

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 21ST DAY OF MAY 2018 / 31ST VAISAKHA, 1940

CrI.Rev.Pet.No. 1076 of 2005

IN CRA 288/2003 of ADL.D.C. & SESSIONS COURT, THODUPUZHA DATED 18-01-2005
IN CC 151/1998 of J.M.F.C.,ADIMALI DATED 08-10-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED

SHAJI S/O. BHASKARAN, KALLANICKAL HOUSE,
KUNCHITHANNI KARA, KUNCHITHANNI VILLAGE.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-05-2018,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ds

P.UBAID, J.

Crl.R.P. No. 1076 of 2005

Dated this the 21st day of May, 2018

O R D E R

The revision petitioner herein challenges the conviction and sentence against him under Section 498A of the Indian Penal Code in C.C. No. 151 of 1998 of the Judicial First Class Magistrate Court, Adimaly. The case relates to the commission of suicide by his wife Leela. The prosecution would allege that Leela had been subjected to much mental and physical torture and harassment by the revision petitioner, and when she felt the acts of cruelty unbearable, she committed suicide on 31.05.1997. The revision petitioner married Leela some 14 years back. On the allegation of matrimonial cruelty, the revision petitioner faced prosecution in the court below.

2. The accused appeared before the learned Magistrate, and pleaded not guilty to the charge framed against him. The prosecution examined 16 witnesses, and

proved Exts. P1 to P5 documents in the trial court.

3. The accused denied the incriminating circumstances when examined under Section 313 Cr.P.C. He did not adduce any evidence in defence.

4. On an appreciation of the evidence, the trial court found the accused guilty. On conviction, he was sentenced to undergo rigorous imprisonment for one year.

5. Aggrieved by the judgment of conviction dated 08.10.2003, the accused approached the Court of Session, Thodupuzha, with Crl.A. No. 288 of 2003. In appeal, the learned Additional Sessions Judge, Thodupuzha, confirmed the conviction and sentence, and accordingly, dismissed the appeal. Now the accused is before this Court in revision challenging the legality and propriety of the conviction and sentence.

6. On hearing both sides, and on a perusal of the materials, including the evidence given by the very material witnesses, I find that there is no satisfactory and

definite evidence in this case to prove a case of matrimonial cruelty as defined under the law. For a successful prosecution under Section 498A IPC, there must be legal and acceptable evidence proving that the victim had been subjected to mental or physical harassment by the husband or the in-laws by a course of cruel conduct. One or two stray instances of physical assault or verbal abuse will not be sufficient for a prosecution under Section 498A IPC.

7. Of the 16 witnesses examined in the trial court, PW1 to PW6 are the main witnesses. Of them, PW1 is the nephew of the accused, PW2 is the mother of the deceased, and PW3, PW5 and PW6 are the sisters of the deceased. PW4 is the daughter of the deceased and the accused. The FI statement was given by PW1, but during trial, he turned hostile. The prosecution could not bring out anything to incriminate the accused in his cross examination.

8. PW2 to PW6 have given evidence regarding a specific incident of assault where the accused allegedly manhandled his wife, consequent to which she was admitted in the hospital. All the witnesses are consistent that Leela had continued treatment at the hospital for a few days. It is not known why the prosecution did not produce the medical records to prove such a treatment. Anyway, during examination, PW2, the mother stated that the alleged incident of assault was not reported as a case of assault at the hospital. All the material witnesses, except PW4, are consistent that their evidence is only regarding a particular incident of assault where some simple injuries were inflicted on the body of Leela by the accused. None of the material witnesses has got a case that Leela had been subjected to mental or physical harassment by the accused by a course of cruel conduct. PW4 is the daughter of the accused and the deceased. This girl was examined by the prosecution to prove the matrimonial cruelty alleged by the prosecution.

But the girl did not support the prosecution. Nothing could be brought out in her cross examination by the prosecution to incriminate the accused. The prosecution has no case that commission of suicide by Leela was abetted by the accused, and rightly there was no charge under Section 306 IPC also. The prosecution is only under Section 498A IPC. Nobody has got a case that Leela had been subjected to mental or physical harassment by the husband by a course of cruel conduct. All are consistent that everything was well, and Leela had happiness in matrimony for a few years, but her miseries started when her husband got employment as a toddy tapper. The prosecution would allege that the accused had very often doubted the chastity of Leela, and on this ground also, she had been mentally or physically harassed. The mother examined as PW2 fairly conceded that she did not make any complaint against the son-in-law, because her son-in-law had doubted the chastity of her daughter. This evidence creates some doubt regarding the

allegations of cruelty. One or two stray instances of assault will not invite a prosecution under Section 498A IPC. Of course, it is true that there was something wrong in between the accused and his wife, and their matrimony was not fully peaceful and happy. There was some problem in matrimony, and the evidence given by the mother of the victim gives an indication that the accused had very often doubted her chastity. One of the material witnesses has even gone to the extent of saying that on the previous day also, things were alright at the matrimonial home, and Leela had gone for a Cinema with her husband. Here also, the allegation of matrimonial cruelty becomes doubtful. I find that the prosecution has not been able to prove a clear case of matrimonial cruelty beyond reasonable doubt. The evidence given by the material witnesses is, to an extent, tainted with doubts. The daughter of the victim did not support the prosecution. Everybody's evidence is about one particular instance of assault, and not about a course of

cruel conduct. I find that definite and satisfactory materials are not there to prove the offence under Section 498A IPC beyond reasonable doubts.

In the result, this revision petition is allowed. The revision petitioner is found not guilty of the offence under Section 498A IPC, and accordingly, he is acquitted of the said offence in revision. The conviction and sentence against the revision petitioner in C.C. No. 151 of 1998 of the trial court, confirmed in appeal by the Court of Session, Thodupuzha, in Crl.A.No. 288 of 2003, will stand set aside.

Sd/-
P.UBAID
JUDGE

ds 21.05.2018

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P.A. To Judge