Valiyakambrath Sreedharan @ Thamban Vs Kerala State

Court: High Court Of Kerala

Date of Decision: Jan. 20, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 397, 401
Indian Penal Code, 1860 â€" Section 306, 498A
Evidence Act, 1872 â€" Section 113A

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: M.Sasindran, K.P.Harish, Sangeetharaj.N.R

Final Decision: Partly Allowed

Judgement

G. Girish, J

1. The petitioner is the accused in S.C.No.20/1998 on the files of the Assistant Sessions Court, Payyannur. He was convicted under Section 498A

I.P.C and Section 306 I.P.C by the learned Assistant Sessions Judge and sentenced to undergo rigorous imprisonment for one year under Section

498A I.P.C and rigorous imprisonment for three years under Section 306 I.P.C. In the appeal preferred before the Sessions Court, Thalassery as

Crl.A.No.10/2000, the learned Sessions Judge set aside the conviction and sentence awarded for the offence under Section 306 I.P.C. However, the

conviction and sentence awarded by the Trial Court under Section 498A I.P.C were upheld. Aggrieved by the above judgment dated 01.08.2006 of

the Sessions Court, Thalassery, the petitioner is here before this Court with this revision petition.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

3. The prosecution case arose out of the suicide of one Lalitha, the wife of the petitioner herein, along with the two daughters of the petitioner and the

said lady, by jumping into the river Vannathipuzha on 19.06.1996. The reason for the above mass suicide was the physical and mental cruelty meted

out to the above said Lalitha by the petitioner herein. It is also stated that the petitioner maintained illicit relationship with another lady of his

neighbourhood, and that deceased Lalitha had the misfortune to see the petitioner indulging in sexual intercourse with the above said concubine of the

petitioner. The deceased and her two daughters resorted to the extreme step of terminating their lives by jumping into a river on the next day after the

petitionerÃ¢â‚¬â„¢s wife had seen the petitioner sharing bed with his concubine.

4. Before the Trial Court, the prosecution relied on the evidence of PW1 to PW7 and the documents marked as Exts.P1 to P15, in addition to the

material objects identified as MO1 to MO6. The Trial Court, reposed upon the evidence of PW1, PW2, PW9 and PW10 to arrive at the finding that

the severe mental and physical cruelty inflicted by the petitioner upon the deceased Lalitha had compelled her to commit suicide along with her

daughters. On the basis of the above finding, the petitioner was convicted and sentenced by the learned Assistant Sessions Judge for the commission

of offence under Section 498A I.P.C and Section 306 I.P.C.

5. In the appeal, the learned Sessions Judge made a re-appreciation of the entire evidence and arrived at the finding that the evidence adduced by the

prosecution convincingly establish the cruelty meted out to the deceased Lalitha by the petitioner herein. The Appellate Court also placed reliance

upon the presumption under Section 113A of the Evidence Act to conclude that the petitioner was guilty of matrimonial cruelty inflicted upon his wife.

However, it was observed that the necessary mens rea to attract the offence under Section 306 I.P.C was not brought out by the prosecution, and

hence the charge in the above regard will not lie. The Appellate Court arrived at the categoric finding that the act of the petitioner maintaining illicit

relationship with a lady in his neighbourhood, amounted to severe mental cruelty coming under the purview of Section 498A I.P.C.

6. It is seen from the case records that there is clinching evidence adduced by the prosecution that the deceased lady had the unfortunate occasion to

see her husband sharing bed with another lady on the day prior to the date of her suicide. PW2, a neighbour of the petitioner was called and brought to

her house by the deceased on the night of 18.06.1996 when she found her husband indulging in sexual intercourse with another lady in the bedroom of

that house. PW2 gave evidence before the Trial Court that he was called by the deceased Lalitha and brought to her house in the night of 18.06.1996,

and that when he looked through the window of that house applying torch light, he found the petitioner sharing bed with another lady. It is on the next

day that the petitionerÃ¢â‚¬â„¢s wife and two daughters preferred to end their lives by jumping into the river. The conduct of the petitioner in the above

regard would definitely amount to mental cruelty of the highest grade which had driven his wife and daughters to commit suicide. There is absolutely

no illegality or impropriety in the finding of the Appellate Court that the prosecution has successfully established the commission of the offence under

Section 498A I.P.C by the petitioner. It is not possible to interfere with the aforesaid findings in a proceedings of revision.

7. The proposition of law upon the scope of interference in revision, is well settled by a catena of decisions of the Hon'ble Supreme Court.

8. In State of Kerala v. Jathadevan Namboodiri : AIR 1999 SC 981, the Hon'ble Supreme Court held as follows:

Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence

has already been appreciated by the Magistrate as well as Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which

would otherwise tantamount to gross miscarriage of justice.

Ã, 9. In Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr : 2015 (3) SCC 123, it has been held by the Hon'ble Supreme Court as

follows:

Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is

sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material

or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision

in exercise of their revisional jurisdiction.

Ã, 10. Referring the above dictums, the Apex Court has observed in Kishan Rao v. Shankargouda : 2018 (8) SCC 165 as follows:

Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan vs. Dattatray

Gulabrao Phalke and others, 2015 (3) SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the

Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground

that another view is possible. Following has been laid down in paragraph 14:

Ã¢â‚¬Å“14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any

relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is

possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to

do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated

with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous

or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is

exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.Ã¢â‚¬â€‹

Ã, 11. Therefore, there is absolutely no reason to interfere with the findings of courts below leading to the conviction of the petitioner for the

commission of offence under Section 498A I.P.C. However, taking into account the fact that the petitioner is presently aged 60 years, and the offence

took place more than a quarter of a century ago, I feel that the sentence of rigorous imprisonment of one year imposed by the courts below has to be

modified to simple imprisonment for six months.

Ã, In the result, the revision petition is allowed in part as follows:

Ã, i) The conviction of the petitioner for the commission of offence under Section 498A I.P.C is upheld.

Ã, ii)Ã, Ã, TheÃ, sentenceÃ, awardedÃ, forÃ, theÃ, aforesaidÃ, offenceÃ, is modified as simple imprisonment for six months.

Ã, iii) The petitioner will be entitled to set off for the period of detention already undergone in this case.