

SUPREME COURT OF INDIA

Undavali Narayana Rao

Vs.

State of A.P.

Crl.A.No.594 of 2004

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

24.07.2009

JUDGMENT

Dr. B.S. Chauhan, J.

1. This appeal has been filed against the judgment and order dated 22.10.2003 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal Nos.1692 of 2001 and 711 of 2002 whereby the High Court has affirmed the judgment and order of the Sessions Judge, East Godavari District at Rajahmundry dated 31.10.2001 in S.C. No.1 of 2000 whereunder the appellant has been convicted for the offence under Section 498A *Indian Penal Code* (in short IPC) and sentenced to undergo R.I. for two years.

2. The facts and circumstances giving rise to this appeal are that a private complaint was filed by Undavilli Veerayamma, PW.1/ complainant against the appellant Undavalli Narayan Rao - the husband, and Undavalli Veerayamma @ Vijjamma - the mother-in-law of the deceased, Malathi Devi. Both of them are alleged to have harassed the deceased for more dowry and due to the strained relationship between the deceased and appellant, an agreement (Khararunama) was executed, restraining the appellant from dealing with or alienating the properties mentioned in the said Khararunama. Subsequent to the execution of said Khararunama the deceased restored marital relations with the appellant and they lived together for nine years. During this period the deceased persistently complained about the behaviour of the appellant and his mother, to her mother Smt. Undavilli Veerayamma PW.1 and other relatives and the continuation of harassment at the hands of the appellant and his mother.

3. It is alleged that the appellant killed his wife on 5.6.1999 and stage managed a hanging to show that the deceased committed suicide. Her dead body was hurriedly cremated with the assistance of co-accused Manyan Narayan Rao, Valluri Gangadhar Rao and Chillikuri Rajasekhara Rao without informing the parents of the deceased who were away at Hyderabad and it was also alleged that the close relatives of the deceased objected to the cremation but despite their objections, the deceased was cremated.

4. After arrival of the parents of the deceased, a dispute arose and when the mother of the deceased Smt. Undavilli Veerayamma PW.1 was about to file a criminal case against the accused persons, a mediator attempted conciliation between the parties, as a result whereof some land was parted with through a registered document by the appellant in favour of the minor child of the deceased as a consideration for not filing a criminal case. However, subsequently the appellant refused to allow the minor child to be with her maternal grand parents. Thereafter Smt. Undavilli Veerayamma PW.1 approached the Police Station for registering an FIR and since there was abnormal delay, the police refused to register the case as a result of which she filed a private complaint, on the basis of which P.R.C.27/99 before the Additional J.F.C. Magistrate, Peddapuram came to the Court for trial.

5. After committal, the case was proceeded with. Charges under Section 302 read with 34 IPC against the appellant and his mother, and under

“Section 201 IPC against all the five accused were framed, to which the accused pleaded not guilty. During the course of the trial, the Public Prosecutor prayed for framing of an additional charge under Section 498A IPC, which was accordingly framed against the appellant and his mother.”

6. To prove the prosecution case against the accused, 11 witnesses were examined. Upon a full scale trial, the trial court came to the conclusion that the charges under Section 302 read with Section 34 IPC against the appellant, his mother or any other co-accused were not made out. The appellant alone was found guilty and convicted for the offence under Section 498A IPC, and was awarded a sentence of R.I. for two years vide judgment and order dated 31.10.2001. The trial against co-accused Manyan Narayan Rao abated due to his death during the pendency of the case.

7. Aggrieved by the finding of guilt recorded by the Trial Court for the offence under Section 498A IPC, the appellant preferred Criminal Appeal No.1612 of 2001. The State preferred Criminal Appeal No.711 of 2002 against the acquittal in respect of all the other charges levelled against the appellant and others. The High Court vide its judgment and order dated 22.10.2003 affirmed the judgment and order dated 31.10.2001 passed by the trial court i.e. dismissed both the appeals. The State has not challenged the judgment and order of the High Court passed in its appeal. It is only the appellant who has filed this appeal against the conviction and sentence as affirmed by the High Court limited to the charge under Section 498A IPC.

8. Shri A.T.M. Rangaramanujam, learned senior counsel appearing for the appellant has submitted that the prosecution has miserably failed to prove the charge under Section 498A IPC against the appellant. The courts below have erred in disbelieving Chy Undavalli Nanda Anuradha Sai Krishna DW.1 the daughter of the appellant, and also the other witnesses on the issue that appellant's wife died of a natural death resulting from a stomach ache. After execution of an agreement dated 14.3.1990 there was no complaint either of harassment or cruelty; no demand had ever been made for dowry. There was inordinate delay in lodging the criminal case by the family of the deceased. Therefore, the appeal deserves to be allowed.

9. On the contrary, Shri D. Rama Krishna Reddy, learned counsel appearing for the state has vehemently opposed the contentions raised by the learned senior counsel for the appellant and contended that both the courts below rightly disbelieved the daughter of the appellant who was merely a child of 8= years labeling her as a tutored witness. From the date of marriage till her death, the wife had been continuously harassed and subjected to mental and physical torture by the appellant. The appellant was a habitual drunkard and misbehaved with his wife, which forced her to commit suicide. Therefore, the appeal has no merit and is liable to be dismissed.

10. We have considered the rival submissions made by learned counsel for the parties and perused the record.

11. The provisions of Section 498A IPC read as under:

“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 purposes 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; (b) harassment of the woman where such harassment is with a view to coercing her to 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. Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment. The elements of cruelty so far as clause (a) is concerned, have been classified as follows:

(i) any `wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any `wilful' conduct which is likely to cause grave injury to the woman; or (iii) any `wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

For the purpose of clause (b) the essential ingredients are as under: (I) The harassment of a married woman

(II) With a view to coercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure or failure of any person related to her to meet such a demand.

Therefore, it is evident that the charge under Section 498A can be brought home if the essential ingredients either in clause (a) or (b) or both are found duly established.”

12. In *S. Hanumantha Rao v. S. Ramani*¹, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that : mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party.

13. In *V. Bhagat v. Mrs. D. Bhagat*² this court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under:

“17.It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made..... The context and the set up in which the word `cruelty' has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty.”

14. In *Mohd. Hoshan v. State of A.P.*³ this Court while dealing with the similar issue held that mental or physical torture should be continuously practiced by the accused on the wife. The Court further observed as under:

“Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not.”

15. In *Smt. Raj Rani v. State (Delhi Administration)*⁴ this Court held that while considering the case of cruelty in the context to the provisions of Section 498A I.P.C., the court must

examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

16. In *Sushil Kumar Sharma vs. Union of India*⁵, this Court explained the distinction of cruelty as provided under Section 306 and 498A IPC observing that under Section 498A cruelty committed by the husband or his relation drive woman to commit suicide etc. while under Section 306 IPC, suicide is abated and intended. Therefore, there is a basic difference of the intention in application of the said provisions.

17. In *Girdhar Shankar Tawade v. State of Maharashtra*⁶, this Court held that cruelty has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another. In explanation b, there is absence of physical injury but it includes coercive harassment for demand of dowry etc. therefore the aforesaid provisions deal with patent and latent acts of the husband or his family members. But both are equally serious in terms of the provisions of the statute.

18. Provisions of Section 498A IPC were introduced by an amendment to curb the harassment of a woman by her husband and/or his family members, for demand of dowry etc. under the garb of fulfillment of the customary obligations.

19. The instant case is required to be examined in the light of the settled legal propositions. The appellant was married to Malathi Devi (Deceased) on 14.6.1987. It is evident from the evidence on record that a dowry passed on to the appellant consisting of Rs.50,000/- cash, Ac.3.00 of wet land and Ac.6-00 of mango tope along with 50 tolas of gold and 2 kgs. of silver. It is also revealed in the evidence on record, that after about two years of the marriage, the deceased was being harassed by the appellant as well as by his mother. There was a demand that the property in her name be sold and deceased should bring more money from her parents. The deceased was beaten by the appellant and was forced out of the house. The deceased Malathi Devi complained to her mother and other family members that the appellant was always drunk and ill-treated her. However, by the intervention of the elder members of the community, the matter was resolved and an agreement dated 14.3.1990 was executed to the effect that the immovable properties owned by the husband and wife would be preserved for their children and none of them would alienate any part of any property in their names. However, they would have a right to enjoy its usufruct. After sometime, the appellant and his mother started pressurising the deceased to alienate the land in contravention of the said agreement and she should bring money from her parents. The appellant's mother also threatened the deceased that in case she did not agree for the said transfer of land, she would remarry her son with another girl. The deceased left her matrimonial home on 25.5.1999. However, she was taken back by her family members on 26.5.1999 and in consultation with the family members of the appellant and by intervention of certain other persons, the dispute was pacified. It was resolved that there would be no quarrel in future. Subsequently, when the family members of the deceased had gone to Hyderabad, Malathi was found dead on 5th June, 1999. She was cremated on 6th June, 1999 hurriedly without being subjected to any post mortem autopsy and without any information to the family members of the deceased. When the family members of the deceased came and

met the appellant, his mother and other family members attempted to resolve the dispute, and not to report the matter to the police and for that consideration, the appellant and his mother agreed to transfer the immovable property of the appellant in the name of the only child of the deceased. As a consequence Ex.P.2 dated 15th June, 1999 was executed and registered purporting to be a partition deed between the appellant and his minor daughter Chy Undavilli Nanda Anuradha Sai Krishna DW.1. According to the said partition deed about Ac.11.69 cents land was given to the daughter. After sometime, it came to the knowledge of the family members of the deceased that the child was not being treated properly, therefore, they approached the appellant's family and made an attempt to take the child in their custody but the appellant did not agree for it. Thus, the mother of the deceased filed the criminal complaint and in exercise of the power under Section 156(3) Code of Criminal Procedure, the court directed for investigation.

20. The Trial Court was fully satisfied with the explanation for delay in launching the criminal prosecution. Admittedly there was a delay of about 2 months but it was fully explained by the witnesses particularly, Undavilli Veerayamma (PW1), Undavilli Vara Prasada Ramachandra Murthy (PW2), Goli Ammanna Chowdary (PW3) and Kakara Krishnamurthy (PW8) that the appellant had transferred the land in the name of the minor child and as agreed upon, no criminal case was to be filed. Subsequently, when the appellant and his mother did not take care of the child properly, the complaint was filed. There is evidence on record that legal proceedings had also been initiated by the family members of the deceased seeking custody of the child. A civil suit was also filed to restrain the appellant from transferring the immovable property in favour of any other person by any means.

21. The Trial Court came to the conclusion that Chy Undavalli Nanda Anuradha Sai Krishna DW.1, born on 1.1.1991, the only child of the appellant and deceased, deposed falsely to save her father and other family members and she was merely a tutored witness. There were other circumstances that the child was in bed with her grand mother, and not with her mother, when the deceased was allegedly complaining of a stomach ache. No medical evidence was led to establish that the deceased was ailing so seriously from before.

22. The independent witnesses deposed that when they came to know that Malathi Devi had died, they reached the place of occurrence and witnessed that the room in which her dead body was found, had been opened by lifting the lever from inside. The body of the deceased was in a sitting posture on a double cot on her knees, and hanging from a fan tied with a sari. It was, therefore, inferred that it was a case of suicide as otherwise, there was no occasion to bolt the room from inside.

23. Taking into consideration various other circumstances, particularly, the agreement dated 14.3.1990, the Trial Court came to the conclusion that the relations between the husband and the wife were not cordial, and that she had been harassed to meet the unlawful demand of the appellant as he wanted to dispose of the immovable property and compel the deceased to fetch more money from her parents. The execution of the deed dated 15.6.1999 (Ex.P.1) was enough to show that it had been executed in order to restrain the family members of the deceased to launch criminal prosecution against the appellant. The Court also took other

circumstances into account, that the death of the deceased was in the house of the appellant; neither the appellant nor his mother made any attempt to inform the family members of the deceased about the death; her dead body had been cremated hurriedly without any autopsy having been conducted; there were independent witnesses like Sunkara Nagaraju (PW5) etc. and came to the conclusion that she had been harassed/coerced to the extent that Malathi committed suicide. The court rightly found the charge under Section 498-A fully proved against the appellant.

24. The High Court after appreciating the entire evidence concurred with the findings recorded by the Trial Court. We do not see any cogent reason to take a view contrary to the one taken by the courts below. The appeal is devoid of any merit and is, accordingly, dismissed. Appellant is on bail. His bail bonds and surety bonds are cancelled. He shall be taken into custody to serve out the remaining sentence.

¹*AIR 1999 SC 1318*
⁵*AIR 2005 SC 3100*

²*AIR 1994 SC 710*
⁶*AIR 2002 SC 2078*

³*(2002) 7 SCC 414*

⁴*AIR 2000 SC 3559*