

Devassia Vs. State of Kerala

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Court : Kerala

Decided On : May-25-2006

Reported in : 2006CriLJ3480; 2006(3)KLT30

Judge : R. Basant, J.

Acts : Indian Penal Code (IPC) - Sections 107, 306 and 498A; ;Evidence Act - Sections 4 and 113A

Appeal No. : Cri. A. No. 428 of 2002

Appellant : Devassia

Respondent : State of Kerala

Advocate for Def. : K.J. George, Public Prosecutor

Advocate for Pet/Ap. : Manoj R.(S.B.)

Judgement :

R. Basant, J.

1. The appellant/accused assails the concurrent verdict of guilty, conviction and sentence in a prosecution under Sections 306 and 498-A of the Indian Penal Code.

2. The prosecution alleged that the appellant had married deceased Mini on 16.2.1998. She was allegedly subjected to matrimonial cruelty of the culpable variety by the appellant after 16.2.1998 till 21.6.98. Unable to stand the trauma, Mini allegedly committed suicide on the night of 21.6.98. The prosecution alleged that the appellant was guilty of various acts of matrimonial cruelty punishable under Section 498-A of the IPC and abetment the commission of suicide punishable under Section 306 of the IPC.

3. The investigation commenced with Ext.P1 - First Information Statement lodged by P. W.2 -- brother-in-law of the accused on the basis of which Ext.P1(a) FIR was registered. It culminated with the charge sheet submitted by P.W. 18. Consequent to the plea of not guilty raised by the appellant, P.Ws.1 to 21 were examined and Exts.P1 to P18 were proved. P.W.1 is his father of the deceased. P.W.2 is his brother-in-law, P.Ws.3,4,5,6,7 and 14 are neighbours who reside close to the matrimonial home of the deceased. P.Ws. 11 and 12 are the financiers with whom the appellant had pledged the ornaments of Mini after the marriage before the commission of suicide by her, P.Ws. 16 to 19 and 21 are the Police Officials who had roles to play in the registration of the crime and investigation, P.W.20 - Doctor conducted the postmortem examination. Others are formal witnesses to unfold the case of the prosecution.

4. On the evidence available, the court below came to the conclusion that the appellant was guilty of matrimonial cruelty and had abetted the commission of suicide by his wife Mini. Accordingly, the court proceeded to pass the impugned concurrent judgments.

5. Arguments have been advanced before me by the learned Counsel for the appellant and the learned Public Prosecutor. The learned Counsel for the appellant challenges the concurrent judgments on four grounds. They are:

(1) The court below should not have placed reliance on the oral evidence of P.Ws. 1 to 7 and 14.

(2) The court below should have found that even if the entire evidence were accepted, no matrimonial cruelty, as defined under Section 498 A of the IPC, is

established.

(3) The court below should have held that, at any rate, there is nothing to drive home the charge of abetment to commit suicide.

(4) The sentence imposed is excessive.

6. A contention that no reliance should have been placed on P.Ws.1 to 7 and 14 is strenuously urged. P.W.1 can be said to be interested inasmuch as he is the father of the deceased. P.W.2 is none other than the brother-in-law of the accused. P.Ws 3 to 7 and 14 are all persons who reside in the closest neighbourhood of the appellant. Some of them, to the extent possible, have chosen to support the appellant by turning hostile to the prosecution. P.Ws. 3,4 and 6 were declared hostile also. These witnesses have spoken about the four aspects of the alleged cruelty of the appellant. The deceased was physically belaboured. Her ornaments were pledged against her volition. The appellant was addicted to drinks. He was having an illicit relationship with the sister-in-law of his. These are the four planks on which the prosecution attempted to build up its case of matrimonial cruelty.

7. I shall later consider whether the evidence of these witnesses is sufficient to establish matrimonial cruelty. But, I must say that I am in total agreement with the court below that the oral evidence of P.Ws.1 to 7 and 14 can safely be accepted. There is no reason to approach the testimony with any amount of suspicion or distrust. The neighbouring witnesses, as stated earlier, were prepared to go to any length to support the appellant. The pieces of information which they were constrained to reveal against the interests of the appellant were rightly relied upon by the courts below. These witnesses have no reason to speak against the appellant. No suggestions to that effect have been made. In these circumstances, I am of opinion that the challenge raised on the first ground cannot succeed, I concur with the conclusion of the court below that the evidence of P.Ws. 1 to 7 and 14 can be safely accepted.

8. The grounds raised as 2 and 3 above shall be considered by me together. The plight of the Indian bride in the matrimonial home was causing concern to the right thinking members of the polity and ultimately it attracted legislative consideration.

By the amendment Act 46 of 1983, Section 498A was brought into the Indian Penal Code and a corresponding Section 113-A was also brought into the Indian Evidence Act. A new offence of matrimonial cruelty was created by Section 498A IPC and the husband and the relatives of the woman who subject her to cruelty of the variety defined in the Explanation were made punishable. I shall consider the details of the offence under Section 498-A a little later. Section 113-A of the Evidence Act incorporated a presumption in favour of the prosecution where the bride commits suicide within a period of 7 years of commencement of the matrimony and if the indictee is shown to have indulged in cruelty of culpable variety defined in Section 498A. If these circumstances co-exist, a permissive discretionary presumption can be drawn that such indictee (husband or relative) had abetted the commission of suicide which, in turn, is punishable under Section 306 of the IPC. It is a presumption to be drawn only 'having regard to the circumstances' it is reiterated. The quality of the presumption to be drawn is only that of 'may presume' which expression is explained in Section 4 of the Evidence Act.

9. It would be apposite to straightaway refer to Section 306 of the IPC. Abetment to commit suicide is made punishable. under Section 107 of the IPC, three categories of abetment is specified. Instigation, conspiracy and intentional aid to commit suicide alone will bring the act within the sweep of abetment under Section 107 of the IPC.

10. That suicide had taken place is not disputed. That such suicide took place within five months of the marriage (16/2/98 to 21/6/98) is also not disputed. The first question to be decided therefore is whether cruelty of the culpable variety is proved by the prosecution. If that is held to be proved, conviction under Section 498-A must follow and the presumption under Section 113-A of the Evidence Act can be drawn, having regard to all other circumstances.

11. As explained earlier, I find no reason not to accept and act upon the oral evidence of P.Ws. 1 to 7 and 14. I find no reason to interfere with the discretion exercised by the court below to accept and act upon the evidence of P.Ws. 1 to 7 and 14. The learned Counsel contends that the court below has committed an

error in coming to the conclusion that the evidence established matrimonial cruelty, as defined in Section 498A of the IPC I extract Section 498A of the IPC below:

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.

(emphasis supplied)

Explanation (b) has no specific application to the facts of the case. The latter part of Explanation (a) does not also specifically apply. So the question is only whether the offence establishes any wilful conduct on the part of the appellant against his wife Mini which was of such a nature as was likely to drive her to commit suicide. That there has been physical assault is proved by the evidence of P.W.1. That there has been drunkenness on the part of the appellant is established by the evidence of P.W.2 - his own brother-in-law - not to speak of the evidence of other witnesses. That ornaments were pledged is also established convincingly by the evidence of P.Ws. 11 and 12 as also those of the other related and neighbouring witnesses. That quarrels, commotion, weeping by Mini etc. used to take place in the matrimonial home - of such nature as to be perceived by the neighbours is also established convincingly. On these aspects, I find no difficulty at all. But so far as to 4th objectionable conduct is concerned, I am in agreement with the learned

Counsel for the appellant that the evidence, at best, can only show that the deceased entertained an impression that the appellant was having illicit intimacy with his brother's wife. Was that only an impression? Was that impression correct or incorrect? There is no satisfactory material on this aspect. The learned Counsel for the appellant contends that the evidence even if accepted in toto, cannot help the court to rule out this alleged intimacy between the appellant and the sister-in-law as a mere unjustified assumption of the young bride Mini. I find merit in that contention and therefore while considering the complicity of the petitioner, I shall exclude the alleged conduct of illicit intimacy between the appellant and his sister-in-law from consideration.

12. What remains to be considered is whether the evidence of physical assault, ornaments pledging and drunkenness can bring the conduct of the appellant within the sweep of cruelty under Explanation (a) to Section 498-A IPC.

13. The learned Counsel submits that wilful conduct must be intentional conduct ' and the intention must be to drive the woman to commit suicide. I am unable to agree with the learned Counsel for the appellant on this aspect of law. The expression 'wilful conduct' must certainly be understood as deliberate, intentional, improper and unjustified conduct against the wife as distinguished from accidental, unintentional, inadvertent or justifiable conduct. To this extent, the expression 'wilful' used in Explanation (a) to Section 498-A must convey that the conduct must not be accidental or inadvertent. It must be deliberate and intentional. In *Pawan Kumar v. State of Haryana* : 1998 CriLJ1144 the Supreme Court had held so specifically. But it is not to be understood that there must be intention to drive the woman to commit suicide. Acceptance of such a plea would obliterate the distinction between the offences punishable under Section 498A and 306 of the IPC. The conduct must be wilful. The conduct must be deliberate and intentional. Such conduct must be likely to drive the woman to commit suicide. It is not necessary that the conduct must be intended to drive the woman to commit suicide. The language of Section 498-A makes this position crystal clear. In these circumstances, the fact that the petitioner had no intention to drive his wife to commit suicide cannot be held to be a valid defence in a prosecution under Section 498-A of the IPC. The objectionable conduct must be wilful in the sense

that it is deliberate, intentional, improper and unjustified. Whether a given piece of conduct can be reckoned as wilful or not will always remain a question of fact and will have to be decided by a court taking into account all the inputs including the social circumstances of the parties. Such conduct need only be likely to drive the wife of the indictee to commit suicide. I have already adverted in *Murali v. State of Kerala* : 2006(1)KLT90 to the aspect that the standards of a reasonably prudent woman cannot be imported and it is the standards of the woman in question which has to be adopted. Otherwise, the statutory provision will become unworkable. The right to preserve and retain a life is so primary, primordial and fundamental in any living being that no conduct can be objectively calibrated as sufficient conduct likely to drive any reasonably prudent person to commit suicide. This is a case where suicide was in fact committed. Mini committed suicide. The evidence shows that the appellant was guilty of the wilful conduct of physical abuse, ornaments pledging and drunkenness. No other circumstances are shown or even suggested to exist which could have driven Mini - the wife of the appellant, to commit suicide. In these circumstances, it is absolutely safe to come to the conclusion that the conduct of the appellant proved through P.Ws. 1 to 7 and 14 was wilful, deliberate and unjustifiable conduct and such conduct was likely to and did drive 'the woman' (Mini) to commit suicide. Therefore, matrimonial cruelty of the culpable variety defined in the Explanation (a) to Section 498-A of the IPC is established. The verdict of guilty and conviction under Section 498-A of the IPC must, in these circumstances, be held to be totally justified.

14. We now come to the offence punishable under Section 306 of the IPC. The ingredients of the offence under Section 306 of the IPC are not in any way altered and continue to be same even when suicide is committed by the bride. Abetting commission of suicide is the offence defined. Under Section 107 of the IPC, Clauses firstly to thirdly -instigation, conspiracy and intentional aid for the commission of suicide will have to be established to prove abetment. The matter was considered by another Bench of this Court in *Cyriac v. S.I. of Police* : 2005(3)KLT673 . Relying on the earlier decisions of the Supreme Court, it was held that the indictee must be guilty of intending that the deceased must commit suicide. If that intention is not there, a prosecution under Section 306 of the IPC cannot succeed.

15. Section 113-A of the Evidence Act shows that a permissive discretionary presumption can be drawn against the indictee, if the circumstances enumerated exist. The legislature had very cautiously reiterated that the presumption can be drawn only 'having regard to all the other circumstances of the case'. It is not obligatory that the presumption should be drawn. The legislature was cognizant of the difficulty of the prosecution attempting to pierce and enter the matrimonial home to collect evidence about the acts of abetment. The presumption is permitted to be drawn only considering the difficulty in securing specific evidence of culpable conduct of abetment of suicide of the bride in the matrimonial home. The presumption has got to be drawn carefully and cautiously.

16. The presumption to be drawn is the presumption of the variety 'may presume' as defined in Section 4 of the Evidence Act. It reads as follows:

4. May presume.- Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

It mandates that when such a presumption of fact is drawn, the court may either regard such fact as proved, unless and until it is disproved or may call for proof of it. In the instant case, I have already noted that the suicide had taken place. It had taken place within a period of 7 years of marriage. The indictee - the appellant is guilty of matrimonial cruelty defined under Section 498-A of the IPC and, in these circumstances, I am of opinion that the presumption can safely be drawn. The evidence of P.W.7 shows that on the night immediately preceding the suicide, quarrels were heard. Mini was heard crying. The appellant was present in the house. These circumstances, according to me, certainly justify the drawing of the presumption under Section 113-A of the Evidence Act against the appellant.

17. The learned Counsel for the appellant submits that even assuming that the presumption can be drawn, there is sufficient material to hold that the presumption is rebutted. The counsel relies on various circumstances in support of his contention. First of all, the counsel submits that the burden on the accused to rebut a discretionary permissible presumption - of the 'may presume' variety, must be realistically understood. His burden is not as heavy as the initial paramount

burden on the prosecution. The learned Counsel first point out the circumstance that the deceased was rushed to the Doctor by the appellant who promptly informed P.W.2 as also his own brother and made arrangements to take the deceased to the hospital. If suicide was the intended result, this conduct is inconsistent with the same, submits the learned Counsel for the appellant. Secondly, the learned Counsel for the appellant submits that even the evidence of P.W. 1 shows that when the deceased went to the house of P.W.1 on the previous day, he gathered the impression and was told that the relationship had improved. The appellant may be guilty of matrimonial cruelty, at worst. But, at any rate, an intention to persuade the deceased to commit suicide cannot at all be deciphered and the presumption must be held to be rebutted, contends the counsel.

18. I find merit in the contention. Acts of cruelty proved against the appellant, to which I have concurred while considering the complicity under Section 498-A of the IPC, cannot at all convey to the court that the appellant ever desired, intended or contemplated the consequence of suicide by his wife. Even assuming that the presumption under Section 113-A of the Evidence Act can be drawn, these circumstances and the total absence of any other circumstance to indicate that commission of suicide by the wife was intended by the appellant, according to me, are sufficient to rebut the presumption under Section 113-A of the Evidence Act. I agree with the learned Counsel for the appellant on this aspect. In the total absence of satisfactory evidence to show that the appellant had intended, desired or contemplated the commission of suicide by his wife, the conviction under Section 306 of the IPC must fail. The challenge in this appeal succeeds only to the above extent.

19. The sentence imposed under Section 498-A of the IPC appears to me to be most reasonable - imprisonment for a period of one year and a fine of Rs. 3,000/- and in default, to undergo imprisonment for a further period of six months. The sentence does not warrant interference at all and therefore the challenge on the 4th ground cannot succeed.

20. In the result:

(a) This appeal is allowed in part.

(b) The verdict of guilty, conviction and sentence imposed under Section 498A of the IPC are upheld.

(c) The verdict of guilty, conviction and sentence imposed under Section 306 of the IPC are set aside.

21. Communicate the order to the prison authorities. If the petitioner is still in custody and has already served the sentence imposed under Section 498A of the IPC, he shall be released forthwith from custody if he is not required in any other case.

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