Ex. P-6 of Rathna Poojarthy, Ex. P.7 of Sadananda, Ex. P.10 of Ananda, Ex. P-11 of Raju. After receiving the chemical examination report Ex. P-8 furnished his information that the cause of the death is due to carbonate insecticide poison. Thus, it is clear that on account of she administering poison to her three minor sons as well as consuming poison committed suicide. Therefore, it is evident that the cause of death was on account of consumption of poison.

16. Now, it has to be examined whether such consumption of poison is on account of abatement or harassment or such willful conduct of the accused which resulted in the commission of the offence. This has to be considered on the evidence available on record and it has to be scrutinized carefully. P.W. 1 Veerappa Poojary the brother of the deceased in his evidence has stated that the deceased Rathna Poojarthy is his younger sister and the deceased Ananda, Raju and Sadananda are her sons. The accused Anni Poojary is the husband of Rathna Poojarthy. It is further stated that the accused and the deceased were living in their house at a distance of about 2 to 3 furlongs from his house. The accused and the deceased were frequently visiting their house. His mother Kamala was residing in his house till 1992. After 1992, she was residing in the house of his brother which is at a distance of about 1 furlong from his house. He has further stated that the accused used to play instrumental music since about 2 years, earlier to the death of her sister he was doing coolie work. He has further stated that Rathna Poojarthy had come to his house for the last about 2 days prior to her death and it was a Monday. He was present in his house at that time. On that occasion, the deceased told him that the accused is subjecting her to cruelty and harassment by assaulting her stating that she should give consent for his second

marriage. On that day the deceased stayed back in his house. Some time thereafter the accused came to his house on that day and threatened his wife Rathna Poojarthi to give consent for his second marriage. At that time, he was holding a knife in his hand. On seeing the same, himself and his wife Vijaya went near the accused and snatched the knife from the hands of the accused. Thereafter, the accused went away from their house. He has further stated that her mother P.W. 2 Kamala was also present in his house. He has further stated that on the next day, they sent their sister to her house along with one Gopanna Poojary on that evening. He has further stated that Chikkamma Moolyathi, who was residing near the house of his deceased sister met him and told that the door of the house is not opened and nobody appears to be there in the house and requested to see what the matter. Then he went near the house of his sister when called out nobody responded. Therefore, he entered the house by opening the "Thatti door". He has further stated that he saw his deceased sister and her 3 children in sleeping posture in the house. On touching them, the bodies were found cold and by that time, they had expired. He has further stated that he came to know that the accused had gone for work to Penchar village. He went in search of him to the said village and on his way he met the accused. Thereafter, he returned to the house and then went to the police station and lodged a complaint Ex. P-1 with the police, Mudabidri.

In the cross-examination he has stated that two days prior to the occurrence of the incident, that is on Monday, the deceased sister alone had come to his house. When his sister had come to his house, her children did not come along with her. He has further stated that on the next day of his sister coming to the house, he returned back to his house from the work in the evening at about 5.00 p.m. By that time, his sister Rathna had been sent to her house. After his return his wife informed about his sister having been sent to her house with Gopanna Poojary. In the further cross-examination he has stated that in the complaint Ex. P-1 it is not written that his mother Kamala was present, at that time his sister told him about the harassment meted out to her by the accused and the accused threatening the deceased in his house at the knife point saying that she should give consent for second marriage. The accused came following his deceased sister to his house when she had come about two days prior to her death. He has further stated that immediately on coming to his house the accused told the deceased in a raised voice saying that she should come to his house forthwith. At that juncture, he asked his sister to stay back in the house on that day. He has further stated that till that day herself and the accused were in cordial terms. He has further stated that he was knowing of the accused threatening his sister asking her to give consent for second marriage. Despite knowing the same, he did not take any steps to file any complaint against the accused hoping that they may set right themselves and lead a cordial life, as they are wife and husband, and stated that all these things were known to his younger brothers and his mother. He has further stated that he replied the police that the said knife is in his house, and the police in turn did not take any steps to recover the same. He

denied the suggestion, that in the complaint Ex.P1 it is not written, that when he entered the house he saw the red colour liquid near the place where the deceased was lying. He denied the suggestion that in Ex. P-1 it is not written that he noticed a parodon pocket which was half opened near the oven and a piece of omelet on the frying pan kept on the oven. When he went inside the house, there was no fire in the oven. He denied the suggestion that he is deposing falsely stating that the accused was subjecting the deceased to cruelty and harassment by assaulting her stating that the deceased should give consent for him for the second marriage and that he has concocted a story for this purpose.

17. P. W. 2 Smt. Kamala the mother of the deceased in her evidence has stated that from the date of the marriage the accused and the deceased were living in different villages, since about 8 years the accused came to their village Mantrady and was living in her house with his children which is at a distance of about 2 furlongs. She has further stated that Rathna Poojaithy had come to the house of P.W. 1 for the last, about 2 days prior to her death. It was a Monday. At that time, she had gone to the house of her son. She has further stated that on that occasion her deceased daughter told her that the accused is assaulting her saying that she should give consent for second marriage and further stated that the accused come to her son's house. She has further stated, that on that day, the accused had come to the house of her son in the afternoon and left after making (quarrel) galatas with his wife and her son P.W. 1. She has also stated that the accused had made galatas with P.W. 1 and his wife by holding a knife in his hand and that she lost consciousness due to it and when she regained consciousness the accused had left the house. Thereafter, she went to her house whereas her daughter stayed back in the house of P.W. 1. She has further stated that on the next day one Gopanna Poojari took her daughter to the house of the accused. On the next day P. W. 1 came and informed about the death of her daughter and children. She has further stated that her deceased daughter and children committed suicide by taking poison being unbearable harassment meted out to them by the accused.

In the cross-examination she has stated that the house of the accused is at a distance of about one mile from their ancestral house. The nearest houses that are situated near the house of the accused is of Apoline Porbu, Keshava Bhat and one Babu Harijana and stated that since about one year prior to the death of her daughter she was taking treatment for her stomach pain. Witness volunteers she was taking the said treatment due to the assault made by the accused. She denied the suggestion that she is deposing falsely stating that the accused was subjecting her daughter to harassment and cruelty by assaulting her saying that she should give consent for the second marriage.

18. P.W. 3 Smt. Vijaya the wife of P.W. 1 in her evidence has stated that about two days prior to the death of the deceased she had come to their house at about 1.00 p.m. At that time, her husband had gone for work and she sent for

him. Her husband returned to the house. At that time, the deceased told them that the accused is assaulting her saying that she should give consent for second marriage. She also told them if she does not give consent to the accused, the accused has threatened her saying that she and her children would be burned in the same grave. She has further stated that the accused came to their house. Her husband told him that if he wants to take second wife he could do so but he should not indulge in assaulting the deceased. Thereafter, the accused left their house.

In the cross-examination she has stated that after the deceased came to her house she enquired as to why she came at that hour and the deceased replied that she is being assaulted by the accused saying that she should give consent for second marriage of the accused. Thereafter she went to bring her husband. On that day the accused came to their house after about half an hour. When the accused came to their house, herself, her husband, deceased and her small child were in the house.

19. P.W. 6 Susheela the sister of Rathna Poojathy in her evidence has stated that whenever she used to go for work to the lands of P.W. 4 Peter Miranda she used to meet the deceased sister Rathna. At that time, the deceased sister was telling her that her husband used to assault her by saying that she should give consent for his second marriage. About 5 years ago on one day while she was proceeding in the afternoon to her house from the place of work through the house of the deceased, she heard a galatas in the house of the accused. She went and informed her mother. After sometime, the deceased came to the house of her mother. Thereafter, the accused also came to the house of her mother armed with a knife. Thereafter, the accused quarrelled with his wife and thereafter his sister remained in the house of his mother. Next day, she was taken by Gopanna Poojary to her house. The next morning, she came to know about the death of her sister and her children.

In the cross-examination, she has stated that her house is situated abutting the property of the accused at Mantrady village. She has further stated that at the time of occurrence her mother was not keeping well. She was cooking food in the house of her mother. In the further examination she denied the suggestion that she is deposing falsely stating that the deceased was telling that the accused is assaulting her by saying that she should give consent for the second marriage.

20. P.W. 4 Peter Miranda residing in a neighbouring house at a distance of about 1 furlong, in his evidence has stated that the accused was coming for work in his lands about 2 years prior to the death of the deceased. At that time, the accused and his wife were living cordially with each other. Thereafter he did not know about relationship. He also stated that the deceased used to frequently come to his house when the accused was coming for work with him. He has further stated that for the last the deceased had come to his house about a day prior to her death. At that time, the deceased told him that she is being subjected to ill-treatment by the accused and she also told him that her husband is intending to

take a second wife.

In the cross-examination he has stated that the deceased had come to his house a day prior to her death at about 6.00 p.m. He has further stated that abutting the house of the accused at Mantrady village, he owns properties which is in the name of his wife. He denied the suggestion that the said land is a government land. He further denied that there were differences between himself and the accused since he had put up fencing to the land which was in the possession of the accused.

21. Lastly, P.W. 5-Subramanya Bhat, in his evidence has stated that the deceased had come to his house a day prior to his death. At that time, the deceased told him that her husband is subjecting her to cruelty and harassment by assaulting her and further she also told him that the accused is intending to take a second wife and being dejected of the same she is likely to take poison and also stated that the accused was insisting her to give consent to take second wife.

In the cross examination he has stated that the deceased had come to his house for the last occasion a day prior to her death at about 4.00 p.m. He has further stated in his statement before the police that the deceased had come to his house a day prior to her death.

22. In the light of the evidence of the prosecution witnesses on record, it is the duty of the Court to reassess the evidence and to discover the truth by separating the grain from the chaff instead of taking an easy course of rejecting the evidence in its entirety only on the ground of certain infirmities.

23. In the appeal by the State assailing the judgment of acquittal, if the Judgment suffers from serious illegalities including ignorance or misreading of evidence on record and the findings of the Court below are only unreasonable or perverse and not based on the evidence on record, the appellate court will be justified in setting aside such an order of acquittal.

24. In the present case, the learned Sessions Judge having found certain inconsistency in the testimony of the prosecution witnesses observed as follows:-

25. At para 13 at page 11 of the judgment the learned Sessions Judge observed:

"P.W. 1 in his evidence has stated that about 2 days prior to the death of his sister she had come to his house. On that occasion she told him, his wife and mother that the accused is subjecting her to cruelty and harassment by assaulting her stating that she should give consent for his second marriage".

Further at para-15 it is observed that:

"He does not say in his evidence that his deceased sister at any time told him about the alleged harassment except for the last occasion when she had visited his house about 2 days prior to the death".

Further at the end of para-15 page 13 observed that:

"his testimony is not corroborated with his own version narrated in Ex. P.1. Apart from the same, the testimony of P.W. 4 goes to show that he had taken P.W. 1 to the police station in his car. Nowhere in his evidence P.W. 4 states that P.W. 1 went to job typing typist to get the complaint typed. This evidence of P.W. 4 coupled with the inconsistent version of P.W. 1 from his own complaint Ex.P-1, and further, as it is not corroborated from the evidence of his own mother P.W. 2 Kamala and his wife P.W. 3 Vijaya, in the circumstances of the case, does not lend any assurance to place any reliance to hold that the deceased in the case committed suicide and the accused abetted the suicide of the deceased".

Further, at para-17 of the Judgment at page 14 observed that:

"She has further deposed that, her deceased daughter Rathna Poojarthy had come to the house of P.W. 1 for the last occasion about 2 days prior to her death and it was a Monday. At that time, she was also present in the house of her son. She has deposed that, on that occasion her deceased daughter told that the accused is assaulting her saying that, she should give consent for his second marriage. On one stretch she has stated on that day the accused had not come to her son's house. Immediately, in the next stretch she has stated, the accused had come to the house of her son P.W. 1 in the afternoon and had left the house after making galatas with his wife and his son P.W. 1 by holding a knife in his hand".

Further, in the same para at page 15 observed:

"Apart from this the testimony of this P.W. 2 who is the mother of the deceased is also not corroborated from any quarters in respect of the accused coming to the house of P.W. 1 and this witness seeing the accused holding a knife in his hand. The evidence of this witness, taking from any angle does not also inspire any confidence in the mind of the court to hold that the accused was subjecting the deceased to cruelty and harassment".

Further, at the end of para 17 observed:

"The evidence of P.W. 2 taking from any angle also does not in any way, in my view lend any assurance to place any reliance on the same since, it is not corroborated from the evidence of the other witnesses let in the case".

Further, while considering the evidence of P.W. 3 Smt. Vijaya at para 15 of the Judgment at page 16 observed:

"After the accused came to their house, her husband P.W. 1 told him that, if she wants to take second wife in marriage, he can do so but, not indulge in assaulting the deceased. Thereafter, the accused left their house. This witness never whispered about the presence of P.W. 2 Kamala who is her mother-in-law".

Further, at para 19 of the judgment at the middle of page 18 observed:

"If the evidence of P.W.s 4 and 5 is taken into consideration, it is doubtful whether at all she had gone to their house a day prior to her death. Further, the

alleged allegation of cruelty and harassment stated to by the deceased to P.Ws 4 and 5 is also not consistent with the version given to by P.Ws 1 to 3 in the case".

At the end of para 19 observed that:

"Since, there is no evidence to show that, there was any ill-treatment or harassment to the deceased except for 2 days prior to her death and as none of these witnesses viz., P.Ws 1 to 5 speak about the same and as their evidence is also inconsistent with each other, I do not think safe to act upon the same".

At para 20 of the Judgment in the middle it is observed that:

"Since this testimony of this witness is not corroborated on any material particulars with regard to the actual harassment meted out by the accused to the deceased 2 days prior to the present occurrence, it also does not inspire any confidence to place any reliance on the same".

26. In the present case, the incident resulted in a pathetic tragedy where 4 lives have been lost on account of the mother administering poison to her 3 sons and also ending her life. Under the above circumstances, the Court should be very cautious in appreciating the evidence to find out the truth as to the cause for taking such an extreme step to and the life of her 3 sons and also in the act of her committing suicide.

27. The testimony of Smt. Susheela P.W. 6 sister of the deceased discloses that whenever she used to go for work in the lands of P.W. 4 Peter Miranda that she used to meet her sister Rathna. On all those occasions the deceased has narrated about the assault by her husband to give consent for the second marriage. Her evidence also discloses that about 5 years back on one day during afternoon while she was passing through the house of the deceased she heard galatas inside the house, then she went and informed her mother. It is after some time, her sister Rathna came to her mother's house. Thereafter, the accused also came armed with a knife and quarrelled with his wife.

In the cross examination she has given the reasoning as to why she had been to the house of her mother. The reason is that her mother was not keeping well and therefore she was cooking food in the house. So far as the deceased Rathna Poojarthy informing her that whenever she used to meet in the lands of Peter Miranda remained unquestioned.

28. Now, coming to the evidence of P.W. 2 Smt. Kamala the mother of deceased Rathna Poojarthy as well as P.W. 1 Veerappa Poojary have consistently stated that the deceased Rathna Poojarthy had come to the house of P.W. 1 for the last, two days prior to her death. It is also in her evidence that the deceased told them that the accused used to assault her, saying that she should give consent for the second marriage. She is very consistent in her evidence and states that the accused had come to the house of P.W. 1 in the afternoon and making galatas with his wife and seen holding a knife in his hand. To a suggestion put in the cross-examination regarding subjecting her to cruelty, harassment are

categorically denied by her. It is also pertinent to note that in the cross-examination at para 8 she has stated that since about a year prior to the death of her daughter she was taking treatment for her stomach pain due to the assault made by the accused. The answer elicited in the cross-examination makes it clear that there used to be frequent quarrels which cannot be forgotten by the Court while considering the manner in which the tragedy had taken place.

29. The evidence of P.W. 1 Veerappa Poojary shows the fact that Rathna Poojathy had come to his house for the last, two days prior to her death, it was a Monday and he has categorically stated that his sister told him that the accused is subjecting her to cruelty and harassment by assaulting her to give consent for his second marriage. It is also in his evidence that after sometime the accused came armed with a knife and that he snatched the knife and then the accused went away. In the cross-examination at para 17 he has stated that he was aware of accused threatening his deceased sister to give consent for second marriage and despite knowing the same he did not lodge any complaint. It is common knowledge that when there is a quarrel between the husband and wife, though the relatives know about the quarrel and many of the secrets of the family affairs, nobody will come forward to give a complaint to the police station or to make appropriate action unless some bad incident takes place. The evidence of P.W. 1 as well as the evidence of P.W. 6 Smt. Susheela coupled with the evidence of P.W. 2 Smt. Kamala establishes the fact that the deceased used to disclose about the assault to her sister P.W. 6 Susheela and the evidence of P.W. 2 Smt. Kamala shows that the deceased was suffering from stomach pain on account of assault made by the accused. Further, P.W. 1 was aware of the fact of assault, but he did not take action.

30. But, the fact remains that the accused was subjecting the deceased to harassment and cruelty by persistently pestering her to give consent for the second marriage. It is also worthy to note in the evidence of P.W. 3 Smt. Vijaya the wife of P.W. 1 who has spoken to the fact of the deceased coming to the house of P.W. 1 and the harassment meted out to the accused and persistently pestering her to give consent for the second marriage. The evidence of P.W.s 1 to 3 clearly establishes that the accused was subjecting the deceased Rathna Poojathy to harassment and causing mental torture to obtain consent to have a second wife.

31. The evidence of P.Ws. 4 and 5 is not of much consequence where they used to work, naturally they coming to know about the incident of this type cannot be ruled out. It is no doubt true that there are some minor discrepancy, contradictions and certain omissions in the evidence of P.Ws 3 and 6, that does not go to the root of the genesis of the case, so as to discard their testimony in toto.

32. The reasoning of the learned Sessions Judge (as already pointed out) is not based on sound reasoning and he has not appreciated the evidence as is required which has to be considered in accordance with the principles of

appreciation of evidence. The observations extracted as above from the Judgment of the learned Sessions Judge also shows that the deceased in fact had disclosed the incident of assault, harassment but only on account of minor discrepancies regarding certain omissions has discarded which is not in consonance with the spirit of law.

33. On carefully scrutinizing the testimonies of P.Ws. 1 to 6 the ingredients of Section 498A regarding the harassment causing mental agony persistently pestering her to give consent are proved and established beyond any reasonable doubt. It is on account of such persistent pestering of obtaining consent of the deceased resulted in the tragedy of administering poison to her three sons and also in committing suicide. It is but for the act of the accused and thereby the ingredients of Section 306 IPC is also proved. In the case of K. PREMA S. RAO AND ANR. v. YADLA SRINIVASA RAO AND ORS. AIR 2002 SCW 4391 while considering the ingredients of Sections 498A and 306 held that where the accused husband was convicted u/s 498A for the offence of cruelty for his cruel conduct driving the deceased wife to commit suicide on the very same evidence, the accused can also be convicted for abetment of suicide u/s 306 IPC.

34. The learned counsel for the accused relied on the decisions in the case of STATE OF RAJASTHAN v. RAM NIWAS 2002 (6) SC 66 GANANTH PATTHAIK v. STATE OF ORISSA 2002 (1) SC 545 AND SANJU @ SANJAY SINGH SENGAR v. STATE OF MADHYA PRADESH 2002 (3) SC 650 and submitted that in the absence of evidence of cruelty the question of convicting the accused either for the offence u/s 498A or for the offence u/s 306 is not sustainable.

35. It is well settled principle that each case has to be examined on its own facts and circumstances and there cannot be any dispute regarding the principles laid down in the decisions supra. But this cannot be made applicable to the facts of this case.

36. On a overall scrutiny of the testimony of P.Ws 1 to 6 it does not give any room to doubt or discredit their testimony which is trustworthy in nature and can be relied upon and acted upon. For the foregoing reasons the judgment of acquittal of the accused by the Trial Court is wholly unreasonable, perverse and not based on the evidence on record which suffers from serious illegalities and misreading of evidence on record. Therefore, the Judgment of acquittal is liable to be set aside by convicting the accused for the offence under Sections 498A and 306 IPC.

37. Heard the learned counsel for the accused regarding the sentence. It is submitted that the incident had taken place about 10 years back and in case the accused were to be sent to prison after a lapse of so many years it results in miscarriage of justice and the Court has to take a lenient view.

38. Learned High Court Government Pleader Sri Rajendra Reddy submitted that the act of the accused resulted in ending the life of four innocent persons and therefore prayed to impose maximum sentence.

39. Considering the facts and circumstances of the case, the accused in a thirst for the second marriage persistently pestered his wife Rathna Poojarthy to give consent for the second marriage for which she was never willing, in this type of cases the Court should also take judicial note of the fact that no wife will be prepared to give consent for the second marriage and it is always the habit to possess their husband and not willing to share them with anybody. As a result of which the wife took an extreme step in administering poison to three sons and also committed suicide by consuming poison. Therefore, this is not a fit case for taking a lenient view.

40. In this case, there is no charge for the offence u/s 498A IPC. But the ingredients for the offence u/s 498A are forthcoming from the testimony of P.Ws 1 to 6 for which the accused is also liable to be convicted by reason of Section 221 and 222 of Cr. P.C.

41. For the foregoing reasons, the appeal is allowed. The accused Anni Poojary is convicted for the offence u/s 498A IPC sentencing him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs. 500/- in default to undergo Simple Imprisonment for a period of 15 days. Further, the accused is convicted for the offence u/s 306 IPC sentencing him to undergo Rigorous Imprisonment for a period of 4 years and to pay a fine of Rs. 1,000/- in default to undergo Simple Imprisonment for a period of one month. All the sentences shall run concurrently.

The learned Sessions Judge is directed to take the accused into custody to undergo the sentence.

A copy of the Judgment shall be kept in the C.R. of the concerned Judicial Officer.