



HIGH COURT OF SIKKIM, GANGTOK
(Criminal Appellate Jurisdiction)

Crl. A. No. 25/2014

Krishna Bahadur Rawat (Chettri),
S/o Late Tharka Bahadur Rawat (Chettri),
R/o 8th Mile, Budang, Soreng,
West Sikkim.

... **APPELLANT/
CONVICT**

Versus

State of Sikkim.

... **RESPONDENT**

**Criminal Appeal under Section 374(2) of the Code of
Criminal Procedure, 1973**

Appearance :

Mr. K. T. Bhutia, Senior Advocate with Ms. Bandana Pradhan and Ms. Nisha Rajliwal, Advocates for the Appellant.

Mr. Karma Thinlay, Addl. Public Prosecutor with Ms. Pollin Rai, Asstt. Public Prosecutor for the State.

**J U D G M E N T****(10.03.2015)**

Following Judgment of the Court was delivered by
SUNIL KUMAR SINHA, ACTING CHIEF JUSTICE -

1. This Appeal is directed against the Judgment dated 16.07.2014 passed in Sessions Trial Case No. 02/2014 by the Sessions Judge, West Sikkim, Gyalshing. By the impugned judgment, while recording the acquittal of the Appellant under Section 306 IPC, he has been convicted under Section 498-A IPC and sentenced to undergo S.I. for one year and to pay a fine of Rs.1,000/- with default sentence of S.I. for 3 months.

2. The facts, briefly, stated are as under: -

2.1 Deceased Pinky Chettri was wife of the Appellant. She was married to the Appellant some time in 2001. They had a minor daughter, aged about 12 years. She was studying in seventh standard. The deceased was living with the Appellant at 8th Mile, Budang, Soreng, West Sikkim. She was missing since the evening of 31.10.2010 and ultimately, her dead body was found in hanging condition from the branch of a tree in a nearby field on 01.11.2010.



2.2 A First Information Report (F.I.R.) was lodged on 01.11.2010. The investigation revealed that deceased had committed suicide by hanging in the intervening night of 31.10.2010 and 01.11.2010. It also came in the investigation that the deceased was being treated with cruelty by the Appellant and the Appellant had abetted the commission of suicide by the deceased.

2.3 The Appellant, thus, was tried for offences punishable under Section 306 and 498-A IPC. The Sessions Judge, on a close scrutiny of the entire evidence adduced before her, recorded a finding that the prosecution could not establish that the deceased had committed suicide on the abetment of the Appellant. The Appellant, therefore, was acquitted of the charges framed under Section 306 IPC. However, relying on the testimonies of Santa Kumar Chettri (P.W. 15) and Krishna Kumari Chawan (P.W. 17), the Sessions Judge held that the deceased was treated with cruelty by the Appellant, therefore, Appellant was liable for punishment under Section 498-A IPC. The Appellant thus was convicted and sentenced as above. Hence, this Appeal.

3. Mr. K. T. Bhutia, learned Senior Counsel appearing on behalf of the Appellant, has argued that the evidence with relation to cruelty



was not cogent and clinching; Santa Kumar Chettri (P.W. 15) is cousin brother of the deceased; he deposed about some incident of 2004. Even if his evidence is taken as reliable, the said incident was not in a close proximity. Krishna Kumari Chawan (P.W. 17) is mother of the deceased; her evidence also was not reliable so as to record conviction under Section 498-A. He further contended that it comes on record that the deceased had developed extra-marital relation with someone, which, in fact, was the cause of her suicide and petty quarrels had also taken place on the said pretext. He cited the decision of ***Manju Ram Kalita v. State of Assam : (2009) 13 SCC 330.***

4. On the other hand, Mr. Karma Thinlay, learned Additional Public Prosecutor appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court. He also argued that the offence under Section 498-A is a continuing offence, therefore, even if the alleged cruelty was not in close proximity, it would make no difference. He emphasized upon the evidence of Santa Kumar Chettri (P.W. 15) and Krishna Kumari Chawan (P.W. 17) and argued that cruelty was proved on the evidence of these two witnesses, therefore, the conviction was fully justified.

5. I have heard the Counsel for the parties.



6. In ***Manju Ram Kalita*** (supra), Hon'ble Supreme Court considered the proof of cruelty, proximity test as also the impact of cruelty not being continuous and held that "cruelty" for purpose of Section 498-A IPC is to be established in that context, as it may be different from other statutory provisions. It is to be determined/ inferred by considering conduct of the man, weighing gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging of complaint. Petty quarrels cannot be termed as "cruelty" to attract provisions of Section 498-A IPC. It was held that causing mental torture to the extent that it becomes unbearable may be termed as cruelty. In the said decision, many judgments were considered by the Supreme Court vide paragraphs 17 to 20, I quote: -

"17. In *Mohd. Hoshan v. State of A.P. : (2002) 7 SCC 414*, this Court while dealing with the similar issue held that mental or physical torture should be *continuously* practiced by the accused on the wife. The Court further observed as under: (SCC p. 418, para 6)

"6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education, etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

18. In *Raj Rani v. State (Delhi Admn.): (2000) 10 SCC 662* this Court held that while considering the case of cruelty in the context



of the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

19. In *Sushil Kumar Sharma v. Union of India* : (2005) 6 SCC 281 this Court explained the distinction of cruelty as provided under Sections 306 and 498-A IPC observing that under Section 498-A cruelty committed by the husband or his relation drives the woman to commit suicide, etc. while under Section 306 IPC, suicide is abated (*sic* abetted) and intended. Therefore, there is a basic difference of the intention in application of the said provisions.

20. In *Girdhar Shankar Tawade v. State of Maharashtra*: (2002) 5 SCC 177 this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498-A IPC and there should be a case of *continuous* state of affairs of torture by one to another.

7. Let us now examine the evidence of Santa Kumar Chettri (P.W. 15) and Krishna Kumari Chawan (P.W. 17) in light of the above principles laid down by the Supreme Court.

8. Santa Kumar Chettri (P.W. 15) is cousin brother of the deceased. He deposed that during the year 2004, he was residing in Jorethang. The Appellant and the deceased were also residing in Jorethang. On one evening, deceased came to his house and told him crying that she was assaulted by the Appellant. She had spent that night in his house. On the following morning, the Appellant came to his house with one H. S. Chawan of Budang. The Appellant saw the deceased in his house and pulled her out from the house and assaulted her in his presence and in presence of H. S. Chawan. Thereafter, the deceased was taken by the Appellant. He also deposed about another incident of 2010, which, according to him,



took place 6-7 months before the deceased committed suicide. This time, he received a phone call from Budang stating that there was a fight between the Appellant and his wife Pinky (deceased) and that during the said fight, the Appellant also manhandled his father (Santa Kumar Chettri's father). Hearing the above phone call, he rushed to Budang and found that the Appellant was quarreling with his brother and his brother was asking the Appellant as to why he manhandled his father.

9. Krishna Kumari Chawan (P.W. 17) is mother of the deceased. She also deposed about the assault given by the Appellant to the deceased in Jorethang. According to her, she had heard all these. She further deposed about an incident while the Appellant and deceased were residing in her house. According to her, one day Appellant had assaulted the deceased in her house. When she intervened, she was also assaulted by the Appellant.


10. In appreciation of evidence of these witnesses, it becomes clear that Santa Kumar Chettri (P.W. 15) deposed about the single incident of assault of the year 2004. According to him, at that time one H. S. Chawan of Budang was also present. H. S. Chawan has not been examined by the prosecution. Thus, for this incident, solitary evidence of Santa Kumar Chettri (P.W. 15) remains on record. The second incident of 2010 had not taken before Santa Kumar Chettri



(P.W. 15) as he was informed by somebody on telephone. Even, when he reached to Budang, he found that the Appellant was quarreling with his brother and not with the deceased. Krishna Kumari Chawan (P.W. 17), mother of the deceased, has also deposed that the deceased and the Appellant had resided in her house for about 5 (five) years and during this period, she can only found a single incident of quarrel between them.

11. Whether, on such incident of petty quarrel in the year 2004, the Appellant was liable for conviction under Section 498-A on a complaint made on 01.11.2010? The principles laid down in **Raj Rani** (supra) by the Supreme Court would show that while considering the case of cruelty in the context of the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

12. We must keep in mind that so far as Section 498-A IPC is concerned, cruelty has to be understood having a specific statutory meaning provided under the said section. A casual incident of assault or petty quarrel between husband and wife cannot be taken as proof of cruelty as is required under Section 498-A. Unless there is a continuous state of affairs of torture, petty quarrels and simple family



affairs between husband and wife would not prove the cruelty between them for the purpose of Section 498-A.

13. What the cruelty would mean for the purpose of Section 498-A has been defined in the *Explanation* to the said Section, which 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.

In the instant case, I do not find an element of cruelty as per the evidence of the above prosecution witnesses, who simply deposed about the two old instances of quarrel between husband and wife.

14. Tulshi Chettri (P.W. 23) is *bhabhi* of the Appellant. It comes in her evidence that the deceased had some affair with another boy. Tulshi Chettri (P.W. 23) was residing in the neighbourhood of the deceased. She clearly deposed that the deceased had an affair with one sir (teacher) of EIILM University. It appears that for the above reasons, the relation between the couple was not cordial.

15. On the above discussions, I find that it was not a case in which the deceased was subjected to cruelty continuously or persistently or



even in close proximity of time of lodging of the report in November, 2010. I am of the view that on an incident of petty quarrel of 2004 and on an other incident of petty quarrel of 2010, the conviction of the Appellant under Section 498-A IPC was not justified.

16. For all these reasons, the appeal is allowed. The conviction and sentences awarded to the Appellant under Section 498-A IPC are set aside. The Appellant is acquitted of charges framed against him. The Appellant is on bail. His bail bonds are cancelled and surety stands discharged.

Sd/-

(Sunil Kumar Sinha)
Acting Chief Justice
10.03.2015

Approved for Reporting : Yes/No.
Internet : Yes/No.

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