



CrI. Appeal No. 3 of 2007

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE JOHNSON JOHN  
THURSDAY, THE 4<sup>TH</sup> DAY OF JANUARY 2024 / 14TH POUSHA, 1945  
CRL.A NO. 3 OF 2007  
JUDGMENT SC 581/2002 OF ADDITIONAL DISTRICT COURT (ADHOC)-II,  
THIRUVANANTHAPURAM  
CP 13/2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,ATTINGAL

APPELLANT/ACCUSED NO.1:

SREEKUMAR,§

BY ADVS.  
SRI.K.P.MAJEED  
SMT.M.ISHA  
SRI.T.H.ABDUL AZEEZ  
SRI.P.ANOOP MULAVANA  
SRI.M.CHANDRAN

RESPONDENT/COMPLAINANT:

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

BY ADV. SRI. PRASANTH M.P., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.12.2023, THE COURT ON  
04.01.2024 DELIVERED THE FOLLOWING:

**'CR'****JOHNSON JOHN, J.**-----  
Crl. Appeal No. 3 of 2007  
-----Dated this the 4<sup>th</sup> day of January, 2024.**JUDGMENT**

The appellant, who is the first accused in S.C. No. 209 of 2001 of the Court of Additional District and Sessions Judge, Fast Track (Adhoc-II), Thiruvananthapuram, filed this appeal challenging the conviction and sentence imposed on him for the offence punishable under Section 498A IPC as per the judgment dated 16.11.2006.

2. The appellant/first accused was prosecuted along with his mother, the second accused, for the offence punishable under Section 304B r/w Section 34 IPC on the allegation that after the marriage of the first accused with the daughter of PW8 on 21.05.1995 and while the daughter of PW8 was residing in the matrimonial house along with accused persons, they subjected her to physical and mental cruelty demanding more dowry and unable to bear the cruelty, the daughter of PW8 poured kerosene over her body and set fire to herself at 4.15 p.m. on 05.12.1998 and thereafter, while undergoing treatment in Medical College Hospital, Thiruvananthapuram, she succumbed to her injuries at



6.50 a.m. on 8.12.1998 and the accused are thereby alleged to have committed the offence as aforesaid

3. Exhibit P1(a) FIR was registered under Section 174 Cr.P.C on 08.12.1998 on the basis of Exhibit P1 First Information Statement of PW1, who is the brother of the father of the deceased. After completing the investigation, final report was filed by PW18, Deputy Superintendent of Police, Attingal, and after committal, the case was taken on file as S.C. No. 209 of 2001.

4. The trial of the case was conducted before the Court of Additional District and Sessions Judge, Fast Track (Adhoc-II), Thiruvananthapuram and from the side of the prosecution PWs 1 to 18 were examined and Exhibits P1 to P9 and MOs 1 to 3 were marked. From the side of the accused, DW1 was examined and Exhibits D1 and D2 were marked.

5. After considering the oral and documentary evidence on record and after hearing both sides, the learned Additional Sessions Judge, by the impugned judgment dated 16.11.2006, convicted the first accused for the offence under Section 498A IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for six months.



6. Heard Sri. K. P. Majeed appearing for the appellant and Sri. Prasanth M.P., the learned Public Prosecutor.

7. The point that requires consideration is whether the conviction and sentence imposed on the appellant for the offence under Section 498A IPC is legally sustainable.

8. The learned counsel for the appellant argued that the evidence in this case clearly proves that it is an accidental death which occurred while the deceased was in the kitchen and when her sari caught fire from the kerosene stove, while she was boiling milk for her child and that there is no evidence in this case to indicate the presence of kerosene in her body and the court below even after arriving at a finding that there is no evidence of cruelty against the deceased from the side of accused persons soon before her death so as to attract the offence under Section 304B IPC, recorded a finding that the appellant/first accused committed the offence under Section 498A IPC.

9. It is also argued that the said finding of the court below was without framing a charge for the offence under Section 498A IPC and without satisfactory evidence to arrive at a finding that the appellant/first accused subjected the deceased to cruelty as defined in the explanation to Section 498A IPC. But, the learned Public Prosecutor argued that the evidence of PWs 1, 2 and 8 to 12 will clearly show that



the appellant/first accused used to manhandle the deceased demanding money for the construction of the house, and since the prosecution has proved that the appellant/first accused subjected the deceased to mental and physical cruelty, there is nothing wrong in convicting him for the offence under Section 498A IPC, even though he was charged and acquitted under Section 304B IPC, as cruelty is a common essential to both the Sections and the difference is that under Section 304B of IPC, cruelty or harassment soon before death is to be proved and the occurrence must be within 7 years of the marriage and no such ingredients are prescribed in Section 498A IPC.

10. The learned counsel for the appellant argued that the deceased sustained the burn injuries at 4.15 p.m., on 05.12.1998 and she succumbed to her injuries only at 6.50 a.m. on 08.12.1998 and it is not in dispute that the victim was fully conscious and able to talk to others during this period and the prosecution has suppressed the treatment records of the deceased and has also not examined the doctor who treated the deceased at Medical College Hospital, Thiruvananthapuram and there is nothing in evidence to show that the deceased made any allegations against the accused persons in connection with the occurrence, and if in fact she was subjected to cruelty as alleged by the prosecution, she could have mentioned the said fact to the doctor who treated her or to her relatives and it is a normal



procedure on the part of the doctor to ascertain the cause of injury from the patient and the only inference possible from the non production of the said treatment records is that the prosecution has deliberately suppressed material evidence.

11. PW1, who is the brother of the father of the deceased, deposed that the victim died due to burn injuries; but it is not known to him whether the victim set fire herself. PW1 stated that the accused used to manhandle the victim by demanding money and the deceased Beena has told him the same. The evidence of PW1 shows that when he visited Beena at Medical College Hospital, Thiruvananthapuram, he asked her about the incident; but, the deceased told him that she will tell the same later. In cross examination, PW1 admitted that at the time of giving statement to the police, he was not aware about the cause of death and that he came to know about the cause of death only later. In cross examination, PW1 categorically admitted that he told the police that it is not known to him why Beena committed this act. In another part of the cross examination, PW1 stated that he sustained an accident after the incident in this case and therefore, he is suffering from loss of memory.

12. PW2, stated that the deceased is his distant relative and about three months before the occurrence, she told him that her



husband is demanding money for the construction of the house and she could not collect money from her house and therefore, requested him to discuss the matter with her husband Sreekumar. In chief examination itself, PW2 stated that he had not given much importance to the same at that time and he was under the impression that it was only a small quarrel between the husband and the wife and he could not meet the husband of the deceased .

13. PW3 is a witness to Exhibit P2 inquest report. PW4 is the Village Officer, who prepared Exhibit P3 scene plan. PW5 is the Sub Divisional Magistrate who prepared Exhibit P2 inquest report.

14. It is not in dispute that the marriage between the first accused and the deceased was on 21.05.1995, and PW6, Devaswom Manager, identified his signature in Exhibit P4 marriage certificate.

15. PW7 was the Sub Inspector of Chirayinkeezhu Police Station who recorded Exhibit P1 First Information Statement on 08.12.1998 and registered Exhibit P1(a) FIR. His evidence further shows that he recovered MO2 stove and MO3 remanence of the sari and skirt worn by the deceased at the time of occurrence as per Exhibit P5 scene mahazar. According to PW7, he produced MOs 2 and 3 before the court as per Exhibit P6 property list. The evidence of PW7 in cross examination shows that at the time when he prepared Exhibit P5 scene mahazar, he was not



sure whether the deceased committed suicide. PW7 further admitted that it was the first accused who pointed out the place of occurrence. The evidence of PW7 further shows that the appellant herein was not arrayed as an accused at the time of preparing Exhibit P5 scene mahazar and therefore, PW7 has not arrested the accused.

16. It is true that PW8, the mother of the deceased, has deposed that the first accused used to beat and hit her daughter by demanding money and when her daughter came there for casting her vote in Parliament election, she told her that the accused inflicted burn injuries on her face with a cigarette and he pressed on her neck and according to PW8, she used to give money to her daughter; but the evidence of PW8 in cross examination would show that there are other issues between the families.

17. According to PW8, when the milk boiling ceremony of the new house of the accused was conducted, her daughter was not allowed to enter the new house with lighted lamp and when she was about to question the accused about the same, her daughter prevented her and thereafter, she returned without eating food from there. PW8, would say that when she asked her daughter about the cause of the incident while her daughter was undergoing treatment in the hospital, her daughter





after looking towards her husband and relatives, told her that she will tell the same later.

18. PW8 also deposed before the court that the accused and his mother told her daughter that they will not allow her daughter to live in the new house even for 10 days. But it is pertinent to note that PW8 has not mentioned when her daughter told the same to her. It is also pertinent to note that PW8 has added that the neighbours also told her about the same, when she reached there for the milk boiling ceremony.

19. The evidence of PW8 in cross examination shows that she was questioned by the police on 9<sup>th</sup>; but she admitted that she has not told the police about giving money to her daughter and she would say that the accused started quarreling with her daughter after the commencement of the construction of the house. PW8 categorically admitted in cross examination that her daughter was fully conscious till her death and she has not told the police that her daughter signalled about the presence of the accused and his relatives when she asked about the cause of the incident. PW8 further admitted that they were not in good terms as it was the mother of the accused who entered the new house with lighted lamp on the occasion of the milk boiling ceremony. When the learned counsel for the defence suggested that the accused attempted to rescue his wife by covering her with his lungi, PW8 only



stated that she did not see the same and to the suggestion that the accused also sustained burn injuries in the incident, the witness answered that she has not witnessed the same.

20. PW9 is a neighbour of PW8 and according to her, one month before the incident, when she saw the deceased, she told her that her husband used to harass her by demanding money for the construction of the house and that her husband will beat her, if she fails to bring the money. In cross examination, PW9 admitted that the deceased is the daughter of the younger brother of her husband. PW9 cannot say the date or time when the deceased told her about the alleged harassment by the accused.

21. PW9 further admitted that she is not aware as to how the deceased sustained burn injuries. According to PW9, even though she asked the victim regarding the cause, the victim only cried and she did not respond to her question. PW10 deposed that she is residing near to the family house of the deceased and two weeks prior to the occurrence, when she met her in the bus stop, the deceased told her that her husband used to harass her for money in connection with the construction of the house and that she came there to collect money from her mother.



22. The evidence of PW10 in cross examination shows that she cannot remember whether she has given such a statement to the police and further her evidence only shows that the deceased has only shared her apprehension that the accused will assault her, if in case she fails to produce money for the construction of the house.

23. PW11 turned hostile to the prosecution and her evidence in chief examination shows that she is not aware about the actual cause of the death. But, in cross examination, she would say that she heard people saying while taking the victim to the hospital that her sari caught fire while boiling milk for the child. PW12 deposed that the deceased is the daughter of the younger sister of her mother and that the husband of the deceased used to beat the deceased demanding money.

24. But, the evidence of PW12 in cross examination would show that it was the mother of the deceased who told her about the harassment. In cross examination, PW12 denied that she told the police that it was Biju, the brother of the deceased who informed her through phone about the death of the deceased and the relevant portion of her statement to the police is marked as Exhibit D1. PW12 also denied that she told the police that on 05.12.1998, at 5.30 p.m., she was informed through phone that her sister Beena is undergoing treatment in Medical



College Hospital, Thiruvananthapuram for burn injuries and the said portion in her statement to the police is marked as Exhibit D2.

25. In cross examination, PW12 also categorically admitted that during night, there is no entry for men to the female ward and during night, her mother and the mother of Beena were there in the hospital. In another part of the cross examination, she stated that the mother of Beena told her that the husband of Beena is subjecting Beena to cruelty and that the mother of Beena used to tell her the same whenever they meet.

26. PW13 is a neighbour who reached the place of occurrence on hearing the cries and according to him, Beena was standing there with burn injuries and they covered her with a lungi and took her to the hospital . He denied that he told the police that the accused used to manhandle his wife and he was declared hostile to the prosecution. However, he stated that there used to be small quarrels between the accused and his wife and for the last 20 years, he is their neighbour.

27. PW14 is the doctor who conducted the postmortem and according to PW14, the death was due to burns involving 92% of body surface and the witness cannot remember whether he was questioned by the Investigating Officer. In cross examination, PW14 admitted that the possibility of the clothes catching fire cannot be ruled out and according



to him, it is not possible to differentiate the burn sustained accidentally by clothe catching fire from the burns that have been facilitated by inflammable substances, especially when there is a lapse of time. He further admitted that if there was more than one layer of cloth, that itself can accelerate severity of burn. The evidence of PW14 clearly shows that he conducted the postmortem examination 3 days after the occurrence and in that circumstances, it was not possible to find out the presence of any inflammable substance in the body.

28. PW18 is the Dy.S.P who completed the investigation and filed the final report. In cross examination, he would say that he questioned the doctor who treated the deceased and also perused the case sheet. But, according to him, he has not recorded the statement of the doctor. PW18 admitted in cross examination that it was revealed in his investigation that the deceased was conscious till her death. PW18 deposed that the deceased has told the doctor about the cause of injury. But, PW18 would say that the doctor has not prepared any wound certificate.

29. In another part of the cross examination, when it is suggested to PW18 that the deceased has told the doctor that her dress accidentally caught fire and it was in that circumstance the doctor has not given any intimation to the police, the witness answered that it is not



known to him whether the deceased has mentioned anything to the doctor. However, PW18 denied the suggestion that he deliberately suppressed the treatment records of the deceased to suppress the fact that the victim sustained burn injuries when her dress accidentally caught fire.

30. At the time of 313 questioning, the first accused stated that he never subjected his wife to cruelty or harassment and never demanded any money and at the time of occurrence, his wife was dressed for attending a marriage and while he was ironing his dress, his wife went to the kitchen for boiling the milk and thereafter, he heard her cries and reached the kitchen. He would say that when he attempted to save his wife, he also sustained burn injuries and that she was taken to hospital after covering her with his lungi and his wife told the relatives and the doctor that her sari caught fire from the stove and after the death of his wife, he availed treatment for the burn injuries on his hand from the Government Hospital Valiyakunnu. The accused further stated that after 5 days, the brother of his wife along with another relative came to his house and demanded to transfer the ownership of the house to the name of his son and he has not agreed for the same.

31. The brother of the accused is examined as DW1 and according to him, he was also present in the house at the time of occurrence and



that he went there to attend a marriage in a nearby house. He deposed that while he was talking to his brother Sreekumar and wife Beena, the deceased Beena went to the kitchen for boiling the milk and subsequently they heard her cries from the kitchen and when they reached the kitchen, they saw the sari of Beena burning in fire and when his brother Sreekumar attempted to extinguish the fire with his hands, he also sustained injuries and thereafter they covered Beena with a lungi and took her to a hospital at Chirayinkeezhu and thereafter to the Medical College Hospital.

32. According to DW1, the victim told him that her sari caught fire from the hearth. In cross examination, DW1 stated that there was a stove and hearth in the kitchen and he is not sure whether the sari caught fire from the stove or hearth.

33. As noticed earlier, there is no satisfactory explanation from the side of the prosecution for not producing the treatment records of the victim and not examining the doctor who treated the victim in the hospital. Admittedly, the victim was fully conscious for the 3 days while she was undergoing treatment in the Medical College Hospital and as per the usual procedure, the injured could have stated the cause of injury to the doctors who examined her in the hospital.



34. It is pertinent to note that the last incident of cruelty allegedly occurred before the housewarming ceremony of the accused. But, the evidence of PW8 clearly shows that at the time of the house warming ceremony, she returned from there without eating food, for the reason that it was the mother of the accused who entered the new house with the lighted lamp. The evidence of PW8 further shows that when PW8 attempted to question the accused in this connection, it was the deceased who prevented her and therefore, it is clear that there are other issues between the family of PW8 and the accused.

35. In order to prove the offence under Section 498A IPC, the prosecution has to establish the consequences of cruelty which are likely to cause a woman to commit suicide or to cause grave injury or danger.

Section 498A IPC 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.]”

36. It is well settled that every type of harassment or cruelty would not attract the offence under Section 498A IPC and to attract the offence under Section 498A IPC, it must be established that cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or that the harassment was to compel her to fulfil illegal demand for dowry. There is no evidence in this case to show that the deceased has made any complaint against the accused prior to her death regarding the ill treatment or manhandling before any of the authorities and if in fact, she had suffered manhandling either physical or mental, definitely she would have given a proper complaint before the concerned authorities.

37. In this case, there is no satisfactory evidence for any cruelty or harassment to the deceased as a consequence of her failure to meet any demand for dowry and the evidence from the side of the prosecution that the deceased feared or apprehended that her husband will beat her if in case she fails to bring money for the construction of the house, is not sufficient to constitute the ingredients of cruelty or harassment contemplated under Section 498A IPC, as it is well settled that minor quarrels between the spouses in the ordinary



life because of difference of opinion or mere sporadic incidents of ill treatment are not sufficient to establish the offence under Section 498A of IPC.

38. On a careful reappraisal of the entire evidence on record, it is found that the prosecution has suppressed material evidence regarding the treatment of the deceased in the hospital and it is clear from the facts and circumstances that the deceased sustained burn injuries when her sari accidentally caught fire, while she was boiling milk in the kitchen after dressing for attending a marriage function and in view of the hostility between the accused and family members of PW8, for permitting the mother of the accused to enter the new house with the lighted lamp and in the absence of satisfactory evidence regarding cruelty or harassment, the accused is entitled for the benefit of reasonable doubt. The point is answered accordingly. Therefore, the impugned judgment requires to be interfered with and I do so.

39. In the result, this appeal is allowed. The conviction and the sentence passed by the trial court against the accused for the offence punishable under Section 498A IPC as per the impugned judgment is set aside and the accused is acquitted under Section



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235(1) Cr.P.C. His bail bond is cancelled and he is set at liberty forthwith.

Interlocutory applications, if any pending, shall stand closed.

sd/-  
**JOHNSON JOHN,**  
**JUDGE.**

Rv