

Basheer Vs. State of Kerala

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Court : Kerala

Decided On : May-17-2004

Reported in : 2004CriLJ3785; II(2004)DMC508

Judge : K.A. Abdul Gafoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 498A

Appeal No. : Crl. A. No. 553 of 1995

Appellant : Basheer

Respondent : State of Kerala

Advocate for Def. : P.M. Habeeb, Public Prosecutor

Advocate for Pet/Ap. : B.S. Swathi Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant herein is faced with conviction and sentence under Section 498A of the Indian Penal Code. Though he had been charged with offence punishable under Section 304B of the Penal Code, he was acquitted on that count.

2. The incident in this case happened on 15.7.1991. The wife of the appellant/accused poured kerosene upon herself at about 3 p.m. and set fire by herself in order to commit suicide. She was taken to the hospital. She died on 17.7.1991. Hence the police laid a charge against the appellant. The Court below found that there was no evidence to convict the appellant/accused under Section 304B, I.P.C. But, the Court below found reliable evidence in P.Ws. 2, 3 and 5 and also in Ext. P2, to convict the appellant under Section 498A of the Code. Accordingly, he was sentenced to undergo rigorous imprisonment for one year. This judgment is impugned in this appeal.

3. Merely because there was harassment or even infliction of injury by the husband on his wife, it will not come under Section 498A, I.P.C. It will come only under the offences relating to human body. There shall be wilful conduct on the part of the accused in causing such injury to drive the woman to commit suicide. There is no evidence in this case that she committed suicide by pouring kerosene by herself because of any wilful conduct of the appellant. So the conviction under Section 498A, I.P.C. is not sustainable. In this regard, the decision reported in *State of Maharashtra v. Ashok Chotelal Shukla, II* (1997) DMC 685=AIR 1997 SC 3111, is relied on.

4. A close scrutiny of the evidence given by P.Ws. 2, 3 and 5 will show that the conviction is perfectly justified. A reappraisal of their evidence will also disclose that there was wilful conduct on the part of the appellant to drive his wife to commit suicide.

5. The incident occurred on 15.7.1991. P.W. 2 is none other than the mother of the deceased. The wife of the appellant was hospitalised on 15.7.1991 itself. On the next day, hearing about the incident, her mother-P.W. 2 went to the hospital. According to her, her daughter the deceased, had told her on 16.7.1991, while at hospital, that it was because of the unbearable harassment and injury on her body that she attempted to commit suicide. This answer was given by her daughter when she asked her daughter, what was the reason for doing so. Necessarily, this evidence given by P.W. 2, the mother of the victim, is sufficient to conclude that there was wilful conduct on the part of the appellant/accused, which was sufficient

to drive his wife to commit suicide or to cause grave injury or danger to her life or limb, by pouring kerosene and by lighting fire. This evidence is corroborated by Ext. P2, the complaint given by the victim earlier to the Juma Ath Committee complaining about the continued harassment on her and seeking to arrange dissolution of the marriage.

6. There is corroboration from P.W. 3, an independent witness. P.W. 3 is none other than the neighbour of the accused. She had seen on several occasions, the appellant beating his wife. Even on the day of the incident, there was such occurrence.

7. There is further corroboration from P.W. 5, the maternal aunt of the deceased who was living just a few yards away and a neighbour. She had even seen the appellant causing injury and causing harassment on the deceased even on the date of occurrence. Thus based on the evidence as aforesaid, it is clear that the victim attempted to commit suicide because of continued harassment from the appellant. In such circumstances, the 'cruelty' in terms of Explanation to Section 498A of the Indian Penal Code is substantiated. Thus the conviction under Section 498A is justified and it is accordingly confirmed.

Hence, the appeal fails and it is accordingly dismissed.