

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR JUSTICE K. N. KESHAVANARAYANA

CRIMINAL APPEAL No.824/2005 (C)

BETWEEN:

Appanna @ Laxmaiah,
S/o Eraiah,
Aged about 28 years,
Occ: Coolie Work,
Residing at Kenchikoppalu Village,
Kottaya Hobli,
Hassan Taluk & District.Appellant

(By Sri.Girish.B.Baladare, Advocate)

AND :

The State of Karnataka,
By Gorur Police,
Represented by its
State Public Prosecutor,
High Court Buildings,
Bangalore-560 001.Respondent

(By Sri.Rajesh Rai.K., HCGP)

This Criminal Appeal is filed under Section 374 (2) of the Cr.P.C by the advocate for the appellant against the judgment dated 31.03.2005 passed by the Additional Sessions Judge and Presiding Officer, Fast Track Court-III, Hassan, in S.C.No.111/2004, convicting the appellant/accused for the offence punishable under

Section 498-A of IPC and sentencing him to undergo R.I. for 3 years and to pay a fine of Rs.2,000/- in default to undergo R.I. for 15 days.

This Criminal Appeal coming for orders on this day, the court delivered the following:

J U D G M E N T

This appeal by the convicted accused in S.C. No.111/2004 before the Fast Track Court-III at Hassan, is directed against the judgment of conviction and order of sentence dated 31.03.2005 passed in the said case convicting him for the offence punishable under Section 498-A of IPC and sentencing him to undergo Rigorous Imprisonment for three years and to pay fine of Rs.2,000/- for the said offence.

2) The appellant was chargesheeted by Gorur police for the offences punishable under Sections 498-A and 302 of IPC alleging that the appellant/accused subjected his wife-deceased Kavitha to physical and mental cruelty and committed her murder on 17.04.2004 by assaulting her with a club, thereby committed the aforesaid offences.

3) The appellant pleaded not guilty for the charges levelled against him. The prosecution in support of the charges, examined PWs.1 to 20 and relied on documentary evidence-Exs.P1 to P26 and MOs. 1 & 2. The appellant/accused denied all the incriminating circumstances appearing against him. He did not choose to lead any defence evidence. His defence was one of total denial and that of false implication.

4) The learned Sessions Judge on appreciation of oral as well as documentary evidence, by the judgment under appeal though held that the prosecution has failed to establish the guilt of the accused for the offence punishable under Section 302 IPC, nevertheless held that the evidence on record established beyond reasonable doubt that the appellant subjected the deceased to mental and physical cruelty within the meaning of Clause (a) of Explanation to Section 498-A of IPC. In that view of the matter, the learned Sessions Judge acquitted the appellant for the charge under Section 302 of IPC and

convicted him for the offence punishable under Section 498-A of IPC. Aggrieved by the said judgment of conviction, the accused is in appeal before this Court.

5) I have heard the learned counsel appearing for the appellant/accused as well as the learned HCGP appearing for the Respondent-State and perused the records secured from the trial Court.

6) At the out set it is necessary to note that against the judgment of acquittal for the charge under Section 302 of IPC, no appeal was filed by the State. Therefore, the only point that arises for consideration in this appeal is, *whether the learned Sessions Judge is justified in holding the appellant guilty of the offence punishable under Section 498-A of IPC?*

7) Even according to the case of the prosecution, after the death of his first wife, the appellant/accused married deceased Kavitha. Even according to the oral evidence of the parents and other relatives of the

deceased, it was a love marriage and the parents of both the deceased as well as the accused had not given their consent for the marriage, therefore, their marriage took place in a temple. For about one year after the marriage, the couple lived happily and from the said wed-lock, the deceased gave birth to a male child. According to the prosecution, it is thereafter, the accused said to have started subjecting the deceased to cruelty by physically assaulting her every day under intoxication of liquor, as he was addicted to liquor.

8) In order to prove the charge for the offence punishable under Section 498-A, the prosecution examined PW.1:Jayamma-mother, PW.2:Savitha- younger sister, PW.4:Kalaiah-Junior Paternal Uncle, PW.,10:Kengaiyah-father of the deceased and PW.18:Ganesha-younger brother of the accused. The prosecution in this regard has also examined PW.3-Jayanna, PW.11-Prema, PW.13-Kamamma and PW.14-Netra, who are the residents of Kenchikoppalu village.

The parents and other relatives of the deceased in their evidence did not whole-heartedly supported the case of the prosecution even with regard to the charge punishable under Section 498-A. There was some evidence on the part of PWs.11 & 13.

9) As could be seen from the judgment under appeal, the learned Sessions Judge referring to the evidence of all the above referred witnesses has come to the conclusion that their evidence would indicate that the accused used to beat the deceased every day after coming home fully drunk and thereby he was subjecting her to physical cruelty. The learned Sessions Judge has assumed this act on the part of the accused in beating the deceased under intoxication of liquor as 'cruelty' within the meaning of Clause (a) of Explanation to Section 498-A of IPC and on that basis has found the appellant guilty of the said charge. The correctness of the said finding is assailed in this appeal.

10) No doubt, the object of introducing Chapter-XX(A) of IPC containing Section 498-A was to prevent torture to the woman by her husband or by relatives of her husband. However, every type of torture or cruelty as generally understood, is not punishable. The Legislatures while making the 'cruelty' to a married woman by her husband or the relatives of the husband punishable, have not left the expression 'cruelty' to be interpreted. The Legislatures have explained the meaning of 'cruelty' . Therefore, in order to find a person guilty of the charge under Section 498-A of IPC, the act complained of must answer the meaning of 'cruelty' as explained under Clause (a) or the harassment as explained under Clause (b) of Explanation to 498-A.

11) In the case of ***Girdhar Shankar Tawade Vs. State of Maharashtra*** reported in ***AIR 2002 S.C. 2078***, the Apex Court has considered the Legislative intent of the Explanation to Section 498-A. The relevant observations, which found in Para-3, read as under:-

“3. The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures: Whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.”

The Apex Court in the aforesaid decision has also considered the question as to whether the charges under

Section 306 and 498-A of IPC are independent of each other and whether the acquittal of one lead to acquittal of the other also. Answering the said question in the negative the Apex Court has held that the two charges are independent of each other and acquittal of one charge does not lead to acquittal of the other and in order to justify the conviction under Section 498-A of IPC there must be available on record some material and cogent evidence. Their Lordships have further held in the said decision that, "If the case of suicide is left-out, then in that event question of applicability of Explanation (a) to Section 498-A would not arise- neither second limb to cause injury and danger to life or limb or health would be attracted". It is further observed therein that "in any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not de-hors the same'.

12) In ***Smt.Sarla Prabhakar Waghmare Vs. State of Maharashtra*** reported in ***1990 Crl.L.J 407***

(Bombay High Court), having regard to the evidence on record has held that, the evidence does not conclusively establish that the beating and harassment was with a view to force the complainant to commit suicide or to fulfil the illegal demands of the non-applicants, therefore, the charge under Section 498-A of IPC is not made-out.

13) In the case of **Shakson Belthissor Vs. State of Kerala** reported in **(2009)14 SCC 466**, the Apex Court after referring to Section 498-A of IPC has held that, *“In order to understand the meaning of the expression ‘cruelty’ as envisaged under Section 498-A, there must be such a conduct on the part of the husband or relatives of the husband of a woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physic of the woman”*.

14) In the case on hand, though initially the death of the deceased was suspected as suicide and therefore, the case for the offence under Section 306 of IPC was

registered, later on the basis of the findings of the post-mortem examination and also having regard to the opinion furnished by the Doctor as to the cause of death, the death was stated as homicidal and on that basis, the accused was charged for the offence punishable under Section 302 of IPC. The trial Court recorded a finding that the evidence on record established the death of the deceased as homicidal and not as suicidal. Nevertheless, the trial Court did not find positive evidence to find the appellant guilty of the charge for the offence punishable under Section 302 of IPC. Thus, the death of the deceased was not suicidal.

15) Assuming for the purpose of argument that the evidence on record as referred to by the learned Sessions Judge indicated that the appellant was beating the deceased under intoxication of liquor, there is no indication that such beating was with a view to force the deceased either to commit suicide or to cause grievous injury to her life, limb or health. It is not the say of any of

the witnesses that the deceased at any point of time attempted to commit suicide or to cause grave injury to herself. Therefore, the torture or physical beating by the appellant as spoken to by the witnesses cannot be treated as 'cruelty' within the meaning of Clause (a) of Explanation to Section 498-A to find him guilty for the said charge.

16) In fact the evidence of the parents and other relatives of the deceased indicates that since the marriage of the deceased with the accused was without their consent, after the marriage, they had not maintained any relationship with her and they were not on visiting terms. They have made categorical statements that the deceased was not visiting them and she was not informing them anything about the alleged torture meted-out to her. According to these witnesses, they learnt about it from the villagers. Therefore, their evidences in this regard are in the nature of hear-say, which is not admissible and no reliance can be placed thereon. The only evidence which

could probably be termed as primary evidence was the evidence of PWs.11 & 13, who are stated to be residing nearer to the house of the accused. Even their evidence with regard to the alleged assault by the accused on the deceased on the fateful day has been disbelieved by the learned Sessions Judge. Therefore, on the strength of the evidence of PWs.11 & 13, it is highly difficult to come to the conclusion that the appellant had tortured the deceased by physically assaulting her. However, even if it is accepted that their evidence would establish the said fact, as noticed supra, since the beating of the deceased by the accused and thereby subjecting her to torture was not the proximate cause for the death of the deceased, the act on the part of the appellant cannot be termed as 'cruelty' within the meaning of Clause (a) of Explanation to Section 498-A. This aspect of the matter has been completely lost sight of by the learned Sessions Judge. The learned Sessions Judge has attributed an ordinary meaning to the expression 'cruelty' forgetting that the expression 'cruelty' has been defined under the statute

giving a specific meaning and it is only when the alleged act answers the said meaning, it would become the offence punishable under the said section. Therefore, the judgment of conviction recorded by the learned Sessions Judge convicting the appellant for the offence punishable under Section 498-A of IPC is perverse and illegal and it suffers from infirmity, as such, it cannot be sustained. Hence, the judgment under appeal calls for interference by this Court and the appellant is entitled for an order of acquittal.

17) In the result, the appeal is allowed. The judgment of conviction and order of sentence dated 31.03.2005 passed by the Additional Sessions Judge and Presiding Officer, Fast Track Court-III. Hassan, in S.C. No.111/2004 convicting the appellant/accused for the offence punishable under Section 498-A is hereby set aside. The appellant/accused is acquitted of the said charge.

The bail and surety bonds executed by the appellant are ordered to be discharged.

Fine amount if any deposited by the appellant is ordered to be refunded to him.

SD/-
JUDGE

KGR*