



2023/KER/61827

"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 12TH DAY OF OCTOBER 2023 / 20TH ASWINA, 1945
CRL.REV.PET NO. 2343 OF 2005
(CRA 298/2000 OF ADDITIONAL SESSIONS COURT, FAST TRACK COURT-I,
PALAKKAD
SC 218/1998 OF ASSISTANT SESSIONS JUDGE (ADDITIONAL), PALAKKAD)

REVISION PETITIONERS/APPELLANTS/ACCUSED:

1 NARAYANAN, S/O.KUNCHAN, AGED 40 YEARS,

2 KUNCHAN, S/O.KANDAN, AGED 72 YEARS

3 MALU, W/O.KUNCHAN, AGED 67 YEARS

4 RADHAKRISHNAN, S/O.KUNCHAN,

BY ADV SRI.K.P.BALAGOPAL

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

SMT.NIMA JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 05.10.2023, THE COURT ON 12.10.2023 DELIVERED THE
FOLLOWING:

**“C.R”****O R D E R**

This Criminal Revision Petition is at the instance of the appellants in Crl.Appeal No.298 of 2000 on the file of Additional Sessions Judge, Fast Track Court No.I, Palakkad, who are the accused in SC No.218 of 1998 on the file of Assistant Sessions Judge (Additional), Palakkad. The revision petitioners are challenging the judgment in Crl.Appeal No.298 of 2000, as their appeal was allowed only in part, though their prayer was for an honourable acquittal.

2. The revision petitioners faced trial for offences punishable under Sections 306 and 498A of IPC, and they were convicted and sentenced to undergo simple imprisonment for four years each and fine of Rs.2,000/- each under Section 306 of IPC, with a default sentence of two months each and simple imprisonment for one year each and fine of Rs.1,000/- each under Section 498A of IPC with a default sentence of one month each, directing the sentences to run concurrently. In the appeal, the conviction was upheld, but the sentence under Section 306 of IPC was modified and reduced to simple imprisonment for two years each, instead of four years, without



modifying the fine amount. According to the revision petitioners, the prosecution utterly failed to prove its case and so, they were liable to be acquitted, and hence they approached this Court with this Revision Petition.

3. The factual matrix of the prosecution case could be summarised as follows:

The 1st revision petitioner fell in love with the deceased named Chandrika and she eloped with him and entered into a marriage agreement on 01.09.1997. Thereafter, they lived together as husband and wife in the house of the 1st revision petitioner, along with other revision petitioners, who are his parents and brother. The revision petitioners 2 to 4 were not happy with that marriage. They harassed and humiliated Smt.Chandrika, as she did not bring sufficient patrimony from her house. So, the 1st revision petitioner and Smt.Chandrika shifted their residence to a separate house. There also, they continued their ill-treatment, and the 1st revision petitioner also supported them by keeping silence. Unable to bear the ill-treatment and harassment, on 24.12.1997, Smt.Chandrika attempted suicide by self immolation using kerosene. Due to the severity of the burn injuries suffered by her, she died at Medical



College Hospital, Thrissur on 29.12.1997.

4. On intimation received from the hospital, PW8 Head Constable attached to Mankara Police Station, recorded FI statement of Smt.Chandrika on 25.12.1997 at Medical College Hospital, Thrissur. As her hands were burnt with full of blisters, she was not able to affix her signature or even to affix her thumb impression in the FI statement. On the basis of the FI statement, PW8 registered crime against the revision petitioners under Section 498A of IPC. Thereafter, Smt.Chandrika died and so, an offence under Section 306 of IPC was also incorporated. PW12 investigated the case and laid charge sheet against the revision petitioners under Sections 306 and 498A of IPC.

5. When the revision petitioners appeared before the trial court after committal, charge was framed under Sections 306 and 498A of IPC, to which all of them pleaded not guilty. Thereupon the prosecution examined PWs 1 to 12 and marked Exts.P1 to P11 and identified M.O 1.

6. During examination under Section 313 of Cr.P.C, the revision petitioners denied all the incriminating materials brought out in evidence. They were asked to enter upon their defence, as they were found not eligible to be acquitted under Section 232 of Cr.P.C. DW1



was examined and Exts.D1 and D1(a) were marked from their side.

7. On analysing the facts and evidence, the trial court found the revision petitioners guilty under Sections 306 and 498A of IPC and they were convicted and sentenced accordingly. The appellate court also found nothing to interfere with the conviction, but the sentence under Section 306 of IPC was modified and reduced from four years to two years, keeping the sentence intact in all other respects. Since their prayer for acquittal was not conceded to by the appellate court also, they have come up with this revision.

8. Now this Court is called upon to verify the legality, propriety and correctness of the decision taken by the appellate court.

9. Heard learned counsel for the revision petitioners and learned Public Prosecutor.

10. Smt.Chandrika, who was living with the 1st revision petitioner, as his wife, died on 29.12.1997 due to extensive burn injuries, is not under dispute. The prosecution case is that, Smt.Chandrika was the wife of the 1st revision petitioner as their marriage was registered on 01.09.1997. Since she was subjected to cruelty by the husband and his relatives, she attempted suicide by self immolation on 24.12.1997 and she succumbed to the injuries on 29.12.1997. So the revision



petitioners are guilty of subjecting her to cruelty and abetting her suicide, as she decided to end her life as she was not able to bear the cruel nature and attitude of the revision petitioners.

11. The revision petitioners were charge sheeted for offences punishable under Sections 306 and 498A of IPC. The prosecution has no case that, the revision petitioners committed the offences in furtherance of their common intention. So, each revision petitioner is independently liable for the offences committed by each of them, and none of them can be held liable for the acts if any committed by the other, in the absence of any common intention.

12. When the revision petition is taken up for hearing, learned counsel for the revision petitioners submitted that, revision petitioners 2 and 3 are no more, and he produced copy of their death certificates. Learned Public Prosecutor, on getting instructions, submitted the death certificates of revision petitioners 2 and 3 which will show that, the 2nd revision petitioner Kunchan died on 10.02.2010 and the 3rd revision petitioner Malu died on 20.05.2009. So, the charge against them stands abated.

13. Now let us examine the available evidence and materials, to find out whether the prosecution has succeeded in proving the guilt of



revision petitioners 1 and 4 beyond reasonable doubt.

14. The trial court convicted and sentenced the revision petitioners under Section 498A of IPC, and it was upheld by the appellate court also. Let us examine the legality of that conviction.

15. Section 498A of IPC reads as follows:

“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”.

16. Though the prosecution case is that, Smt.Chandrika was the wife of the 1st revision petitioner, no evidence was brought out to show that, their marriage was solemnised under any form of marriage either



religious or customary. Ext.P3 is the agreement entered into between the 1st revision petitioner and Smt.Chandrika which is only an agreement entered into between them, agreeing to live together as man and wife. Even if that document is registered, it cannot be a substitute for a legally valid marriage. So it cannot be accepted as a valid marriage document. The prosecution has no case that, but for entering into Ext. P3 agreement, they underwent any form of marriage so as to say that, their marriage was solemnised. Even when a marriage was solemnised following the rituals, it may not be legal always, as the validity of a marriage depends on so many factors like age, mental status, religion, consanguinity, spouse living etc. etc. and it varies according to personal law based on religion. When there is some form of marriage either religious or customary which has the colour of a legal marriage, then also, the woman can seek protection under Section 498A of IPC though later, for some reason as mentioned above, that marriage is found to be invalid in the eye of law. But, when there was no solemnisation of marriage at all, and only live in relationship on the basis of a marriage agreement, then the woman cannot seek shelter under Section 498A of IPC, saying that they were holding out to the society as man and wife by their long cohabitation.



In the case on hand, the deceased was living with the 1st revision petitioner after executing Ext.P3 marriage agreement dated 01.09.1997 and before completing four months, she committed suicide.

17. In **Reema Aggarwal vs. Anupam and others** [(2004) 3 SCC 199], the Apex Court held that, the expression 'husband' would cover a person who enters into a marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any purposes enumerated in Sections 304B/498A, whatever be the legitimacy of the marriage. Paragraph 18 of that judgment reads as follows:

"18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue, further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 (for short "the Evidence Act") were introduced, cannot be lost sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit



positively requires to be interpreted with a certain element of realism too and not merely pedantically or hypertechnically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages...".

18. A three Judge Bench of the Apex Court in **Shivcharan Lal Verma and another** vs. **State of Madhya Pradesh** [(2007) 15 SCC



369], held that, for a prosecution under Section 498A of IPC, there must be a valid marital relationship between the accused and the victim. Therefore, only a legally wedded wife can claim the protection under Section 498A of IPC and that in the absence of such a legal relationship as husband and wife, there cannot be a conviction under Section 498A of IPC.

19. This Court, in **Unnikrishnan vs. State of Kerala** [2017 (3) KLT 991] and in **Suprabha vs. State of Kerala** [2013 (3) KLT 514] held that, a valid marriage is essential to attract Section 498A of IPC, and live in relationship sans valid marriage is not sufficient to attract Section 498A.

20. In the case on hand, since the marriage between the 1st revision petitioner and deceased Chandrika was not solemnised, and they started living together on the basis of a marriage agreement, which has no legal sanctity in the eye of law, they have to be treated as persons in live-in-relation, and they were not husband and wife, in order to attract an offence punishable under Section 498A of IPC. So, the trial court as well as the appellate court went wrong in finding the revision petitioners guilty under Section 498A of IPC and sentencing them for that offence. Even otherwise, Ext.P5, the FI statement of the



deceased, as well as Ext.P7, the dying declaration of the deceased, say nothing about the cruelties meted out to her, either by the 1st revision petitioner or by the 4th revision petitioner. In Ext.P5, what she had stated is that, the mother and father of the 1st revision petitioner, who are now no more, abused her saying that, she enticed their son, and when she complained to the 1st revision petitioner about their abusive words, he used to pacify her. In the dying declaration, which was marked as Ext.P7, the deceased has stated to the Doctor, that the 1st revision petitioner was a loving husband to her, but his family members ill-treated her and so, she burnt herself using kerosene. Except such a general statement made against the family members of the 1st revision petitioner, no specific allegations are there against the 4th revision petitioner also.

21. PW8-the Head Constable who recorded Ext.P5 FI statement and PW11-the Doctor who recorded the dying declaration of the deceased as per orders of Judicial First Class Magistrate-I, Thrissur, categorically deposed that, Smt.Chandrika was fully conscious and coherent enough to give that statement. When such clear statements are there from the part of the deceased herself after the accident, we need not search for other evidence to establish their innocence. In



any view of the matter, the revision petitioners are not liable to be punished for an offence punishable under Section 498A of IPC, and so, their conviction and sentence under that Section is liable to be set aside.

22. Now coming to the offence under Section 306 of IPC, it is worth quoting Section 306 of IPC which 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”.

23. Section 107 of IPC defines ‘abetment’ as follows:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound



to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

24. The testimony of the prosecution witnesses, especially that of PW1 will show that, when he reached the house of the deceased along with the 2nd revision petitioner, he could see the deceased and the 1st revision petitioner there. According to him, The 1st revision petitioner was trying to put off the fire, and in that process, he also sustained burn injuries. So, the inference is that, at the time of incident, only the deceased and the 1st revision petitioner were there in that house, and nobody else. As already stated, Smt.Chandrika died on the fifth day of the incident. She gave FI statement to Police and dying declaration to the Doctor but, none of those statements will show anything against her husband. No overt acts were stated against the 4th revision petitioner also, except a general statement given to the Doctor, that she burnt herself due to the ill-treatment from the part of the family members of the husband.



25. Prosecution mainly relied upon the testimony of PW3 Madhavi, the mother of the deceased, PW4 the sister-in-law of the deceased and PW5 the sister of the deceased, to prove the guilt of the revision petitioners. PW3-mother of the deceased deposed that, about three months prior to the incident, her daughter Chandrika eloped with the 1st revision petitioner, taking 25 sovereigns of gold ornaments from her house. PW3 had lodged a complaint before Police against her daughter, and on the previous date of the incident, she had given statement to the Police as admitted by her. DW1 is the Police Constable examined by the revision petitioners as a defence witness to prove Ext.D1 petition register of Kasaba Police Station, Palakkad, which will show that, PW3 had filed a complaint against her daughter deceased Chandrika. Ext.D1(a) is the relevant entry in that register which says that the deceased had agreed to return the balance amount in her Bank Account, to her mother. PW3 categorically admitted that, after Smt.Chandrika left her house, she never came back to that house.

26. PW4 Sumathy, the sister-in-law of the deceased, deposed that, four days prior to the death of Chandrika, she had told her that the revision petitioners were ill-treating her, and so, she was finding it



difficult to live with them. PW5-sister of the deceased would say that, on the date of incident, Smt.Chandrika came near to her paternal house and told her that, she was humiliated and ill-treated by the revision petitioners, and the 4th revision petitioner broke her chain. She further stated that she could see swelling on the face of the deceased. But, she had no such case in her 161 statement. PW12-the investigating officer, deposed that, none of the witnesses gave statement to the effect that, the deceased was assaulted either by the 1st revision petitioner or by the 4th revision petitioner. The allegations were mainly against revision petitioners 2 and 3 and now they are no more.

27. In Ext.P5 FI statement, the deceased had stated to Police that whenever the 2nd revision petitioner abused her, the 1st revision petitioner kept silence and he used to pacify her. Even in the dying declaration, she was saying that the 1st revision petitioner was a loving husband. There is nothing to show that, on that fateful day, either the 1st revision petitioner or the 4th revision petitioner did anything positive for abetting her suicide.

28. In **M.Mohan** vs. **State represented by the Deputy Superintendent of Police** [AIR 2011 SC 1238], the Apex Court held



that, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

29. In **Rajesh vs. State of Haryana** [AIR 2019 SC 478], the Apex Court held that, in order to attract an offence under Section 306 of IPC, there must be any positive action of harassment which is proximate to the time of occurrence so as to compel the person to commit suicide. Paragraph 8 of that judgment reads as follows:

"8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by



doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC”.

30. In the case on hand, there is nothing to show that, on the date of incident, there occurred any quarrel between the deceased and revision petitioners 1 and 4. The deceased did not make any allegations of ill-treatment or harassment against revision petitioners 1 and 4. The trial court as well as the appellate court mainly relied upon the testimony of PWs 4 and 5, to find the revision petitioners guilty of the offences alleged. But, the courts below failed to analyse their evidence in its correct perspective, and there was no chance for the deceased to meet either PW4 or PW5 on the date of incident. They have no case that, even after knowing about the suicide attempt from the part of Smt.Chandrika, they went to the hospital to see her. PW3-mother was in enmical terms with the deceased and that is why, she filed a police complaint, alleging that, the deceased had taken away 25 sovereigns of gold ornaments, which included 10 sovereigns of gold which belonged to PW4. But, PW4 had no such case when she was examined before court. The testimony of PWs 4 and 5 were full of embellishments and improvements, and so, it was not liable to be



believed by the courts below. The trial court as well as the appellate court ought to have found that, the prosecution failed to prove the offences alleged against revision petitioners 1 and 4 and so, their conviction and sentence under Sections 306 and 498A of IPC are liable to be set aside.

31. As revision petitioners 2 and 3 are no more, charge against them stand abated. If at all some evidence was there against revision petitioners 2 and 3, revision petitioners 1 and 4 cannot be held liable vicariously, as they were not charged under Section 34 of IPC.

As we have seen, prosecution failed to prove its case against the 1st and 4th revision petitioners beyond reasonable doubt. So, the impugned judgment of conviction and sentence against them is set aside and accordingly, the revision petitioners 1 and 4 are found not guilty under Sections 306 and 498A of IPC and they are acquitted under Section 235(1) Cr.P.C. Their bail bonds are cancelled and they are set at liberty forthwith. M.O1 shall be destroyed being worthless.

The Crl.Revision Petition stands allowed accordingly.

Sd/-
SOPHY THOMAS
JUDGE