

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1247 of 2004 (A)

**AGAINST THE JUDGMENT IN CRL.A.NO.293/2002 of V ADDL.SESIONS COURT,
ERNAKULAM DATED 27-02-2004**

**AGAINST THE JUDGMENT IN C.C.NO.798/1998 of CHIEF JUDICIAL MAGISTRATE
COURT, ERNAKULAM DATED 12-04-2002**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**RAVEENDRAN, S/O.SANKARAN,
KARUKAPPILLY VEETIL, SOUTHERN SIDE OF T.D. ROAD,
GOPALAPRABHU ROAD, ERNAKULAM.**

**BY ADVS.SRI.S.RAJEEV
SRI.T.RAVIKUMAR(B/O)**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02-
03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

K. Ramakrishnan, J.

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Crl.R.P.No.1247 of 2004

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Dated this, the 02nd day of March, 2015.

O R D E R

Accused in C.C.No.798/1998 on the file of the Chief Judicial Magistrate Court, Ernakulam is the revision petitioner herein. He was charge sheeted by the Circle Inspector of Police, Central police station, Ernakulam in Crime No.749/1997 of that police station under Section 498A of the Indian Penal Code.

2. The case of the prosecution in nutshell was that the revision petitioner married the de facto complainant on 09.02.1981 and thereafter, they were living together as husband and wife and while they were living together, he used to manhandle her, treat her cruelly and also harassed her with a view to coerce her father to meet his unlawful demands for transfer of five cents of land. On 20.12.1997 at about 8.45 p.m., he assaulted her with hands and kicked her and beat her with a wooden roller used for making chappathies and thereby, he had committed the offence punishable under Section 498A of Indian Penal Code. After investigation, final

report was filed and the case was taken on file as C.C.No.798/1998 under Section 498A of Indian Penal Code.

3. When the revision petitioner appeared before the court below, after hearing both sides, charge under Section 498A of Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 10 were examined and Exts.P1 to P7 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and in fact, both he and PW1 were living happily and when PW1's brother had some illicit connection with a Harijan girl and on account of that illegal relationship, when she became pregnant, he interfered and insisted for their marriage and on account of that, the marriage was conducted and due to that, there was some enmity between PW1, himself and her family members which prompted her to file a false case against him at the instigation of her family members. The revision petitioner

himself was examined as DW1 and Exts.D1 to D4 were marked on his side.

4. After considering the evidence on record, the court below found the revision petitioner guilty under Section 498A of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for three months more and directed to pay Rs.45,000/- to PW1 as compensation out of the fine amount under Section 357(1)(b) of Code of Criminal Procedure. Aggrieved by the same, he filed Crl.Appeal No.293/2002 before the Sessions Court, Ernakulam which was made over to Vth Additional Sessions Court, Ernakulam and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner – accused before the court below.

5. Heard the Counsel for the revision petitioner and the Public Prosecutor.

6. The Counsel for the revision petitioner submitted

that there was a delay of nearly five days in lodging the First Information Report and there is no explanation forthcoming for the delay. Further, in Ext.P1, there is no allegation of any demand for dowry and that was subsequently incorporated by way of additional statement said to have been given by PW1. Further, there is no documents produced to prove the reason for PW1 to go to City Hospital from General Hospital and no document has been produced to prove the treatment given there as it is seen from Ext.P1 that the statement was recorded from City Hospital, not from General Hospital where she was said to have been treated first. The evidence of PWs 1, 2 and 5 and 6 are contradictory to each other and as such, the ingredients of the offence under Section 498A has not been made out. He had relied on the decisions reported in **Thulia Kali v. State of T.N. [1972 KHC 592]**, **Dilawar Singh v. State of Delhi [(2007) 12 Supreme Court Cases 641]**, **Bhajan Singh alias Harbhajan Singh & Ors. v. State of Haryana and connected cases [AIR 2011 SUPREME COURT 2552]** and **Peethambaran v. State of Kerala [1998 (1) KLT 602]** in support of his case.

7. The learned Public Prosecutor supported the

concurrent findings of the court below on this aspect.

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

The revision petitioner married the de facto complainant on 09.02.1981 and thereafter, they were living together as husband and wife. The case of the prosecution was that, at the time of marriage, Rs.3,001/- cash and three and half sovereigns of gold ornaments were given and even from the date of marriage, there was ill treatment and that continued and even during the subsistence of marriage, she had to leave the house on several occasions on account of the same and on 20.12.1997 while she was in the house at about 8.45 p.m., the revision petitioner came drunk and beat her and kicked her and then, hit her with Mo1 Chappathi stick. On the next day, PW4 who is the cousin of the revision petitioner came there and on seeing the pitiable condition of PW1, informed PW2 and he came there and thereafter, she was taken to hospital from where she was seen by PW3 who issued Ext.P2 wound certificate. Thereafter, she went to City Hospital and on getting intimation from there, PW7 - the Sub Inspector of police attached to City police station, Kochi went to hospital

and recorded Ext.P1 statement of PW1 and came back to police station and registered Ext.P4 First Information Report as Crime No.749/1997 of that police station under Section 498A of Indian Penal Code against the revision petitioner. The investigation in this case was conducted by PW9 - the Circle Inspector of Police. He went to the place of occurrence and prepared Ext.P7 scene mahazar in the presence of PW10 and another and seized MO1 Chappathi stick. He seized Ext.P3 and P6 consent deeds produced by PW5 as per Ext.P5 mahazar. He questioned the witnesses and recorded their statements. He completed the investigation and submitted final report against the revision petitioner.

9. PW1 is the de facto complainant and the victim in this case. She had categorically stated that the marriage was solemnized on 09.02.1981 and thereafter, they were living together for some time. Even during that time, the ill treatment started. But, she did not complained much about the same and even during that time, she had left the house several times and due to mediation, she had come back and started living with him. Even though the ill treatment continued, she had tolerated the same. She had further stated

on 20.12.1997 at about 8.45 p.m., the revision petitioner came fully drunk and abused her and then, started beating her and kicked her and then, hit with MO1 Chappathi stick. She became weak on account of the assault. On the next day morning, PW4 - the cousin of the revision petitioner came and on seeing her pitiable condition, he informed PW2 - her brother who came and took her to hospital. She had identified MO1 as the weapon used for attacking her and proved Ext.P1 statement given by her. In the cross examination, she had stated that, even on earlier occasions, complaints were filed before the police and from the police station, it was settled and she had also stated that he had demanded property from the father. It is true that there was no allegation in Ext.P1 that the ill treatment was on account on demanding property and she had answered this on the suggestive question given at the time of chief examination. Further, she had also stated that though he had beaten her, she had no complaint against him and she does not want to punish him. That shows the magnanimity of the woman though she had suffered the injuries at his hands. That doesn't mean that she is telling lie against her husband.

10. PW2 had stated that, PW2 had only hearsay knowledge about the incident. He had stated that he came to the house of the revision petitioner on the next day of the incident on getting intimation from PW4 - the cousin of the revision petitioner and took her to hospital on seeing her pitiable condition. He had stated that the ill treatment was there from the beginning and even when she was in the parental house, she was beaten by the revision petitioner.

11. PW3 is the Doctor who treated PW1 and issued Ext.P2 wound certificate. In Ext.P2 wound certificate, the cause of injury was shown as;

“ഭർത്താവ് രവീന്ദ്രൻ കൈ കൊണ്ടും ചപ്പാത്തി പലക കൊണ്ടും
മർദ്ദിച്ചതിനാൽ at 8 p.m. on 20/12/97; ഭർത്താവിന്റെ വീട്ടിൽ വെച്ച്”

It is also noted that she was brought to the hospital on 21.12.1997 at 2.00 p.m., and was brought by Radhakrishnan who is none other than PW2 examined before this court. It is true that there is interlineation regarding introducing the weapon as;

“ചപ്പാത്തി പലക കൊണ്ടും, then, ഭർത്താവിന്റെ വീട്ടിൽ വെച്ച്”

But, it may be mentioned here that when PW3 was examined, no questions were put to her regarding this aspect. The only

suggestion given to him was that the injury could be self inflicted. Further, she had also stated that she would have been beaten with less force with MO1. So, it cannot be said that unless the genuineness of this document was questioned when PW3 was examined, there is no meaning in saying that it was a subsequent interlineation made by the Doctor so as to help the prosecution. Further, when the revision petitioner was examined under Section 313 of Code of Criminal Procedure, he had no explanation as to how these injuries were caused as well and he had pretended ignorance about the same as well. So, the fact that she sustained injuries on the night on account of the beating by the revision petitioner is evident and proved by the prosecution.

12. It is true PW5 had stated that the revision petitioner demanded five cents and he had said that he will not be able to give the same. But, he had no case that it was on account of that the ill treatment started. It is true that there is some delay in filing the First Information Report. Further, she was taken to hospital on the next day of the incident and Ext.P2 wound certificate was prepared. There is a duty cast on the Doctor to inform the police. Further, PW7 - the person who

recorded Ext.P1 had stated that on getting intimation from the City Hospital, he went there. Once a wound certificate has already been prepared, there is no necessity to prepare another wound certificate by the subsequent hospital from where the further treatment was given. Merely because the treatment documents from the subsequent hospital were not produced is not a ground to disbelieve the case of PW1 regarding the nature of injuries sustained by her which has already been recorded in Ext.P2 wound certificate. The explanation to Section 498A of Indian Penal Code not only deals with cruelty for demanding more dowry or valuable property, but also, conduct of the accused in beating and causing injury cruelly both mental and physical which is likely to drive the victim to commit suicide also. In this case, the evidence will go to show that she had stated that she does not want to live with revision petitioner on account of the ill treatment and she was afraid of the same.

13. There is no dispute regarding the propositions laid down in the decisions reported in **Peethambaran v. State of Kerala [1998 (1) KLT 602]**, **Bhajan Singh alias Harbhajan Singh & Ors. v. State of Haryana and**

connected cases [AIR 2011 SUPREME COURT 2552], Dilawar Singh v. State of Delhi [(2007) 12 Supreme Court Cases 641] and Thulia Kali v. State of T.N. [1972 KHC 592]. But, in matrimonial cases, the delay cannot be said to be fatal always unless the court is satisfied that it was intended to harass the accused. In matrimonial cases, normally people will not rush to the court or police immediately after the incident and they will wait for some time to patch up the dispute as well. In this case, in Ext.P1, it was mentioned that, even after the incident, the revision petitioner came and threatened if any case is given, they will have to face the consequences, that prompted them to file the complaint. So, that shows that the delay has been explained and it cannot be said that delay is fatal in this case.

14. It is true that Ext.P6 shows that the stamp paper was purchased on 10.02.1981. But, the agreement was said to have been executed with date 02.02.1981 and this document was not proved through any witnesses and it was marked only through the investigating officer. So, much reliance cannot be made on that document to prove that there was demand even prior to the marriage as observed by the

courts below in their judgments.

15. There is no dispute regarding the proposition laid down in the decision reported in **State of Andhra Pradesh v. M.Madhusudhan Rao [(2008) 15 Supreme Court Cases 582]** wherein the Hon'ble Supreme Court has held that, for the purpose of considering the question of cruelty under this Section, court need only consider the cruelty defined under the explanation under Section 498A and the scope cannot be widened. There are two circumstances mentioned in the Section and if those circumstances were not proved, the accused is entitled to get the benefit.

16. Further, in the decision reported in **Harbans Singh v. State of Punjab [1984 Supreme Court Cases (Cri) 486]**, the Hon'ble Supreme Court has held that when there is doubt regarding the prosecution case and if there are two views possible and that benefit must be given to the accused. In this case, though the evidence adduced on the side of the prosecution is not supportive of the fact that the ill treatment was made on account of demand for dowry, but, the evidence of PW1 and the manner in which she had given evidence will go to show that she was subjected to cruelty and even caused

bodily harm continuously even questioning her chastity. The fact that she had shown the magnanimity of deposing before the court that she did not want to see her husband punished, but, at the same time, she was sticking on to the manner in which the cruelty was attributed to her in the hands of the revision petitioner. So, under the circumstances, the submissions made by the Counsel for the revision petitioner that the evidence of PW1 cannot be believed has no force. The way in which she had given evidence shows that she was tolerating these acts of the revision petitioner so as to keep up with the matrimonial home as far as possible happy and the way in which she gave evidence coupled with Ext.P2 wound certificate shows that she was beaten and caused injuries as well by the revision petitioner. So, under the circumstances, this will come under the first limb of the explanation to Section 498A for the purpose of convicting the revision petitioner for the offence under Section 498A and this court do not find any reason to interfere with the concurrent finding of the court below on this aspect and the conviction entered by the court below is proper and just and does not call for interference at the hands of this court.

17. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for three months and it is further ordered that if the fine amount is realised, an amount of Rs.45,000/- be paid to PW1 as compensation under Section 357(1)(b) of Code of Criminal Procedure. This was confirmed by the appellate court. But, considering the fact that the victim herself had no intention to send him to jail, this court feels that the substantive sentence imposed by the court below could have been avoided. Even the witnesses examined also had no intention to send him to jail. But, they want only that he must be given some punishment for the wrong committed by him to realise his mistake. So, under the circumstances, the substantive sentence as well as the fine of Rs.50,000/- imposed by the court below appears to be harsh. Considering the circumstances and also considering the fact that they were living separately now for nearly seventeen years and the revision petitioner is more than 65 years now, this court feels that imposing a fine of Rs.10,000/- with default sentence of simple imprisonment for two months will be sufficient and that

will meet the ends of justice and if the fine amount is realised, Rs.8,000/- can be given to PW1 as compensation under Section 357(1)(b) of Code of Criminal Procedure. So, the sentence imposed by the court below and confirmed by the appellate court are set aside and the same is modified as follows:

The revision petitioner is sentenced to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two months. If the fine amount is realised, an amount of Rs.8,000/- be paid to PW1 as compensation under Section 357(1)(b) of 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.

Bb

[True copy]

P.A to Judge