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**(2014) 10 SC CK 0094**  
**In the Supreme Court Of India**  
**Case No : Criminal Appeal No. 193 of 2010**

Virupaxappa Mallappa Majjigudda

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 15-10-2014

**Acts Referred:**

Evidence Act, 1872 — Section 113A — Penal Code, 1860 (IPC) - Section 302, 306, 498A

**Citation :** (2015) 2 DMC 145 : (2015) 1 RCR(Criminal) 1011

**Hon'ble Judges :** S.J. Mukhopadhaya, J;S.A. Bobde, J.

**Bench :** Division Bench

**Advocate :** C.M. Angadi and Rameshwar Prasad Goyal, Advs., for the Appellant; V.N. Raghupathy, Pariksnt P. Angadi and Sanjay R. Hegde, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. This appeal has been preferred by the Appellants against the judgment and order dated 20th June 2008 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 1 of 2003. By the impugned judgment, the High Court made certain observations and affirmed the conviction and sentence passed by the trial court for the offence Under Section 498A and 306 of the Indian Penal Code (for short "the Indian Penal Code) and dismissed the appeal. The case of prosecution is that the complainant- Siddalingappa Yallappa Madalli (PW1), father of the deceased lodged a complaint on 14.04.1997 before the Mulagund Police Station stating that his eldest daughter - Basavennewwa was married to the Appellant (first accused) who is the son of complainant's sister. Their marriage was performed in the Basava Jayanti of 1995. After the marriage, his daughter went to the house of the accused persons. There was no trouble and a male child was born out of the wedlock. Two months thereafter, he went to Mulagund to see his daughter. The deceased started weeping on seeing him. When he questioned her, she told him that accused No. 1 ill-treated her by saying that she does not know cooking, how to clean cattle shed, field work and she is a burden to their house. She was ill-treated, particularly, by her mother-in-law (accused No. 3 -

Parwatewwa), husband's brother -Ningappa, Mahantappa, Shankarappa, Malakajappa, Basappa, Ashok and husband. Sometimes, they used to beat and abuse her in filthy language. She was not given sufficient food and water and asked her to sleep in the cattle shed. She requested her father to take her at maternal home. On hearing such words from her daughter, he met the accused persons in the house and requested them not to harass his daughter. When the complainant requested the accused not to ill-treat his daughter, the accused threatened him, as not to interfere in their family affairs and they know how to treat her. Thereafter, he met the elders of the Mulagund village, Subhas Kolar and Mahantappa Mastar and requested them to advice the accused persons. He also informed the elders of his village. But there was no improvement in the way his daughter was treated. That being so, on 13.04.1997 at about 10 pm, he was informed that his daughter died in her husband's house. Immediately, he came to Mulagund to see his daughter and suspecting foul play in her death, filed a complaint on 17.04.1997 and the same was registered in CrI. No. 10/97 against all the accused persons. Thereafter, the post mortem examination of the dead body of his daughter was conducted and he took the dead body for cremation to his village.

2. The prosecution examined altogether 16 witnesses and relied upon Exbs. P.1 to P. 11(a) and also Nos. 1 to 7. Ex. D1 and D2 were marked from defence side.

3. The trial court, on appreciation of the evidence, observed that it is the husband who is expected to respect and safeguard the interest of his wife in the family and in case of neglect, harassment and torture, it is the husband who is solely responsible for such act. The trial court came to a conclusion that both accused Nos. 1 and 3 were guilty for the offence Under Section 498A and 306 of the Indian Penal Code. Such finding was based on presumption that the deceased committed suicide within a period of seven years of her marriage due to harassment by accused Nos. 1 and 3.

4. By the impugned judgment dated 20th June, 2008, the High Court, on appreciation of evidence, upheld the finding of the trial court and observed as follows:

"There is therefore, doubt of homicidal death or suicide. It is unfortunate that prosecution did not invoke the provision of Section 302 against the accused when circumstance glaring, indicated commission of that offence. Even the trial court did not notice it and has framed a charge only on the basis of provision of law invoked by the I.O. i.e. Section 306 of the Indian Penal Code."

5. Learned Counsel for the Appellants submitted that there is no material on record to show the involvement of the Appellants in the death of the deceased. He, further, contended that no evidence has been brought out by the prosecution to come to a conclusion that the deceased committed suicide.

6. On the other hand, according to the prosecution, the material on record leads to only one conclusion that the deceased committed suicide due to cruelty and

harassment by the Appellants.

7. We have heard Learned Counsel for the parties and perused the record. Siddalingappa (PW1 -father of the deceased) stated that after marriage, the Appellants treated her daughter very well for one and a half years. After 2-3 years, they started torturing her daughter. He further stated that the Appellants did not give sufficient food to her daughter and kept her in a cattle shed. She told him that the Appellants were scolding her for not bringing anything from her house. He further stated that he came to know that the Appellants have beaten her daughter to death.

8. Gangawa (PW2) is a mother of the deceased. She stated that for one and a half years, the accused treated their daughter very well. Afterward, the Appellants started harassing their daughter. The Appellants deprived her daughter from sufficient food and water. They used to scold and beat her for not doing work in the fields. Whenever her daughter came to the house, she used to tell everything about harassment. Suddenly, she heard a news of her daughter's death. They went to Mulagund village. She saw there that he, daughter's body was kept in a sitting position across the wall, the stomach was swollen, a stick was inserted in her private part and her back was injured. She was beaten to her death. The police came and took the body to Gadag. The post mortem was done and body was handed over to be taken in their village where cremation was done. In the cross-examination, she denied the suggestion that she had not told the police about the injuries occurred on her back and her private part was swollen.

9. Sangappa (PW3) is the brother of the deceased. He also stated that after marriage for one and a half years, the accused treated the deceased very well but thereafter, they started harassing her. He enquired from her sister the details but she never divulged it. Two days before Ugadi festival, he was informed over the phone the news about her sister's death. Alongwith his parents he went to Mulagund and saw his sister's dead body was made to sit across the wall. He came to know that the accused had beaten his sister to death. He made a complaint in Mulagund police station. The police came and made inquest panchnama of the dead body.

10. Shivappa (PW4), Mahantappa (PW5), Gurubasappa (PW6), Sananamallappa (PW8), Irappa (PW9) were independent witnesses. All of them stated that after the marriage, the deceased went to the house of the accused to lead a marital life and the accused persons treated her very well. They did not assault her. All of the independent witnesses were declared hostile.

11. Maruti (PW7), one of the witnesses stated that he was told that the accused were harassing the deceased for not knowing how to cook, how to clean the cattle shed and not knowing the work in the field. He was a witness to the inquest panchnama (Ex. P5) who saw the body. Nothing suspicious was found. He has not deposed anything about the injury on the body of the deceased.

12. Dr. Chidananda, PW-10 conducted Post Mortem on the body of the deceased. He stated that on 15th April, 1997 at 11.40, they completed the examination and identified the following things:

"The dead body was female body it was 21 years old, the body was swollen and eyes also swollen and tongue was come out of mouth and it was also swollen, hairs are coming out if touch, skin was turned into blue and black colour, bubbles on the body were shown to be big. Parts of the brain was squeezed it turned into liquid. The parts of the body, heart, intestine, kidney all are decomposed. Entire parts of the bodies are decomposed hence exact cause for the death cannot ascertain. The death was caused prior to the 36-40 hours before Post Mortem. I gave a certificate to that effect now I see the document it is at Ex. P7, it bears my signature at Ex. P7(a) its contains are true."

13. From the evidence on record, we find that the prosecution has failed to brought on record any evidence to suggest that deceased- Basavannawa committed suicide. Siddalingappa Yallapa Madalli (PW1) father of the deceased while stated that the accused beaten her to death, PW-2 Gangawa- mother of the deceased specifically stated that she saw her stomach was swollen and accused had inserted the stick in her private part and her back was injured and there were bloodstains, Sangappa (PW-3)- brother of the deceased specifically stated that they came to know that the accused had beaten her to death.

14. Section 306 Indian Penal Code relates to abatement of suicide and reads as follows:

"306. Abetment of suicide. 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."

Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman as quoted herein:

"113A. Presumption as to abetment of suicide by a married woman--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation - for the purposes of this section, "cruelty" shall have the same meaning as in Section 498A of the Indian Penal code."

Section 498-A of Indian Penal Code reads as follows:

"498A. 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.]

15. There is evidence on record brought by prosecution that the deceased died within a period of seven years from the date of her marriage. For the purpose of cruelty, there is no evidence on record to suggest that the husband or relative of the husband of the deceased i.e. accused Nos. 1 to 3 herein subjected the deceased to cruelty due to which the deceased committed suicide. We have noticed that prosecution has failed to bring on record any relevant material to suggest that the deceased have committed suicide. On the contrary, according to the prosecution witnesses P W-1, father of the deceased, PW-2, mother of the deceased and PW-3, brother of the deceased, the deceased was murdered by the accused.

16. For the purpose of Clause (b) of explanation to Section 498A, where the harassment is made with a view to coercing the women 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. In the present case, the prosecution failed to show that the accused have harassed the deceased or coerce her to meet any unlawful demand for any property or any valuable security and on account of failure by her and her relatives to meet such demand.

17. The PW-1 Siddalingappa, father of the deceased alleged that the accused did not use to give proper food to his daughter and they had kept her in cattle shed. Gangawa, PW-2 -mother of the deceased stated that the accused used to beat her daughter and they did not give her proper food, they used to scold and beat her for not doing work in the field. Brother of the deceased (PW3) stated that his sister did not state the cause for harassment. In the First Information Report, the complainant (PW1) stated that the accused harassed his daughter for not cooking food, not cleaning utensils, not cleaning cow-dung and not doing the field work. The aforesaid allegation of harassment does not constitute any offence for the purpose of Clause (b) of the explanation to Section 498A, Indian Penal Code.

18. The aforesaid fact has been noticed by the High Court in its impugned judgment dated 20th June, 2008, but the High Court's conclusion to hold suicide

committed by deceased is based on surmises and conjectures as will be apparent from its observation as quoted below:

"28. As far as this case is concerned, I am satisfied that not only the witnesses P.Ws. 1, 2 and 3 have noticed protrusion of tongue and eye balls of the deceased at the first but even during the inquest conducted, same symptoms were noticed. These symptoms are indicative of compression on the neck of the deceased. Such protrusion of the tongue and eye ball results in cases of manual strangulation or suicidal hanging. It may ultimately result in asphyxia. In the instant case, the cause of death has not been determined by the doctor. But, on the basis of what is noticed during inquest and by the witnesses, it given clear evidence that the deceased must have died due to asphyxia as a result of either manual strangulation or suicidal hanging.

29. In the instant case, opinion of the expert as to cause of death was relevant. The doctor has given an opinion which is inconsistent with the evidence tendered by PWs. 1, 2 and 3 and the inquest conducted by PW-15. Therefore, when the opinion of PW-10 is inconsistent with this evidence, then, what these witnesses have stated does transform into legal evidence becomes relevant and acting on it and accepting it, it can safely be concluded that this is a case of as physical death cause either by manual strangulation or suicide."

In view of the finding recorded above, we hold that the prosecution failed to prove the charges of offence under Sections 498A and 306, Indian Penal Code, against both the accused-appellants herein. The findings of the Trial Court and High Court being not based on evidence but on mere surmises and conjectures, are fit to be set aside. We accordingly, set aside the judgment and Order dated 07.12.2002 passed by the Presiding Officer, Fast Track Court at Gadag in S.C. No. 77/2000 and impugned judgment and Order dated 20.06.2008 passed by the High Court of Karnataka in CrI. A. No. 1/2003. Both the accused are acquitted. The bail bonds shall stand discharged.

The appeal is allowed.