

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2018

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL APPEAL NO.355 OF 2010

BETWEEN

SRINIVASA GOWDA,
S/O LATE THIMMEGOWDA,
AGED ABOUT 39 YEARS,
R/AT HALENAHALLI VILLAGE,
MUDURE HOBLI,
DODDABALLAFURA TALUK,
BENGALURU RURAL DISTRICT.

... APPELLANT

(BY SRI. KEMPARAJU, ADVOCATE FOR M/S
A. LAWMEN'S CHAMBER)

AND

STATE OF KARNATAKA BY
DODDABELAVANGALA POLICE
REP. BY STATE PUBLIC PROSECUTOR.

... RESPONDENT

(BY SRI. CHETAN DESAI, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2)
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF
CONVICTION AND SENTENCE DATED 11.03.2010
PASSED BY THE PRESIDING OFFICER, FAST TRACK
COURT-III, BENGALURU RURAL DISTRICT,
BENGALURU, IN S.C.NO. 232/2007 - CONVICTING THE
APPELLANT/ACCUSED NO.1 FOR THE OFFENCE
PUNISHABLE UNDER SECTION 498-A OF IPC. THE

APPELLANT/ACCUSED NO.1 SENTENCED TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF TWO YEARS AND FINE OF RS. 5,000/- IN DEFAULT, FURTHER HE SHALL UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF THREE MONTHS, FOR THE OFFENCE PUNISHABLE UNDER SECTION 498-A OF IPC. THE DEFAULT SENTENCE SHALL RUN SEPARATELY AFTER THE EXPIRY OF MAIN SENTENCE OF IMPRISONMENT OF TWO YEARS.

THIS CRL.A. COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by accused No.1 in S.C. No. 232/2007, challenging the judgment of conviction and order of sentence dated 11.03.2010, passed by the Presiding Officer, Fast Track Court – III, Bangalore Rural District, convicting the accused No.1-appellant herein for the offence punishable under Section-498-A of IPC and sentencing him to undergo simple imprisonment for a period of two years and to pay fine of Rs. 5,000/- and in default, to undergo simple imprisonment for a further period of three months. The default sentence was ordered to run separately.

2. The case of the prosecution, in brief, is as follows:-

The deceased Annapoornamma was given in marriage to accused No.1 on 03.06.1994. Subsequent to her marriage, she was blessed with three children. It transpires that the accused No.1 along with his mother accused No.2 were not allowing Annapoornamma to visit her parental house and they used to subject her to both mental and physical harassment. On 08.09.2005, during night hours the accused No.1 is said to have picked up a quarrel with her under the guise that the shed of the poultry farm which they had established by obtaining loan had collapsed as a result of which he had incurred loss. Hence, angrily, he had told her to go somewhere and die. Being unable to bear the said torture and on account of abetment by her husband, deceased Annapoornamma committed suicide on 09.09.2005 at 8.00 p.m. by consuming pesticide. On the basis of the complaint lodged by Bettaswamaiah, the father of the deceased, a case was registered in Crime No. 75/2005 of Doddabelavangala police. After completion of

investigation, a charge sheet was filed against the accused for the offences punishable under Sections 498-A and 306 read with Section 34 of IPC, wherein the accused pleaded not guilty to the charge framed and claimed to be tried. In order to prove its case, the prosecution in all examined 11 witnesses and got marked 8 documents as at Ex.P.1 to P.8. On behalf of the accused, accused No.1 was examined as DW-1, elder sister of the deceased namely Pushpalatha was examined as DW-2 and son of the deceased and accused, namely Mithun Gowda was examined as DW-3 and 07 documents were got marked as at Ex.D.1 to D.7.

On appreciation of the oral and documentary evidence let in by the prosecution, by the impugned judgment of conviction and order of sentence, the Trial Court acquitted accused No.2, the mother-in-law of the deceased for all the charges levelled against her. The accused No.1 also has been acquitted for the offence punishable under Section 306 of IPC. However, the accused No.1, the husband of the deceased has been convicted for the offence punishable under Section 498-A

of IPC and has been imposed sentence as stated supra. Being aggrieved by the same, the present appeal is preferred by accused No.1.

3. Heard Shri Kemparaju, learned counsel for the appellant and Shri Chetan Desai, learned Government Pleader for the State.

4. Shri. Kemparaju, learned counsel appearing for the appellant vehemently contended that the deceased had a boundless love towards her husband's family and she was very much depressed due to the loss caused by the collapse of their poultry farm which they had established by obtaining a bank loan. Added to it, her husband also incurred huge loss due to the fact that their lorry had met with an accident recently. These losses had tormented her very much and she had gone to depression and hence she had committed suicide by consuming pesticides. He further contended that except the evidence of P.W-1, the father of the deceased, there was no corroborative evidence to prove the guilt of the accused that he was the one who had instigated her to commit

suicide. Smt. Pushpalatha, the elder sister of the deceased who has been cited as witness for the prosecution (C.W.6) has been examined as witness on behalf of the accused as DW-2. She has stated that there was no physical or mental harassment given to her younger sister (deceased) by the accused. After collapse of the poultry farm which they owned, her sister died and that she was suffering from stomach ache from the beginning. Apart from this, DW-3 - Mithun Gowda, who is none other than the 16 year old son of the deceased also has not deposed against the accused. The deceased Annapoornamma died after a long lapse of 11 years from the date of her marriage. Hence, there was no cogent evidence adduced by the prosecution to establish the guilt of the accused beyond reasonable doubt. When the Trial Court, based on the evidence let in by the prosecution has acquitted the accused for the offence punishable under Section 306 of IPC, the Trial Court ought to have acquitted the accused for the offence punishable under Section 498-A IPC as well by extending benefit of doubt. Therefore, the trial Court has failed to appreciate the

evidence on record in a proper perspective and has misdirected itself in convicting the accused. Hence, he pleads that the appeal be allowed and the accused be acquitted for the offences alleged against him.

5. On the other hand, Shri Chetan Desai, learned Government Pleader for the State submits that though the counsel for the appellant has contended that the deceased had a boundless love for the family of the accused and hence as a result of depression due to the fact that her husband had incurred huge losses that she committed suicide, it is evidenced from the deposition of PW-1, father of the deceased that when he went and saw the dead body of his daughter in the hospital, none of the family members of the accused were present. Even till the next day when the body was handed over, the family members of the accused were not present in the hospital. The accused had run away from the spot leaving behind the dead body of his wife and he had not even bothered to give a complaint and it was the father of the deceased who had lodged a complaint. This conduct of the accused

establishes his guilt of his abetment. Moreover, the harassment meted out to the deceased was inside the four corners of the wall and it cannot be said that the accused had not abetted her to commit suicide. Hence, he submits that the Trial Court, on appreciation of the evidence on record in a proper perspective, has rightly convicted the accused for the offence alleged against him and hence, he prays for dismissal of the appeal.

6. On hearing the counsel for the parties, the point that arises for consideration in this appeal is,

“Whether the court below was justified in convicting the accused for the offence punishable under Section 498-A IPC?”

On hearing the contentions advanced by the learned counsel for the parties and on an evaluation of the material on record, it is to be seen that PW-1, the father of the deceased is the complainant in the case who lodged complaint against the accused as per Ex.P.1. PW-2 is the relative of the deceased and witness for inquest mahazar Ex.P.3. PW-3 is the mother of the deceased. PW-4 was a

resident of Vadegatta, who informed about the death of deceased to complainant PW-1 and he is also a witness for inquest mahazar Ex.P.3. PW-5 is also witness for inquest mahazar Ex.P.3. PW-6 is the brother of deceased. PW-7 was the person who was present at the time of marriage talk and he was examined to prove that the cash and gold ornaments were given to accused at the time of marriage. PW-8 is the Medical Officer who conducted autopsy over dead body of the deceased Annapoornamma as per Ex.P.4. PW-9 is the constable who carried FIR to the Court. PW-10 is the Assistant Director of Forensic Science Laboratory, who examined the pesticide and submitted his report as per Ex.P.6. PW-11 is the PSI who registered the complaint and submitted FIR and conducted investigation in the case.

7. Indisputably, as per the evidence of PW-1, the marriage of his daughter Annapoornamma – the deceased was performed with the accused and the marriage of his another daughter Pushpalatha was performed with the brother of the accused. Both the marriages were

performed on the same date and place and both his daughters were leading a happy marital life. It is to be noticed that DW-2, Pushpalatha, the sister of the deceased who is said to have been examined on behalf of the accused has spelt out in her evidence that the accused and the deceased had led a happy married life and she has not stated anything regarding physical and mental cruelty meted out by the accused to her sister Annapoornamma. If there was harassment of any sort, her sister who was married in the very family would have very well known about the same. But however, she has not even uttered anything about any sort of physical or mental harassment meted out to her by the accused. Added to this, her brother PW-6 had specifically stated in his cross-examination that the deceased did not suffer from stomach ache but had stated that they had provided treatment for her stomach ache. Moreover, the son of the deceased Mithun Gowda aged 16 years had deposed to the effect that the relationship of his parents was cordial. But however, his mother the deceased was very much worried that their shed had collapsed and their lorry had met with

an accident as a result of which they had suffered losses. He has specifically stated that her worry was the cause for her committing suicide. Hence, it becomes very difficult for this court to believe the evidence of PW-1 and PW-3, the parents of the deceased that the accused had meted out mental as well as physical harassment to the deceased and had abetted her to commit suicide.

PW-1, PW-3 and PW-6 are the vital witnesses examined for the prosecution to prove the guilt of the accused. However, the evidence of DW-2, the sister of the deceased is contrary to the evidence of these material witnesses PW-1, PW-3 and PW-6. Hence, at a cursory glance of these witnesses, it is found that the same is full of inconsistencies and are contradictory to each other relating to physical as well as mental harassment given by the accused to the deceased. Hence, the same does not constitute an offence under Section 498-A IPC. However, the Trial Court, on appreciating the evidence on record had come to the conclusion that the prosecution has established the offence under Section 498-A of IPC.

On a careful scrutiny of the complaint (Ex.P.1 lodged by PW-1, the father of the deceased), it is seen that there is no whisper about any quarrel having occurred either on the date of incident or on the previous day. Except the evidence of PWs.1, 3 and 6 who are the father, mother and brother respectively of the deceased, there was no other corroborative evidence to prove the guilt of the accused and the other witnesses are only hearsay witnesses. As such, there was no corroborative evidence put forth by the prosecution. The Trial Court, in paragraph 28 of the impugned judgment has recorded a categorical finding to the effect that 'absolutely there is no evidence on the side of the prosecution to establish that there was instigation by the accused to commit suicide by the deceased immediately before her death and there is any willful conduct on the part of the accused to drive the deceased to commit suicide'. Marriage of the deceased with the accused was performed on 03.06.1994 and deceased led a happy marital life with the accused for a long duration of 11 years prior to her death on 09.09.2005. Under such circumstances, an inference can be drawn that deceased

committing suicide by consuming pesticides was not on account of ill-treatment or cruelty given by the accused. The Trial Court based conviction of the accused for the offence punishable under Section 498-A of IPC solely on the ground that the accused did not allow the deceased to go to her parental house and the same would amount to cruelty. Mere non-sending of the deceased to her parental house, does not amount to cruelty. In the absence of any material evidence on record, the Trial Court was not at all justified in coming to such a conclusion.

Section 498-A IPC was introduced in the Indian Penal Code in order to curb the harassment meted by the husband to the wife and also in order to protect the weaker spouse. The life of a woman in the family of the husband is sometimes intolerable and so also miserable that it drags the woman to commit suicide. In such cases, Section 498A IPC has been lugged into the issue against the husband. In the instant case, the deceased Annapoornamma had committed suicide by consuming pesticides after 11 years from the date of her marriage. It

is revealed from the case projected by the prosecution who had examined several witnesses. Among those witnesses, PW-1, PW-3 and PW-6 are material witnesses for the prosecution. There are inconsistencies and contradictions in these three material witnesses examined for the prosecution relating to the harassment meted out to the deceased by the accused. It is seen from the entire material available on record that the deceased had given birth to three children and among them, her elder son examined as DW-3 Mithun Gowda has not spelt out anything about the allegation of accused having given physical as well as mental harassment to his mother Annapoornamma. Moreover, the prosecution has not established the guilt of the accused relating to the offences under Section 498-A IPC for her to commit suicide due to the harassment meted out by her husband. The Trial Court has not appreciated the evidence on record in respect of these material witnesses in a proper perspective which is clear from their respective evidences itself.

On re-appreciation of the entire material on record, this Court is of the considered view that the trial Court

has committed an error in appreciating the evidence on record in a proper perspective and the learned Judge of the Trial Court was not justified in convicting the accused for the offences alleged against him.

8. For the foregoing reasons, the point framed by this court is answered in the negative and the appeal is hereby allowed. The judgment of conviction and order of sentence dated 11.03.2010 passed by the Presiding Officer, Fast Track Court-III, Bangalore Rural District in S.C.No.232/2007, convicting the accused-appellant herein for the offence punishable under Section 498-A IPC is hereby set aside. The accused-appellant is acquitted of the charges levelled against him.

The bail bond shall stand cancelled.

**Sd/-
JUDGE**

KS