

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 556 of 2004 ()

**AGAINST THE JUDGMENT IN CRL.A 174/2003 OF SESSIONS COURT, MANJERI
DATED 24-01-2004**

**AGAINST THE JUDGMENT IN CC.NO. 38/1998 OF
CHIEF JUDICIAL MAGISTRATE, MANJERI**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.P.RAMESH BABU S/O. K.P.RAMAN,
PALATHODI HOUSE, VADAKKUMURI, IRUMBUZHI 676 531
MALAPPURAM DISTRICT.**

BY ADV. SRI.S.RAJEEV

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE:

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- 1. THE CIRCLE INSPECTOR OF POLICE,
MANJERI, MALAPPURAM DISTRICT.**
 - 2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
COCHIN-682 031**

BY ADV. SRI.RAJESH VIJAYAN, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.556 OF 2004

Dated this the 6th day of March, 2015

O R D E R

First accused in CC.No.38/1998 on the file of the Chief Judicial Magistrate Court, Manjeri, is the revision petitioner herein.

2. The revision petitioner along with his mother were charge sheeted by the Circle Inspector of Police, Manjeri in Crime No.221/1998 of Manjeri police station under section 498A read with section 34 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that the revision petitioner married the defacto complainant on 30.12.1990, and thereafter they were living together as husband and wife and after the birth of the first child, both the accused ill-treated her by demanding more dowry and harassed her both physically and mentally and on several occasions she had to leave the house on account of that harassment and due to mediation she had to come back during the first week of April 1998 and even thereafter, ill-treatment continued and first accused demanded certain money for the purpose of construction of the house to be brought from the house of the defacto complainant, which she refused and at that time she was beaten by him and again on 10.04.1998, the same thing

continued and when she refused, she was beaten and thrown out of the house and she wanted the children, she was beaten with stone by PW1 and kicked her and this was supported by the second accused, the mother of the first accused and thereby both of them have committed the offence punishable under section 498A read with section 34 of the Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.38/1998 on the file of the Chief Judicial Magistrate Court, Manjeri.

4. When the revision petitioner and his mother appeared before the court below, after hearing both sides, charge under section 498A read with section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 11 were examined and Exts.P1 to P7 were marked on the side of the prosecution. After closure of the prosecution's evidence, the accused were questioned under section 313 of the Code of Criminal Procedure (herein after called the Code) and they denied all the incriminating circumstances brought against them in the prosecution's evidence. They have further stated that they have not committed any offence and they are innocent of the same. After considering the evidence on record, the learned Chief

Judicial Magistrate found the second accused not guilty and acquitted her of the charge levelled against her, but found the revision petitioner guilty under section 498A read with section 34 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year. Though, the revision petitioner filed Crl.Appeal No.174/2003 before the Sessions Court, Manjeri, the learned Sessions Judge by the impugned judgment dismissed the appeal confirming the order of conviction and sentence passed. Aggrieved by the same, the present revision has been filed by the revision petitioner- first accused before the court below.

5. Heard both sides and pursued the case diary file.

6. The counsel for the revision petitioner submitted that except the interested testimony of PW1, which contains embellishments and improvements, there is no other evidence to prove the alleged demand or ill-treatment. Further, she had not stated anything about the ill-treatment on the previous day either in Ext.P1 or before the police and that was an improvement made by her. The way in which the incident narrated by PW1 is not believable and the case of the defence that she had gone to the house since the first accused was not amenable for her demand to have an independent residence leaving his mother and in order to pressurise for the same, a

false complaint has been filed is more probable and it was not mentioned in the First Information Statement that the revision petitioner had pressed her neck when she was thrown out. Further, the evidence of PW1 will go to show that no criminal force was used to send her out of the house. Further, even assuming that the entire things spoken by PW1 is believable, it will not come under the definition of cruelty as defined under section 498A and he is entitled to get acquittal. He had relied on the decisions reported in **Appa Saheb Vs State of Maharashtra [2007(4) KLT 463]** and **Vipin Gaiswal Vs State of Andhra Pradesh [2013(3) SCC 684]**.

7. The learned Public Prosecutor supported the concurrent findings of the courts below on this aspect.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:-

The marriage between the defacto complainant and the revision petitioner was solemnised on 30.12.1990 and for two years, they were living happily and after the birth of the first child, both the accused that is, mother and son started ill-treating her stating that he would have got more amount if he had married somebody else and started ill-treating her and on account of the ill-treatment, she had left the house and due to the intervention of the mediators, she came back, considering

the welfare of the children. During the first week of April 1998, the first accused asked her to bring money for construction of the house and when she refused, she was beaten and again on 10.04.1998, the same thing continued and when she refused, she was thrown out of the house and when she insisted for the children, she was beaten with stone and first accused pressed her neck and when she fell down she was kicked and beaten and on seeing this, when the neighbours came, they went inside the house and thereafter as requested by PWs 2 and 3 the neighbours she went to her parental house and PW4 her father took her to hospital from where she was seen by PW5 doctor, who issued Ext.P2 wound certificate.

9. On getting intimation regarding her admission, PW10 the head constable attached to the Manjeri police station went to hospital and recorded Ext.P1 First Information Statement of PW1 and came back to police station and entrusted the same to HC.1714 who registered Ext.P7 First Information Report against the revision petitioner and his mother as Crime No.221/1998 under section 498A read with section 34 of the Indian Penal Code and investigation was conducted by PW11 the Circle Inspector of Police, he went to the hospital and requested PW1 to show the place of occurrence and accordingly as directed by him, she came to the place of

occurrence as pointed by her Ext.P5 scene mahazar was prepared in the presence of PW8. He questioned the witnesses and recorded their statement. He seized Exts.P2 and P3, photograph and the marriage invitation as produced by PW1 as per Ext.P6 mahazar in the presence of PWs 8 and 9. He completed the investigation and submitted final report.

10. PWs 2 and 3, the neighbours of the revision petitioner, who were examined as eye witnesses to the incident did not support the case of the prosecution. So they were declared hostile by the prosecution. PW1 is the victim and the wife of the revision petitioner. The factum of marriage and birth of two children are admitted. According to PW1, after two years of the marriage the ill-treatment started demanding money and gold and also they have started stating that the revision petitioner would have got some other lady who would have brought good amount and better employed and on account of the ill-treatment according to her she used to leave the house several times. But due to the intervention of the mediators namely, the relatives of the accused, she came back and started living in the house. During the first week of April 1998, there was some quarrel occurred on account of not meeting the request of the revision petitioner to go to her house and bring money in connection with the construction of the house and

again on 10.04.1998 the same thing continued. It was on that day that she was driven out of the house after manhandling her.

11. It is true that in the cross-examination he had stated that certain things mentioned at the time of examination was not mentioned in Ext.P1. It is true that in Ext.P1 it was not mentioned that revision petitioner had assaulted her by pressing her neck. But according to her, she had stated that she had nothing to say if it was not recorded by the police. Further, she had stated that no criminal force was used for sending her out. But when the same question as to how she was driven out of the house of repeated she had stated as follows:-

“പ്രതികൾ എന്നെ സാധാരണ പൂർത്താക്കുന്നതു പോലെ പിടിച്ചു കൊണ്ടുപോയി പൂർത്താക്കി. അവിടെ നിൽക്കാൻ പറ്റില്ല എന്ന് മനസ്സിലായതു കാരണം ഞാൻ കുട്ടികളെയും കൊണ്ടുപോകാൻ ഒരൂങ്ങി”.

12. So, it is clear from this, that some force was used to drive her out of the house. It was spoken to by PW4, the father of PW1 that she came to house in an auto rickshaw at about 3.30 p.m on 10.04.1998 and immediately on seeing the injuries, he had taken her to hospital and she was admitted in the hospital. Ext.P2 wound certificate will go to show that she was examined by PW5 doctor, on 10.04.1998 at 4.10 p.m the cause of injury was given as:-

"ഇറുംബുഴിയിൽ ഭർത്താവിന്റെ വീട്ടിൽവെച്ച് ഉച്ചയ്ക്ക് ശേഷം **2.30** മണിക്ക് ഭർത്താവ് രമേഷ്ബാബു കല്ല് കൊണ്ടു തലയ്ക്ക് ഇടിക്കുകയും കരഞ്ഞപ്പോൾ കഴുത്ത് പിടിച്ച് ഞെക്കുകയും ചെയ്തതിനാൽ"

13. The following injuries were noted:-

(1) lacerated wound 2½ x ½ x 1cm, vertical with rugged margin on the temporal area on the left side of scalp.

(2) Pain front of neck with 4 small discrete area of echimosis to the front of neck on the left side.

(3) Echimosis around left eye with congestion of conjunctiva one day old.

14. It is true that the echimosis around eyes was stated as one day old. But PW1 had given evidence that on the previous day, she was beaten by the revision petitioner. It is true that it was not mentioned in Ext.P1 or at the time of further examination by the Circle Inspector the investigating officer. But that alone is not sufficient to come to the conclusion that the case of PW1 is not believable. Further, the accused had no explanation as to how PW1 had sustained injuries and why she went to hospital on 10.04.1998, when he was questioned under section 313 of the Code of Criminal Procedure. Though a vague suggestion was given to PW1 that she left the house voluntarily and met with some accident in which she sustained minor injuries using that a false case has been foisted, it is quite unbelievable or unprovable. Further, the fact that she left the house on previous occasions and due to mediation she was brought to home was not challenged in cross-examination as

well.

15. It is true that what is the specific amount demanded has not been spoken to by witnesses. But it was spoken to by PW1 that the amounts were demanded for the purpose of construction of the house and she was told to go and bring the money and if she is not able to bring the money she need not come back. Mere asking of money and having quarrel for domestic purpose is different from telling that she need not come back to home without money and driving her from the house by manhandling her and this was what had happened in this case.

16. The dictum down in the decisions reported in **Appa Saheb Vs State of Maharashtra [2007(4) KLT 463]** and **Vipin Gaiswal Vs State of Andhra Pradesh [2013(3) SCC 684]** are not applicable to the facts of this case. There was no evidence in those cases except making some demand for making the domestic purposes and making quarrel there is no case of causing any bodily injury to the victim and it is not known as to what was the nature of injuries sustained also from those decisions. Further, in those cases it was observed that merely because some amounts were demanded for making the domestic purpose after marriage will not amount to demand dowry as provided under the provisions of Dowry

Prohibition Act and as such it cannot be said to be harassment met for meeting the demand for dowry.

17. Explanation to Section 498A of the Indian Penal Code defines the cruelty which reads as follows:-

Section 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.

18. There are two limbs of that explanation: (1) conduct of the husband causing harassment both physical and mental making her to drive to commit suicide and second limb deals with harassment in connection with demand for valuable security or other articles if injuries were caused and making the living of the wife not possible in the house and that ill-treatment continued resulted in driving her from the house will come under the first limb of the explanation cruelty mentioned under section 498A of the Indian Penal Code and that has what had happened in this case. Merely because there were some embellishments in the evidence of PW1 regarding the manner

in which the incident occurred is not a ground for disbelieving her evidence in toto in the absence of any other evidence adduced on the side of the accused to prove the circumstances under which she sustained injuries and she was treated in the hospital.

19. Further, on the date of incident itself the cause of injury was given to the doctor by the victim. There is no possibility of making any embellishment at the time when the statement was given by the victim to the doctor, though, certain omissions were made by her at the the time when she gave Ext.P1 statement regarding the incident, that was not material in nature. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that she was subjected to cruelty both physical and mental making her living in the house impossible and thereby he had committed the offence punishable under section 498A of the Indian Penal Code and the concurrent findings of the courts below on this aspect do not call for any interference.

20. As regards the sentence is concerned, the revision petitioner was sentenced to undergo rigorous imprisonment for one year by the trial court which was confirmed by the appellate court. It may be mentioned here that the incident occurred in the year 1998 and they were living separately

thereafter. Further, the first accused is now aged more than 60 years. It is true that harassment on the ground of demand for some unlawful money of the wife by the husband has to be viewed seriously. But considering the peculiar circumstances of the case, this court feels that instead of sending him to jail imposing fine and making the injured compensated will be sufficient and meet the ends of justice as far as both the parties are concerned. So, the sentence of imprisonment is set aside and the same is modified as follows:-

The revision petitioner is sentenced to pay a fine of Rs.20,000/- in default to undergo simple imprisonment for three months. If the fine amount is realised, the same be paid to PW1 as compensation under section 357(1) (b) of the Code of Criminal Procedure. Two months time is granted to the revision petitioner to pay the amount. Till then the execution of sentence is directed to be kept in abeyance.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge