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**(2001) 06 KAR CK 0037**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal No. 108 of 1995**

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| State of Karnataka         | Vs | APPELLANT  |
| Veerabhadrappe and another |    | RESPONDENT |

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**Date of Decision :** 21-06-2001

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 498A

**Citation :** (2001) 2 DMC 411 : (2001) 4 KarLJ 150 : (2001) 3 KCCR 1933 :  
(2002) 3 RCR(Criminal) 509

**Hon'ble Judges :** V.G. Sabhahit, J;Kumar Rajaratnam, J

**Bench :** Division Bench

**Advocate :** Sri Mohan Shanthanagoudar, State Public Prosecutor, for the Appellant; Sri A.K. Bhat and Smt. Prabha Murthy, Amicus Curiae, for the Respondent

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## Judgement

Kumar Rajaratnam, J.—This is yet another case where a wife has been ill-treated by the husband as a result of the ill-treatment given by the husband the wife either committed suicide or perhaps done to death. However, the charge against the accused lamentably was only u/s 498-A of the Indian Penal Code.

2. This is an appeal against acquittal and we have our limitations with regard to how the deceased died since the accused was tried only for an offence u/s 498-A of the TPC.

3. The State being aggrieved by the judgment passed by the Judicial Magistrate of the First Class, Kudligi in C.C. No. 203 of 1990 in acquitting the respondents-accused for an offence u/s 498-A of the IPC has preferred this appeal against acquittal.

4. On 21-3-1983 the deceased Thippamma married the first accused. The 2nd accused is the mother of A-1. On 22-7-1986 the deceased was found dead under mysterious circumstances.

5. In fact since the appeal against acquittal is for an offence u/s 498-A and the

maximum sentence was only three years, it ought to have been heard by a learned Single Judge. When the matter came before the learned Single Judge on 30-7-1998, the learned Single Judge was aghast that charge-sheet was filed only for an offence u/s 498-A and not under either 304-B or u/s 302 of the IPC. The learned Single Judge (Farooq, J.) on a perusal of the post-mortem report found that there was materials to show that the deceased had suffered certain injuries on her neck and on her back and also on her buttocks. The FSL Report also indicated that the clothes on the deceased contained smell of kerosene. In these circumstances, the learned Single Judge referred the matter to a Division Bench since the "appeal involves an important question of law of public importance".

6. Accordingly the matter was referred to us u/s 9 of the High Court Act. This is why this appeal against acquittal preferred by the State is before us.

7. Let us examine the evidence of those witnesses who speak about the cruelty meted to the deceased.

8. P.W. 2 is the brother of the deceased. He states that the marriage of the deceased with A-1 took place in 1983. At the time of marriage certain ornaments within their means was given to the deceased. After the marriage, the deceased went to live with her husband A-1. They had a happy married life for about three years. After that disputes started. According to P.W. 2, the deceased was not accustomed to doing manual work in the field. The accused forced her to do manual work. P.W. 2 requested A-1 to treat the deceased well and not to entrust her with heavy work. The accused started ill-treating her and also assaulted her several times. When the house was under construction, the deceased was made to carry stones and mud. The accused was also not provided with proper food and clothing.

9. After about 3 years after the marriage P.W. 2 brought the deceased to their house for the Ugadi Festival. At that time, the deceased told him not to send her back and if she is sent back, she will commit suicide by taking poison. The deceased stayed with P.W. 2 for about 25 days. A-1 came to take the deceased back. The deceased went back to the house of A-1. The deceased again complained to her brother P.W. 2 that she was forced to work in the lands. A message was also sent to P.W. 2 through one Khanappa P.W. 8 stating that she was being ill-treated by A-1. Two days later they came to know that the deceased was dead. P.W. 2 suspected foul play and on the next day lodged a complaint at Hosahalli police station. P.W. 2 clearly states that his sister (deceased) sustained swelling in her neck and bruises on her buttocks. The complaint given by P.W. 2 is Ex. P. 2.

10. P.W. 4 is the father of the deceased. He states in his evidence that after the marriage for some time the deceased and A-1 were happy together. After that, the accused did not provide proper food and clothing. The deceased told her mother P.W. 5 that A-1 used to assault her and ill-treat her. Before his daughter's death P.W. 8 had informed the family of the deceased that the

accused was ill-treating the deceased. P.W. 4 also noticed certain injuries on the deceased.

11. P.W. 5 the mother of the deceased corroborates P.Ws. 2 and 4. The mother states that her daughter was not provided food by the accused. Her daughter was not accustomed to doing agricultural work and she has been ill-treated. She also speaks about the message sent by her daughter through P.W. 8-Khanappa.

12. P.W. 6 is a close relation of the deceased. She states that the accused used to ill-treat her and the deceased wept several times before her. She also states in her evidence that the deceased was also not provided proper food and she was made to work in the lands. When the deceased came to her parents house during the Ugadi festival, the deceased told her parents that it is not possible to bear the ill-treatment meted out to her by the accused. Thereafter, due to mediation by elders, the deceased went back to her husband's house. Thereafter, within 15 days, they received the sad news of the death of the deceased.

13. P.W. 7 is also a very close relation of the deceased. He also corroborates the evidence of P.Ws. 4 and 5. He states that the deceased complained to P.W. 8 about the non-supply of food and clothing. He also states that he had noticed injuries on the body of the deceased when the body was kept outside the house.

14. P.W. 8 is the witness who met the deceased and the deceased sent a message through P.W. 8 to inform her father to come immediately as she was in difficulty. Two days after that the deceased was dead.

15. All these witnesses speak in one voice about the cruelty meted out to the deceased. All these witnesses also speak about certain injuries found on the body of the deceased.

16. We now come to the evidence of P.W. 16 who conducted the post-mortem. The doctor P.W. 16 has stated as follows:-

"Contusion 6" x 5" over the right gluteal region on dissection. I did not notice any internal injuries. I have sent heart, blood, part of lung, liver, kidney to F.S.L. Bangalore for examination. I received report stating that no poison is detected. In my opinion cause of death is due to shock (Neutrogena vegal inhibition).

Court Question 1: Will you tell how the shock is caused?

Heart, abdominal wall, genital area and gluteal area supplied by the same nerve, further that nerve is connected to brain any minute trauma (hit) over these area will cause shock, in my opinion death is due to shock caused by contusion on right gluteal area".

The post-mortem report is marked as Ex. P. 6.

17. Two questions arise for consideration in this appeal. They are.-

1. Whether an accused can be convicted for an offence u/s 498-A when there are no specific allegations for demand of dowry?

2. Whether Section 498-A of the Indian Penal Code is attracted in a case where the husband fails to take care of his wife by providing proper food and clothing to his wife and thereby causing cruelty?

18. The first question poses no difficulty. It is settled law that if a husband subjects his wife to cruelty even without a specific demand for dowry, the Court is entitled to convict the husband u/s 498-A.

19. Section 498-A of the Indian Penal Code reads as follows.-

"498-A. Husband or relative 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".

A reading of Section 498-A of the IPC indicates that the cruelty meted out to the wife need not be in the form of demand for dowry. Sections 498-A and 304-B create distinct offences. However, cruelty is a common element to both. A person charged u/s 304-B can be convicted u/s 498-A without being convicted u/s 304-B of the IPC.

20. The Supreme Court in the case of State of Karnataka Vs. H.S. Srinivasa Iyengar and others, , defined "cruelty" as follows.-

"The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their interaction in daily life".

21. Although no charge-sheet has been filed for offences u/s 304-B or u/s 302 of the IPC, it may be relevant to point out that four essential ingredients are necessary for an offence u/s 304-B.

22. The Supreme Court in the case of Smt Shanti and Another Vs. State of Haryana, and Akula Ravinder and others Vs. The State of Andhra Pradesh, , held that there are four essentials for an offence u/s 304-B:

"(1) The death of a woman should be caused by burns or bodily injury or

otherwise than under normal circumstances;

(2) Such death should have occur within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry",

(emphasis supplied)

23. Therefore, we hold without any hesitation that the concept of cruelty enshrined in Section 498-A of the IPC has a wider meaning as defined by the Supreme Court and is not confined to only demand of dowry. The word "cruelty" has wider ramifications and depends on the facts of each case.

24. The Division Bench of the Bombay High Court in the case of Mithailal and others Vs. State of Maharashtra, , has held that criminal law fastens liability on a husband to provide food, clothing, shelter and medical aid. Thus, where a wife is in a helpless state and is unable to help herself, there is a legal duty cast on the husband to take care of his wife and provide cloths, food, shelter and medical aid to her. This is the paramount duty of a husband in a civilised society. If he fails to do so, the husband would be liable for causing cruelty to his wife.

25. The Supreme Court in Satpal Vs. State of Haryana, , held that when there is direct and convincing evidence to show that the deceased wife had been humiliated and treated with cruelty on some occasions by the husband conviction u/s 498-A is maintainable.

26. The Supreme Court in State of West Bengal Vs. Orilal Jaiswal and another, , held that evidence about physical and mental torture of the deceased coming from the mother, elder brother and other close relations of the accused cannot be discarded simply on the score of absence of corroboration by independent witnesses. In this case the victim was a newly married girl and her mother-in-law abused her for evil luck. The deceased had an abortion and she was abused saying that she was a woman of evil luck and that she was vile enough to swallow her own baby. The Supreme Court in the said decision convicted the accused for an offence u/s 498-A of the IPC.

27. The Division Bench of the Calcutta High Court in Hira Chowdhury v State, held that if a wife had to do all the domestic work single handed and was ill-treated and subjected to cruelty by assault and she protested and if she was not getting sufficient food which resulted in slow starvation that would amount to cruelty u/s 498-A.

28. The Division Bench of this Court in State Vs. Balappa and Another, , held that the conduct of the accused in not accepting the wife and the new born baby girl for a period of 9 months till certain gold ornaments were paid to the accused amounted to cruelty u/s 498-A of the IPC.

29. In this case, admittedly, there is overwhelming evidence of P.W. 2-the brother of the deceased that A-1 started ill-treating the deceased and assaulted her several times. The deceased was asked to carry stones and mud and the deceased was not provided with food and clothing. The deceased also stated to her mother that she will commit suicide by taking poison if she continue to live with her husband. P.W. 2 also noticed certain injuries on the deceased when he went to see the body of the deceased.

30. P.W. 5-the mother of the deceased also speaks of the fact that the deceased was not given food and clothing and the deceased told her that A-1 assaulted her and ill-treated her. P.W. 4-the father of the deceased also states that the deceased was being ill-treated and the deceased was not provided with proper food. P.W. 6-a close relation also speaks about the fact that the deceased wept several times stating that the husband had ill-treated her. P.W. 7-a close relation of the deceased also states that the deceased was not given food and clothing. P.W. 8-an independent witness speaks about the deceased informing P.W. 8 that the parents of the deceased should come immediately otherwise there is danger to her life.

31. In the light of this overwhelming evidence the Trial Court has miserably failed to appreciate the evidence adduced by the prosecution. Even the nature of the injuries on the deceased as per the post-mortem report of the doctor P.W. 16 does not rule out that there was a contusion measuring 6" x 5" over the right gluteal region. P.W. 16-the doctor further states that death was due to Neutrogena vegal inhibition. All this clearly indicates that the deceased was subjected to cruelty by her husband by not providing basic necessities within his means.

32. No doubt we are dealing with an appeal against acquittal and if two views are possible, the benefit of doubt must go to the accused. From the nature of the evidence which appears to be natural and convincing, there is no doubt that the deceased was subjected to cruelty by A-1.

33. The Supreme Court dealt with the power of the Court in an appeal against acquittal. M.N. Venkatachaliah, J. (as he then was) speaking for the Bench of the Supreme Court in the case of State of Uttar Pradesh v Krishna Gopal, held as follows.-

"13. .... A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to proof is an exercise particular to each case.

..... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused

person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust commonsense and ultimately, on the trained intuitions of the Judge".

(emphasis supplied)

34. We are convinced that the Trial Court has committed a cardinal error in acquitting A-1 on the materials before the Court for an offence u/s 498-A of the Indian Penal Code. We, however, do not find any case even in the evidence of the prosecution witnesses as against A-2.

35. Accordingly we set aside the judgment of the Trial Court only insofar as A-1 is concerned and allow the appeal for an offence u/s 498-A of the IPC.

36. We heard the Amicus Curias on the question of sentence and the learned Counsel for the respondents.

37. We feel that the ends of justice will be met if the A-1 is sentenced to undergo R.I. for one year and to pay a fine of Rs. 5,000/-.

38. Accordingly we sentence A1-the husband of the deceased for a period of one year R.I. and to pay a fine of Rs. 5,000/- in default to undergo S.I. for three months. On payment of the fine amount in the Trial Court, the Trial Court shall disburse the said amount to P.W. 5-the mother of the deceased as compensation. A-1 shall surrender and serve the remaining portion of the sentence.

39. Accordingly the State appeal against A-1 stands allowed. The appeal against A-2 is dismissed.

40. We place on record the valuable assistance rendered by Mrs. Prabha Murthy, the Amicus Curias and determine her fees at Rs. 1,000/-.