

(2017) 08 KL CK 0017

High Court Of Kerala

Case No: 62 of 2010

UNNIKRISHNAN @ CHANDU

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

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**Date of Decision:** Aug. 17, 2017**Acts Referred:**

- Code of Criminal Procedure, 1973, Section 313, Section 386(B)(i) - Power to examine the accused - Power of the Appellate Court
- Indian Penal Code, 1860,

**Hon'ble Judges:** P.Ubaid**Bench:** SINGLE BENCH**Advocate:** P.K.MOHANAN(PALAKKAD), C.S. HRITHWIK

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**Judgement**

1. The appellant herein challenges the conviction and sentence against him under Section 498A IPC in S.C.No.650 of 2006 of the Court of Session, Palakkad. The said case relates to the commission of suicide by one Pushpalatha by burning herself. Pushpalatha abandoned her parents, and left the house, and thereafter joined the appellant. They started living as man and wife, sans a legal marriage, and it was only a live-in relationship. They continued the relationship for about four years. On 03.10.2005, Pushpalatha burnt herself, and on 07.10.2005, she died at the hospital due to extensive burns, while undergoing treatment. Her mother made a complaint before the Police, on the basis of which the Police registered a crime, and after investigation, the Police submitted final report in Court against the appellant under Sections 498A and 306 IPC.

2. The prosecution case is that deceased Pushpalatha had been subjected to much mental and physical cruelty and harassment by the accused by a course of cruel conduct, and when she found it unbearable, she burnt herself to death.

**3.** On committal, the case came up before the Court of Session, from where it was made over to the learned Additional Sessions Judge (Adhoc-III), Palakkad, for trial and disposal.

**4.** The accused appeared before the trial court, and pleaded not guilty to the charge framed against him under Sections 498A and 306 IPC. The prosecution examined 17 witnesses in the trial court, and proved Exts.P1 to P15 documents, including the statements given by the deceased under Section 32 of the Indian Evidence Act. The learned Judicial Magistrate, who recorded the statement, is one of the 17 witnesses examined in the trial court.

**5.** When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances, and projected a defence that he had not at any time treated deceased Pushpalatha with any sort of cruelty, and that their live-in relationship had been quite cordial and happy.

**6.** On an appreciation of the evidence, the trial court found the accused not guilty under Section 306 IPC, and accordingly, he was acquitted of the said offence, but the trial court found the accused guilty under Section 498A IPC. On conviction, he was sentenced to undergo rigorous imprisonment for two years, and to pay a fine of ₹5,000/-, by judgment dated 22.12.2009. The said judgment of conviction is under challenge in this appeal.

**7.** The learned counsel for the appellant submitted that the factual aspects as regards the allegations of cruelty need not be probed into in this case, because the conviction cannot be sustained under the law for the reason that the accused had not at any time married deceased Pushpalatha in accordance with the customary rites and ceremonies. The legal issue raised by the appellant is that for a conviction under Section 498A IPC, there must be a legal relationship of husband and wife between the deceased and the accused.

**8.** Even according to the prosecution, there had only been a live-in relationship between the deceased and the accused. PWs 1 and 2 are the parents of the deceased. Their evidence is that some four years prior to the commission of suicide, Pushpalatha left the house by abandoning the parents, and she joined the accused. She started living with him, and they thus continued to live as man and wife for about four years. The parents do not know the cause of death, or why Pushpalatha committed suicide. They have no case in evidence that Pushpalatha had been treated cruelly by the accused, or that she had been mentally or physically harassed by the accused during the four years of their live-in relationship.

**9.** The prosecution very much relied on the Ext.P3 statements of the victim recorded

under Section 32 of the Indian Evidence Act. PW17 is the learned Magistrate who proved the Ext.P3 statements, and PW6 is the doctor who certified the fit mental condition of the deceased to give such a statement. In this statement, deceased Pushpalatha has given clear indication as to why she decided to commit suicide, or in what circumstance, she decided to put an end to her life. The trial court did not accept the dying declaration, and found that the statement does not contain anything definite proving the circumstances that led to the commission of suicide, or proving the intentional or voluntary acts of the accused, leading the deceased to the commission of suicide. There is nothing in the evidence of the parents of the deceased or the other witnesses, including the neighbours to prove cruelty. The only material to prove the alleged acts of cruelty is the Ext.P3 statement. But the court below was not inclined to act upon it for a conviction under Section 306 IPC. Accordingly the accused was found not guilty under Section 306 IPC. However, on the basis of the statements of the deceased revealing the cruel acts she had to undergo during the four years of her live-in relationship with the accused, the learned trial Judge found the accused guilty under Section 498A IPC.

**10.** The trend of the earlier decisions was that for a conviction under Section 498A IPC, the prosecution must prove a valid marital relationship between the deceased and the accused. There occurred a change in the trend when the Honourable Supreme Court interpreted Section 498A IPC in view of the absence of the definition of the word "husband", and held that even long co-habitation as man and wife will attract a prosecution under Section 498A IPC. The Honourable Supreme Court so decided in *Reema Agarwal v. Anupam* (2004 (2) KLT 822 SC), and later in *Koppiseti Subbharao @ Subrahmaniam v. State of Andhra Pradesh* (AIR (2009) SC 2684). In *Koppiseti Subbharao*'s case, the Honourable Supreme Court held in Paragraph 6 of the judgment thus, "..... there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married, but also any one who has undergone some or other form of marriage, and thereby assume for himself the position of husband to live, co-habitat and exercise authority as such husband over another woman .....".

**11.** It is pertinent to note that prior to the above decisions, a three Judge Bench of the Honourable Supreme Court had decided otherwise, that the mental or physical harassment of a lady who had not been legally married by the accused, will not attract a prosecution under Section 498A IPC. In *Shivcharan Lal Verma and Another v. State of Madhya Pradesh* [2002 (2) Crimes 177 SC] = [JT 2002 (2) SC 641], the three Judge Bench held that for a prosecution under Section 498A IPC, there must be a valid marital relationship between the accused and the victim. That is a case where a second wife committed suicide, allegedly due to the acts of cruelty of her husband and the former wife. The victim's marriage with the accused in the said case was void ab initio. For the said reason, the Honourable Supreme Court held that a

conviction under Section 498A cannot be sustained. The decision was followed by the Honourable Supreme Court later in *U. Suvetha v. State by Inspector of Police and Another* ((2009) CrI.L.J. 2974). Following the decision of the Honourable Supreme Court cited above in *Shivcharan Lal Verma's* case, this Court also held in *Suprabha v. State of Kerala* (2013 (3) KLT 514) that, only a legally wedded wife can claim the protection under Section 498A IPC, and that in the absence of such a legal relationship as husband and wife, there cannot be a conviction under Section 498A IPC. In the present case, the relationship of the accused and the deceased was only a live-in relationship. Even in *Koppiseti Subbharao's* case, the Honourable Supreme Court held that the parties must have undergone some sort of ceremonies with the object of getting married. In this case, the parties, admittedly, had not undergone any such ceremony, and they just started living as man and wife. Thus, I find that on legal ground itself, the accused is entitled for acquittal. In the above circumstances, it is not necessary to go into the factual aspects as regards the allegation of cruelty and harassment. In the result, the appeal is allowed. The appellant is not found guilty of the offence under Section 498A IPC, and he is acquitted of the said offence in appeal under Section 386(b)(i) of Cr.P.C. Accordingly, the conviction and sentence against him in S.C.No. 650 of 2006 of the court below will stand set aside. The appellant is released from prosecution, and the bail bond, if any, executed by him will stand discharged.