

SUPREME COURT OF INDIA

Rajendran

Vs.

State Asstt. Commnr. of Police Law

CrI.A.No.53 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

02.12.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. These two appeals are interlinked and have their matrix on a judgment of the Madras High Court. By the impugned judgment the High Court upheld the conviction of the accused persons for offence punishable under Section 498(A) of the *Indian Penal Code, 1860* (in short the 'IPC'). Each was sentenced to undergo rigorous imprisonment for three years. The conviction was imposed by learned Second Additional Sessions Judge, Madras, and appeal was preferred by the appellants questioning conviction and the sentence imposed. Originally, the accused persons were charge sheeted and tried for offence punishable under Section 498A and 304 B IPC. The Trial Court after considering the material on record acquitted the appellants in respect of offence referred to Section 304 B and convicted them for offence under Section 498A IPC.

2. Prosecution version in a nutshell is as follows:

“Appellant-Rajendran, was married to Shanthi (hereinafter referred to as the 'deceased'). The other appellants are the parents of Rajendran. On 1.12.1989, the deceased Shanthi got married to appellant-Rajendran. Since there was torture at the hands of the appellants, the deceased Shanthi committed suicide on 7.3.1991 at 10.30 A.M. by setting fire on herself after pouring kerosene.

On the complaint of Ganesan (PW-1), the father of the deceased, a case was registered in Crime No. 99 of 1991 for suspicious death by the Sub-Inspector of Police (P.W.9).

After examination of witnesses and recovery of material objects, the Assistant Commissioner of Police (PW-11) filed a charge sheet before the trial Court on 20.3.1992 for the offences under Section 498(A) and 304(B) IPC.

During the course of trial, on the side of prosecution, P.Ws 1 to 11 were examined, Exs. P1 to P16 were filed and M.Os. 1 to 4 were marked. The trial court on completion of trial, concluded that all the appellants were guilty of offence under Section 498 A IPC and convicted and sentenced them to undergo rigorous imprisonment for 3 years. Same was challenged before the High Court.

The appellants in the appeal before the High Court submitted that in the absence of any dying declaration or suicide note or any evidence relating to dowry torture the trial court ought not to have convicted the appellants for offence punishable under Section 498A IPC. It was also submitted that since the appellants were acquitted of charge punishable under Section 304B IPC, consequentially the trial court ought to have acquitted the appellants in respect of other offence. The High Court did not accept this plea. It held that on going through the evidence of PWs. 1 & 2 it was clear that there was no offence relating to dowry torture but there are materials to show that deceased was being tortured by the appellants.

The High Court also referred to the evidence of independent witness Dhanam (PW 3) who was a neighbour. She had specifically stated about the ill-treatment by the appellants. The High Court, therefore, held that the appellants were rightly convicted. The stand taken before the High Court was reiterated in this appeal.”

3. Learned counsel for the State on the other hand supported the judgment.

4. One of the reasons for ill-treatment to the deceased was that the deceased gave birth to a female child, which was considered to be inauspicious and after the birth of the said female child, the Rajendran's brother's wife died and the appellants thought that the birth of the said female child was the reason for various debacles in the family and consequently, she was tortured by the appellants.

5. It is also clearly stated by P.W.1 that on 28.2.1991, PW-1 went to the house of the appellants to take both the first appellant-Rajendran and the deceased to attend a function at their 'Kula Theivam' temple. But the appellants allowed only the deceased to go along with PW-1 to attend the function. Admittedly, Rajendran did not accompany the deceased to the function.

6. On 7.3.1991 at about 10.30 A.M., PW 2 the brother of the deceased, took the deceased and left her in the house of the appellants. At that time, the 3rd appellant abused her. After having pacified the deceased, PW2 came back. Then at 12.30 PM, PW 1 received message from the first appellant that the deceased Shanti was not well. At that time, the first appellant did not inform him as to what really happened.

7. Section 498A reads as follows:

"498A: 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."

8. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the *Indian Evidence Act, 1872* (in short 'Evidence Act') have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See *Akula Ravinder and Others v. The State of Andhra Pradesh*¹) Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

9. The above position was highlighted in *Balwant Singh & Ors. v. State of H.P.*².

10. Section 498A IPC has two limbs. The first limb of Section 498A provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. 'Cruelty' has been defined in clause (a) of the Explanation to the said Section as any willful conduct which is of such a nature as is likely to drive to a woman to commit suicide. When there is demand of dowry, the case comes under clause (b) of the Explanation to Section 498A. Clause (a) of the Explanation has definite application to the

facts of the present case. Additionally, effect of Section 113 A of the Indian Evidence Act cannot be lost sight of.

11. Further as per Section 113 A of the Evidence Act when the question as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relative of her husband. This has not been rebutted by the appellants.

12. Above being the position we find no merit in these appeals, which are accordingly dismissed.

¹(AIR 1991 SC 1142)

²[2008(10) JT 589]