

Sathyan Vs. State of Kerala

Sathyan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/947778

Court : Kerala

Decided On : Nov-11-2011

Judge : V.K. Mohanan

Appeal No. : Crl.A.No.434 of 2003

Appellant : Sathyan

Respondent : State of Kerala

Judgement :

V.K. Mohanan, J.

1. The sole accused in S.C. No.105 of 1998 of the court of the Additional Sessions Judge-II, Mavelikkara is the appellant, who challenges his conviction and sentence imposed against him vide judgment dated 7.3.2003 of the trial court in the above sessions case.

2. The prosecution case is that the accused married the deceased Sangeetha on 7.9.1997 as per Hindu Religious rites and customs and thereafter they were living as man and wife and at that time, the accused illtreated the deceased both physically and mentally demanding dowry and due to the continuous harassment, the deceased returned to her parental house and at about 10 a.m. on 11.1.1998, she consumed poison and while she was undergoing treatment in the government Hospital, Adoor, she died at about 12.30 p.m. on 11.1.1998. On the basis of the above allegation, Crime No.9 of 1998 was registered in the Nooranadu Police

Station for the offences punishable under Section 498A and 306 I.P.C.

3. On completing the investigation, the police had preferred report before the Judicial First Class Magistrate Court, Mavelikkara based upon which CP.No.14 of 1998 was instituted in the said court and the learned Magistrate by his order dated 8.7.1998 committed the case to the Sessions Court wherein the same is received as S.C.No.10 of 1998 and subsequently, the case was made over to the trial court for disposal. Thus, when the accused appeared before the trial court after hearing the prosecution as well as the defence, a formal charge was framed against the accused for the offences punishable under Section: 498A and 306 I.P.C. and when the said charge was read over and explained to the accused, he pleaded not guilty. Therefore, the prosecution adduced its evidence consisting of the oral testimonies of PWs.1 to 16 and Ext.P1 to P5. MOs.1 to 5 were also identified and marked as material objects. Though there were no defence witnesses the defence has got marked Exts.D1 to D8 as defence exhibits. Where the prosecution evidence is over, the accused was questioned under Section 313 of Cr.P.C. and he had denied the incriminating evidence and circumstances which emerged during the prosecution evident and put to him. During the 313 examination, according to the accused, he did not demand anything as dowry and he purchased cents of property in the name of the deceased for a sale consideration of Rs.50,000/- and out of that Rs.20,000/- was obtained by selling sovereigns of gold and he paid Rs.30,000/- from his saving . According to him, he had also obtained passport of the deceased and he had categorically stated that he was living with the deceased with peace and joy. According to him, after reaching at Gulf, he became ill and returned to his house and at that time, the deceased was along with her parents and on the same day of his arrival, he called the deceased to stay with him. But, the parents of the deceased did not permit her to reside with the accused. According to the accused, the Police Station, she had agreed to reside with him and on the next day, she died mysteriously and her death was not due to any harassment. After considering the entire evidence and material according to the Judge of the trial court, in assessing the evidence in its cumulative effect, he has to find that the accused subjected the deceased to cruelty with a view to get more property as dowry and the accused complained that the dowry brought by her is very low an asked her to bring more dowry. Thus, according to the learned

Judge of the trial court, the above unlawful demand of dowry or property drive the woman to commit suicide and thus, the accused has committed the offence punishable under Section 498A of I.P.C. It has been further found that the marriage was on 7.9.1997 and she committed suicide on 11.1.1998 within four months of the marriage and the cruelty and harassment drive her to commit suicide and the accused, by willful act, abetted the commission of suicide and thus, the accused has committed the offence punishable under Section 306 of I.P.C. Accordingly, the accused is convicted for the offences under Sections 498A and 306 of I.P.C. On such conviction, the trial court has sentenced the accused to undergo rigorous imprisonment for period of three years under Section 498A of I.P.C. and five year under Section 306 of I.P.C. The accused is also directed to pay compensation of Rs.3 lakhs under Section 357(3) of Cr.P.C. for the offence under Section 498A and 306 I.P.C. and further ordered that compensation is realised, the same shall be disbursed to PWs.1 and it is also directed that the sentence shall run concurrently. It is the above finding, order of conviction and sentence and the direction pay compensation are challenged in this appeal.

4. I have heard Sri. R. Padmakumar, learned counsel appearing for the appellant and Smt. Lousy, the learned Public Prosecutor for the State.

5. The specific case of the prosecution is that the marriage between the accused and the deceased Sangeetha was solemnized on 7.9.1997 in accordance with the Hindu religious rites and thereafter they were residing together as man and wife during which the accused, illtreated and harassed the deceased demanding more dowry and thereby, committed the offence punishable under Section 498A I.P.C. and as a result of the continuous harassment demanding the dowry, the deceased committed suicide on 11.1.1998 and thereby, the accused abetted the deceased to commit suicide and thus, the accused; has committed the offence punishable under Section 306 of I.P.C.

6. As I indicated earlier, in order to substantiate the prosecution allegation, the prosecution has adduced the oral evidence of PWs.1 to 16 and the documentary evidence Exts.P1 to P15 documents and MOs.1 to 5. Among the above prosecution evidence, the prosecution mainly depends upon the evidence of

PWs.1, 2, 3 and 13 to prove its case against the accused. PW1 is none other than the father of the deceased Sangeetha. PW1 deposed that his daughter Sangeetha committed suicide by consuming poison on 11.1.1998 and he had also deposed about the marriage between the accused and the deceased. According to him, at the time of marriage, the accused was working in Gulf countries and at the time of marriage, PW1 gave 35 sovereigns of gold and promised to pay Rs.2,00,000/- within two years and if the amount is not given within the stipulated time, he promised to give property for that amount. According to PW1, after the marriage, when he visited the matrimonial house of his daughter, he was told by the deceased that the accused informed her that another girl offered Rs.10,00,000/- and a Maruthi Car and 101 sovereigns to the accused and the amount given from the house of the accused was very low and she was further asked why the property was not transferred in the name of the accused. According to PW1, due to this repeated demand he transferred 25 cents as gift and 5 cents as sale deed to his daughter. According to PW1, after three months from the date of marriage, the accused went abroad and the deceased, at that time, visited her parental house and informed her parents about the harassment of the accused. PW1 has also stated that few days after his departure to Gulf, the accused called her through telephone and informed the deceased that he would arrive soon. According to PW1, the deceased thought that if the accused returned soon, he would destroy her mental peace because the accused ill-treated the deceased demanding more dowry. PW1 says that demand for more dowry was informed to him on several occasions. PW1 is specific in his deposition that after the arrival of the accused, he called the deceased to his house, but PW1 informed the accused that he will send her daughter on the next day provided the accused should come there with his relatives. But, the accused did not turn up with his relatives. According to PW1, on the next day, they filed Ext.P1 complaint in the Police Station based upon which the Sub Inspector of that Police Station questioned them and during that time, the deceased expressed her unwillingness to go with the accused. According to PW1, on the next day, his daughter consumed poison and she was taken to KLM Hospital from there she was brought to Medical Mission Hospital, Pandalam and thereafter, she was removed to Government Hospital, Adoor where she died. While PW1 was examined, Ext.P1 complaint and Ext.P2 F.I. Statement were

marked through him.

7. PW2 is a neighbour who deposed that there is a call from the accused to the deceased just prior to the incident. She had further stated that on 11.1.1998 morning, while PW3 was giving water to the cow, the deceased was found weeping from her house. After sometime, PW3 returned to her house and at that time, she heard a cry from the house of PW3 and when she reached there at that time, the deceased was saying that she wants to die. According to PW2, after speaking with the accused over telephone, the deceased was found returning to her house by crying. PW2 has also stated that the deceased consumed poison due to mental depression.

8. Another important witness examined by the prosecution is the mother of the deceased, who is examined as PW3. When PW3 was examined, she had deposed in tune with the deposition of PW1. According to her, after the marriage, she had visited the matrimonial house of her daughter and her daughter also visited several times her parental home and at that time, the deceased informed her that the deceased was questioned and told that dowry given was very low and she was demanded more amount. Thus, according to PW3, the deceased was given 25 cents of property as gift. According to PW3, on the date of the execution of the gift deed, the accused informed his intention to divorce the deceased. According to PW3, the deceased told her that the accused was complaining that the dowry was very low and demanding more dowry, the accused illtreated the deceased on several times. PW3, in her deposition, specifically stated that after the marriage, both the accused as well as the deceased went to Bombay and the deceased realised that the accused has illicit relationship with the wife of his elder brother and according to PW3, the deceased had to witness such illicit relationship of the accused and there is one child in that relationship. According to PW3, after the accused left for Gulf, the deceased was residing in the house of the accused, who occasionally visited the parental home. According to PW3, a few days before the incident, the accused called the deceased through telephone in the house of PW2 and informed that he would return there within two days. According to PW3, after attending the phone call, the deceased told her that it is impossible to reside with the accused. PW3 has also stated that on Sunday night, the accused and his

mother reached in their house and invited the deceased. But, PW1 informed that they would send the deceased on 8.1.1998 after mediation, but the accused did not turn up with the mediators on 9.1.1998. PW3 further states that on 10.1.1998, she went to the Police Station along with PW1 and the deceased and the Sub Inspector questioned the accused and the deceased and both of them were sent back to their respective houses. She has also stated that on 8.1.1998, while she was giving water to the cow, PW2 saw deceased weeping. According to PW3, when she reached, she found the deceased lying in a cot by saying she wants to die. According to her, the deceased was removed to the hospital, but at about 12 o'clock, in noon, her daughter died. PW3 has also identified MOs.1 to 5. According to PW3, her daughter/the deceased died due to harassment of the accused connected with demand for money as dowry.

9. PW4, who was then working as Deputy Director of Panchayat, deposed that she knows PW1, PW3, the deceased and the accused and on 9.1.1998, she went to the Noorandu Police Station for discussing about the petition which was given by the deceased and she had discussed with the Sub Inspector. According to PW4, the deceased was not interested in residing with the accused and if the deceased is sending with the accused, she requested for police protection. PW5 is an attester to Ext.P3 scene mahazar whereas PW6 is an attester to Ext.P4 seizure mahazar of the marriage register. PW7 was the Secretary of SNDP Sakha Yogam No.287 Ulavakkadu and he had taken back the registers from the Noorandu Police for that he executed Ext.P5 kaicheet. PW8 was the Secretary of Karimukkom Temple, who issued Ext.P6 certificate. PW9 is the then Assistant Sub Inspector, Noorandu Police Station. According to him, on 11.1.1998, PW1 arrived at the Police Station and informed about the death of PW1's daughter and he recorded Ext.P2 F.I. Statement of PW1 on the basis of which he had registered Ext.P7 F.I.R. in Crime No.9/1998.

10. PW10 is the then Assistant Surgeon at CHC Adoor, who had examined the deceased Sangeetha, when she was brought in a stage of unconsciousness, not responding to painful stimulate. According to PW10, the deceased was admitted and treated for the poisoning and in spite of the emergency measures, she expired at 11.30 p.m. Ext.P8 wound certificate dated 11.1.1998 is marked through PW10.

PW11 is the Doctor who was working as the then Associate Professor Forensic Medicine and Deputy Police Surgeon, Medical College, Alappuzha. According to him, he conducted post mortem examination on the body of Sangeetha, aged 20 years, the deceased in Crime No.9/98 of Noorandu Police Station and Ext.P9, the postmortem certificate is proved through PW11. Besides Ext.P9, Ext.P10 certificate of Dr. Nelson was also marked through PW11. Ext.P10 is the final opinion dated 10.7.2002 issued by Dr. Nelson based upon the certificate of chemical analysis dated 5.7.2002 received by Dr. J. Nelson, who was working as the then Professor of FSL Medicine and Police Surgeon, MCH, Alleppey. According to Ext.P10, the death was due to carbo furan poisoning. It was PW12 who entrusted the body of the deceased after postmortem to the relatives.

11. PW13 is the another star witness of the prosecution to prove its case against the accused. PW13 was the then Sub Inspector of Police, Noorandu. According to him, on 9.1.1998 at about 7.30 p.m. PW1 brought Ext.P1 complaint and he entrusted the complaint for enquiry and called both parties to appear before him on 10.1.1998 at 11 a.m. According to him, the deceased came there with her parents and brother. PW4 was also present. According to PW13, he questioned the deceased first. According to PW13, at that time, the deceased informed him that the accused was harassing the deceased by saying that the dowry given to him was very low and also claimed to have been stated that the accused has illicit relation with the wife of his elder brother and in that relationship, there is one child and the accused was keeping a photo of the said child in his purse. According to PW13, thereafter, he called the accused and questioned him and PW13 persuaded the deceased to go and to reside with the accused. But, she responded that if she was sent with the accused, he would harass her both physically and mentally. According to PW13, when she refused to live with the accused/her husband, he directed the parties to appear on 17.1.1998 for a family counseling at the family counseling centre in the Police Station premises. Till that time, PW13 directed both the parties to reside with their parents. During his examination, the accused had got marked Exts.D3 to D7 contradictions with respect to 161 statement of PW13. During his deposition, PW13 has admitted that Ext.P1 petition was received in the Police Station on 7.1.1998 and not on 9.1.1998. PW13 has also admitted that he was questioned by the Investigating Officer-PW16.

12. PW14 is the then Tahsildar of Chengannur Taluk through whom Ext.P11 carbon copy of the inquest report of PW14 was identified and marked, lie had also admitted that MOs.1, 2, 3, 4 and 5 were taken at the time of preparation of the inquest and thereafter, the body was sent for postmortem examination at Medical College Hospital, Alappuzha. PW15 has deposed that he attested the original of Ext.P11 which was prepared by PW14 and he had also identified the signature in Ext.P11 and MOs.1 to 5 are taken at the time of inquest.

13. PW16 is the investigating officer who was then working as the Dy. S.P. Chengannur. He had stated that he undertook the investigation on 13.1.1998 and he prepared Ext.P3 scene mahazar when he arrived at the place of occurrence at 9.30 p.m. on the very same date. According to him, he had questioned the witnesses and verified the register and prepared Ext.P4. Ext.P6 was produced before the court. He had obtained Ext.P1 petition and produced before the court. Ext.P12 was proved through POW16 connected with the release of marriage register on moonamstanam. He had deposed that the original inquest report prepared by PW14 has been lost. He had produced MOs.1 to 5 as per Ext.P15 report. When PW16 was examined, the defence has got admission from PW16 that PW13 during his 161 statement has deposed as Exts.D3 to D7. It is the above materials and evidence formed the basis of the finding of the learned Judge of the trial court and convicting the accused. Those findings, conviction and sentence are challenged in this appeal.

14. Sri. R. Padmakumar, learned counsel appearing for the appellant vehemently submitted that the findings, conviction and the sentence imposed against the appellant are unsustainable and are liable to be set aside and the accused is entitled to get an acquittal. In support of the above contention, it is pointed out by the learned counsel that the evidence and materials on record are not sufficient to establish or attract the essential ingredients of Sections 498A and 306 of I.P.C. Learned counsel pointed out that the prosecution has no specific case regarding any overt act from the part of the accused by which the deceased was subjected to harassment. It is the further submission of the learned counsel that till the accused went abroad after the marriage, the deceased and the accused were residing happily and without any complaint and according to the learned counsel,

the facts and circumstances involved in the case supported by the evidence of the prosecution witnesses itself would show the fact that there was no harassment or ill-treatment from the part of the accused. It is specifically pointed out by the learned counsel that Ext.P1 is the earliest document reached in the Police Station against the accused wherein there is no allegation that the accused has demanded more dowry or he was unsatisfied with the dowry already given. In Ext.P1, the only allegation is that whatever gold given to the deceased was misused. But, when PWs.1 and 3 were examined, they deposed against the contents of Ext.P1 and entirely a different case is set up when Ext.P2 F.I. statement is given by PW1. The learned counsel strenuously submitted that the state of mind of the deceased before her death is crystal clear from the 161 statement of PW13, though PW13, who is a responsible officer, denied the same. Inviting my attention to Exts.D3 to D7, the learned counsel submitted that in the 161 statement of PW13, the deceased has no complaint against the accused and she was prepared to go with the accused. Learned counsel has also pointed out that PW1 in his deposition has admitted that the accused has obtained passport for the deceased and the marriage between the deceased as well as the accused was not an arranged one, but it was a love marriage. It is also pointed out by the learned counsel that in the deposition of PW3, she has stated that when the accused left for Gulf countries, PW1, PW3 and the mother of the accused have gone to the airport to see off the accused and thereafter, the deceased was residing in her matrimonial home. On the basis of the above materials and evidence, it is the specific contention of the learned counsel that there was no harassment or ill-treatment from the accused and there was no demand for more dowry as alleged by the prosecution. Thus, according to the learned counsel, in the absence of any specific allegation regarding any overt act or assault or in the absence of any positive evidence that the accused abetted the deceased to commit suicide, neither Section 498A nor Section 306 of I.P.C. are attracted and as such, the prosecution has miserably failed to establish the case against the accused. Thus, according to the learned counsel, the finding of the learned Judge of the trial court is absolutely incorrect and baseless and against the settled principles of law governing the case. Thus, according to the learned counsel, the accused is entitled to get a clear acquittal. In support of the above contention,

learned counsel very much place reliance upon the following decisions:

Tarunav. State of West Bengal, 2001 Cri.L.J. 4937 (SC)

RameshKumar v. State of Chhattisgarh, (2001) 9 SCC 618

State of H.P. v. Nikku Ram, AIR 1996 SC 67

Rajanv. State of Kerala, 1994 (1) KLT 179

State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582

BhaskarLai Sharma v. Monica, (2009) 10 SCC 604

ManjuRam Kalita v. State of Assam,(2009) 13 SCC 330

15. On the other hand, stoutly opposing the contention raised by the learned counsel for the appellant, the learned Public Prosecutor submitted that the evidence adduced by prosecution particularly the depositions of PWs. 1, 2, 3, 4 and 13 would categorically prove that the accused had subjected the deceased to cruelty both mentally and physically demanding more dowry from the deceased and from her parents. The learned Public Prosecutor has pointed out that though the marriage was on 7.9.1997 and before the departure of the accused for Gulf on 15.12.1997, 25 cents, of property was given to the deceased as gift and another 5 cents as per sale deed. The above facts and circumstances are sufficient to show that PWs.1 and 3 are constrained to transfer the property in the name of their daughter because of the illegal demand of the accused within a short span of time from the date of marriage. The learned Public Prosecutor has pointed out that the evidence of PW2, PW4 and PW13 who are the independent witnesses would show that the deceased was not in a pleasant mood after the phone call of the accused, which was attended by the deceased. Taking me through the deposition of PWs.2 and 4, the Public Prosecutor submitted that after the phone call, the deceased was found weeping and the deceased was not prepared to go along with the accused even though PW13 has advised her for the same. Thus, according to the learned Public Prosecutor, the cruelty meted out against the deceased can be gathered from the instances that borne out from the evidence off

PWs.2, 4 and PW13 independent witnesses and the evidence of those witnesses are corroborated by the evidence of PWs.1 and 3, who are none other than the parents of the deceased. So, according to the learned Public Prosecutor, the trial court is fully correct and justified in its finding and convicting the accused for the offence under Section 498A and 306 of I.P.C. and no interference is warranted.

16. I have carefully considered die arguments advanced by the learned counsel for the appellant and the learned Public Prosecutor. I have perused the judgment of the trial court carefully and gone through the deposition of the prosecution witnesses and other materials and evidence on record.

17. In the light of the rival contentions advanced by counsel for the appellant as well as the learned Public Prosecutor and in the light of the evidence and materials on record, the question to be considered is whether the learned Judge of the trial court is justified and correct in his finding that the accused has committed the offences punishable under Sections 498A and 306 of I.P.C.

18. The specific case of the prosecution is that, while the accused and the deceased were residing as man and wife after their marriage on 7.9.1997, the accused ill-treated the deceased both physically and mentally and due to the continuous harassment, the deceased at about 10 a.m. on 11.1.1998 consumed poison and while she was undergoing treatment in the Government Hospital at Adoor, died at about 12.30 p.m. on 11.1.1998 and thus, according to the prosecution, the accused has committed the offence punishable under Sections 498A and 306 of I.P.C. As I already held, in order to prove the above allegation, among other evidence, the prosecution mainly depends upon the depositions of PWs.1, 2, 3, 4 and 13. I have already referred to the depositions of those witnesses. Though I have scanned the evidence of those witnesses, I could not find out anything material or any evidentiary value of the deposition of those witnesses to attract the offence punishable under Section 498A or section 306 of I.P.C. Regarding the harassment and abetment to commit suicide, the prosecution pressed into service the evidence of PWs.1 and 3. On a reading of the depositions of PWs.1 and 3, it can be seen that in no way in their depositions, they have stated or mentioned any particular incident or occasion of ill-treatment or assault or any

overt act from the side of the accused. On a careful scrutiny of the evidence of PWs.1 and 3, it can be seen that whatever stated therein by PWs.1 and 3 are their own opinion on the basis of what allegedly heard by them from the deceased. But, PWs.1 and 3 miserably failed to catch the words which are allegedly spoken to by the deceased. PWs.1 and 3 have no case that the deceased told them that on any particular date regarding any particular incident by which the accused subjected her to cruelty. Thus, it can be seen that neither the prosecution nor the prosecution witnesses especially PWs.1 and 3 have got a specific case of cruelty or harassment meted out by the accused against the deceased. The absence of any specific allegation of incident of cruelty or harassment assumes significance in the light of the facts and circumstances involved in the case. In order to appreciate the above aspect, it is absolutely necessary to consider the date wise events taken place after the marriage (i.e. 7.9.1977) of the deceased and the accused. It is beyond dispute that within a span of three months or 100 days after the marriage, exactly on 15.12.1997, the accused left for Gulf for joining in his work there. In the meanwhile, both the relatives of the spouses visited the houses frequently. The evidence of PWs.1, 3 and 16 show that the accused has obtained the passport of the deceased on 21.11.1997. It is also an admitted fact that during the stay of the accused after the marriage on 7.9.1997, both of them visited Bombay, the house of the elder brother of the accused. Ext.P9 postmortem certificate coupled with the evidence of PW11 would show that at the time of the death of the deceased, she was carrying and the fetus in the womb was having a length of 2.5 cms. Which fact would show that the deceased conceived two months back from the date of her death, probably within four months from the date of the marriage, which will come in and around the second week of November, 1997. The said fact also positively proves the joyful life enjoined by them. It is also evident from the deposition of PW3 that PW1. PW3 and mother of the accused went to the airport to see off the accused, when he left for Gulf after marriage. PW1, during his cross-examination, has categorically stated that the accused is a person from the same locality and his daughter, deceased was in love with the accused and it was a love marriage. In the above backdrops, particularly in the absence of any specific allegation of harassment or incident of ill-treatment, I am unable to accept the case of the prosecution that the accused was subjected to ill-treatment so as to attract the

ingredients of Section 498A as well as Section 306 of I.P.C.

19. It is pertinent to note that the evidence of PWs.1 and 3, who are the parents of the deceased and who has got animosity against the accused, are not supported by any independent evidence, especially with regard to the so-called cruelty or harassment allegedly meted out against her. Let me examine the evidence of PWs.1 and 3 to find out whether the same is sufficient to inspire the confidence of the court. It is brought out on record that PW1 is a person who is involved in several criminal cases and who is also a convict. As rightly pointed out by the counsel for the appellant, it is Ext.P1, which is allegedly launched at the instance of PW1 and the earliest version regarding the prosecution case before the Police. In Ext.P1, there is no whisper of demand of the accused for more dowry and what is stated in Ext.P1 is to the effect that the gold which is given as dowry has been misused or destroyed. No details of dowry demand are stated in Ext.P1.

20. In the prosecution case, the allegation is confined against the accused alone. In Ext.P1, the allegation is not only against the accused, but also against the mother and brother of the accused. When PW1 was examined, he deposed deviating from the allegations contained in Ext.P1 and gave evidence only for the purpose of convicting the accused. It is relevant to note that crime No.9 of 1998 of Noorandu Police Station-i.e., Ext.P7 F.I.R. was registered on the basis of Ext.P2 F.I. statement given by PW1. It is relevant to note that the undated Ext.P1 petition is received in the Police Station on 7.1.1998. Ext.P2 F.I. statement is dated 11.1.1998. The difference in the date of the above two documents is only four days. No reason is assigned by PW1 for not mentioning the case of harassment and the case of demand for more dowry in Ext.P1. If the allegation contained in Ext.P1 is correct under the factual situation which I indicated earlier, according to me, the allegation made in Ext.P2 is only as a result of an afterthought because of the death of his daughter. It is also relevant to note that the deposition of PW1, about the payment of dowry appears to be not fully correct, in the light of the deposition of PW7 through whom Ext.P4 which is the mahazar connected with the seizure of marriage certificate is marked. PW7 is the Secretary of the S.N.D.P. Shikha in whose jurisdiction the marriage has taken place and according to PW7, the gold ornament alleged to have been given to as dowry at the time of marriage will come

on 21 sovereigns, whereas PW1 say that 35 sovereigns of gold ornaments were given as dowry at the time of marriage. The above evidence of PW1 is not supported by any other document or independent evidence whereas the independent witness viz., PW7 says otherwise. So the above approach or conduct of PW1 is sufficient to hold that he is a man prepared to go any extent so as to canvass a conviction against the accused.

21. Another witness examined by the prosecution to prove the points, which are covered by PW1 is PW3 who is none other than the mother of the deceased and wife of PW1. The deposition of PW3 is also in the line of the deposition of PW1, her husband. PW3 has also not stated anything about the harassment or any particular instance of cruelty that was suffered by the deceased during her stay along with, the accused. Going by the deposition of PW3, it can be seen that she had also deposed before the court as her own opinion and she miserably failed to re-produce any words of harassment spoken to by the deceased, which is claimed by PW3. In the case of PW3, she went to the extent to say that the deceased had undergone treatment for her teeth since the deceased was attacked by the accused. She has no such case in the 161 statement. It is also relevant to note that the story regarding the illicit connection of the accused with the wife of the elder brother of the accused is also spoken to by her for the first time in the court. Thus, several embellishments and improvements are made by PW3 from her 161 statement when she was examined in the court. During the cross-examination, she had further stated that when the deceased went to Bombay along with the accused, she had occasions to witness the illicit connect of the accused with the wife of his elder brother. To a question during the cross-examination as to whether if the said fact is true, why she has taken no steps to put an end to the marital relationship between the accused and the deceased, there was no specific answer. When the defence asked whether any complaint was filed against the illicit relationship, there was no answer from her side. During the cross-examination, as an answer to the question put on behalf of the accused, she had answered that she was not aware whether the deceased daughter was pregnant or not. It is quite unbelievable that PW3 being the mother of the deceased was ignorant of her daughter's pregnancy. So PW3 is also not a reliable witness.

22. PW2 is a neighbour examined by the prosecution to show that the deceased had attended a phone call from the accused. Though PW2 has stated that the deceased is seen gone crying, she has no direct knowledge regarding the reason for such crying. Another witness examined by PW4, is a person accompanied PWs.1 and 3 and the deceased when PW13 summoned them to the Police Station. Though PW4 has stated that she had accompanied the deceased and her parents, she has not stated the details of the discussion that had taken place in the Police Station. When considering the evidence of PW4, it is to be remembered that she is the person accompanied the deceased and PWs.1 and 2 to represent them before the S.I. What she had stated in the chief examination is that she told the Police that if the deceased had no interest in sending her along with the accused, police protection to the deceased may be provided. She had further stated that as there was no cordial relationship between the deceased Sangeetha and her husband, the mother of the deceased said that they have no interest to send the deceased along with the accused. Thus, on a scanning of the evidence of PW4, it can be seen that she is not in a position to say anything about the approach of the deceased when PW13 convened the deceased and her parents and her evidence is sufficient to hold that the deceased was not willing to go with the accused. During the cross-examination, PW4 had stated that the son of PW1 is the driver of her relative. She had also stated that the accused told her that he returned from Gulf due to jaundice and there was no problem with his wife/deceased. PW4 never stated that the deceased has stated anything about the harassment or ill-treatment or demand of dowry from the side of the accused.

23. PW13 is the then S.I. of Police, Nooranad Police Station before whom Ext.P1 petition was filed and according to PW13, he had summoned the deceased and her parents and also the accused before him and there had been a talk. When PW13 examined, he had deposed in support of the prosecution. But the defence had succeeded in bringing out Exts.D3 to D7 contradictions in his deposition before the court. In this juncture, it is relevant to note that PW13 was examined during the investigation conducted by PW16 who recorded the 161 statement of PW13 in which PW13 has deposed as per Exts.D3 to D7. But, he denied the same before the court. It is relevant to note that during the chief examination, PW1 has stated that on 9.1.1998 at about 7.30 a.m., PW1 came in the Police Station and

preferred a petition. During the cross-examination, PW13 had admitted that Pw16 had recorded his statement. It is also admitted by him that when Ext.P1 was given, the deceased Sangeetha was not present along with PW1 and Ext.P1 was given by PW1. He had also stated that he did not ask PW1 as to who prepared Ext.P1 petition. It is relevant to note that though he was aware of the fact that a crime could have been registered on the basis of Ext.P1, since the allegation therein discloses the cognizable offence and he was bound to register a crime, no such crime was registered. Deviating from his 161 statement, PW13 has stated before the court that the deceased had spoken to him demanding more dowry and the accused used to harass her. As I indicated earlier, during the cross-examination, PW13 has denied Exts.D3 to D7 portion of his 161 statement recorded by PW16, the investigating officer. If the contradicted portion is considered as true and as stated by the deceased, no offences under Section 498A or Section 306 of I.P.C. are attracted. But, from the nature of the deposition made by PW13, it can be seen that he purposefully deviated and denied from his 161 statement, which was legally recorded by PW16, the investigating officer during the investigation of the case. No explanation is forthcoming from PW13, who is not a layman, but was working as a Sub Inspector of Police, deviating and deposing against Exts.D3 to D7 statement in his 161 statement. On the strength of the decision in Taruna's case (cited supra), the counsel submitted that the nature of the evidence of PW13 is liable to be discarded because the denial of Exts.D3 to D7 statement discredits the version of PW13 in the court. According to me, every contradiction will not be sufficient to disbelieve the version of a witness and every omission also has also no such effect. Such omission or contradiction has to be evaluated on the basis of explanation offered by the witnesses for such omission and contradiction. In the present case, as I indicated earlier, PW13 is not a layman, but at the relevant point of time, he was working as S.I. of Police in the concerned Police Station, but during his examination as PW13, no explanation is forthcoming for such omission and contradiction pointed out by the defence. In the present case, the omissions and contradictions pressed into service by the defence are very material and vital in the light of the allegations raised by the prosecution. Therefore, being a Police Officer, who had talk with the deceased prior to her death, the explanation from the side of PW13 is absolutely inevitable to assess his evidence and to appreciate

the omission and contradiction. In the light of the facts and circumstances which I pointed out in the foregone paragraph, especially which indicates the cordial relationship between the accused and the deceased Sangeetha and in-laws, the contradiction marked through PW13 has very vital role and therefore, those contradictions and omissions certainly go against the prosecution, particularly on the ground that those contradicted portions of 161 statement of PW13 are consistent with the defence version.

24. Thus, on an overall assessment and evaluation of the evidence and materials on record, it can be seen that the prosecution has miserably failed to allege and prove any particular instance of harassment either physical or mental and to adduce any evidence to prove such allegation. The prosecution allegation itself in the charge is very vague and not conspicuous and in the evidence of the prosecution witnesses particularly, PWs.1 to 4 and 13, no instance of assault or quarrel is pointed out. It is relevant to note that none of the prosecution witnesses have stated even a single incident of demanding dowry and inflicting the injury either physical or mental connected with the demand of dowry.

25. In the decision reported in Madhusudhan Rao's case, the Honourable Apex Court has held that for the purpose of S.498A I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to "cruelty" punishable under S.498-A I.P.C. In the present case, as I indicated earlier, the prosecution has miserably failed to plead and prove any instance of harassment. In the decision reported in Bhaskar Lai Sharma's case (cited supra), the Honourable Supreme Court has stated the essential ingredients of Section 498A I.P.C. so as to attract the offence therein. It is held therein that for proving the offence under Section 498A I.P.C. complainant must make allegation of harassment, to the extent so as to coerce her to meet any unlawful demand of dowry, or any willful conduct on part of accused 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. In the light of the scrutiny of evidence of PWs.1 to 4 and 13, I have already found that no such incident or conduct from the side of the accused is either pleaded or proved.

26. As I indicated earlier, even according to the prosecution, at the time of consumption of poison, the deceased was in her parental home and the prosecution has miserably failed to prove that immediately before the death or consumption of poison, the accused had subjected the deceased for cruelty demanding dowry. What proved by the prosecution is to the effect that before the return of the accused from the Gulf, he had made a phone call to the house of PW2, which was attended by the deceased and thereafter, she had seen weeping when she returned to her house. There is no evidence regarding the subject matter of the telephonic conversation. The death was not immediately after the phone call. It is also relevant to note that after the return of the accused and on the date of his arrival, he along with his mother went to the house of the deceased and required the deceased to go along with him to her matrimonial home. Neither PW1 nor PWS has got a case that at that time, the accused has harassed the deceased either mentally or physically. It is trite that Ext.P1 complaint was filed after the visit of the accused to the house of the deceased and his request to go with him on his return from the Gulf. But, in Ext.P1 complaint, which is a contemporary document, there is no averment to the effect that he had asked for more dowry and also any sort of harassment. So, according to me, the prosecution has miserably failed to plead and establish that the deceased has committed suicide in pursuance of any demand or dowry and cruelty connected therewith. Thus, absolutely there is no evidence to attract the offence either under Section 498A or under Section 308 against the accused. In the decision reported in Manju Ram Kalita's case (cited supra), the Apex Court has held that petty quarrels cannot be termed as cruelty to attract the provisions of Section 498A of I.P.C. and causing mental torture to the extent that it becomes unbearable may be termed as cruelty. According to me, the above dictum laid down by the Apex Court is squarely applicable in the instant case because there is no allegation or proof to show that the deceased was mentally or physically tortured so as to become the same as unbearable. In the present case, in Ext.P1 also, there is no allegation of demand for more dowry and when the incident has taken place in the present case, the deceased was in her parental home and in the first complaint, there was no allegation of mental or physical harassment or demand for dowry. In the above decision, the Honourable Apex Court has held that "cruelty" for the purpose of Section 498-A I.P.C. is to be

established in the context of Section 498-A IPC as it may be different from other statutory provisions. It was held that it is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is also held that it is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. In the present case, on examination of the evidence and the materials and allegations itself, in the light of the above decision of the Apex Court, it can be seen that the prosecution has not succeeded in establishing that the deceased committed suicide due to the cruelty meted out against her in connection with the demand of dowry. In the absence of any evidence or materials in support of the allegation of dowry or cruelty connected with the demand for dowry, and especially, when there is no allegation and evidence to show that the accused or his relative had subjected to cruelty, according to me, the presumption under Section 113A of the Evidence Act is not available in favour of the prosecution to establish the offence against the accused, even though the death was within a period of seven years from the date of marriage.

27. The Apex Court in the decision reported in Kishori Lai's case held that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide and it is further held that the mere fact that the husband treated the deceased/wife with cruelty is not enough and merely on the allegation of harassment, conviction in terms of S.306 IPC is not sustainable. In the present case, the prosecution has miserably failed to plead and prove any demand for dowry and cruelty connected with such demand. The facts and circumstances involved in the case and the evidence on record are not sufficient to hold that the deceased committed suicide because of the unbearable cruelty meted out against her and there is no proximity of time between the act of committing suicide and any kind of cruelty and no evidence for abetment, which incited the deceased to commit suicide. Therefore, the prosecution has failed to prove the essential ingredients of Section 306 of I.P.C. against the accused.

In the light of the above facts and circumstances and the evidence and materials on record and the foregone discussions, I am of the firm view that the prosecution

has miserably failed to prove the essential ingredients of Section 498A and Section 306 of I.P.C. against the appellant/accused and therefore, the findings of the court below in favour of the prosecution and against the accused cannot be approved. Accordingly, the finding and conviction recorded by the trial court against the appellant is set aside. In the result, this Criminal Appeal is allowed setting aside the judgment dated 7.3.2003 in SC No.105 of 1998 of the court of Additional Sessions Judge-II, Mavelikkara and the appellant/accused is acquitted of all the charges levelled against him and the bail bond if any executed by him will stand cancelled and he is set at liberty.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com