

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1456 of 2005

JAYAMMA

..... APPELLANT

VERSUS

STATE OF KARNATAKA

..... RESPONDENT

O R D E R

1. This appeal arises out of the following facts.

1.1 Latha, the deceased herein, about 19 years of age at the time of her death, had been married with Murugesh A1 about nine months prior to her death which happened on the 6th January, 1995. The other two accused Jayamma and Nagendrappa A2 and A3, are the sister and the brother-in-law of the first accused. After the marriage, the deceased and her husband had been residing with A2 and A3 in the police quarters in Bangalore as the third accused was, at that time, working as a Head Constable with the Bangalore Police. As per the

prosecution story, the accused subjected the deceased to mental and physical cruelty on account of various demands including demands for dowry and that the first and second accused would call her a prostitute whereas the third accused was forcing her to have sexual intercourse with him as well. This behaviour was conveyed by the deceased to her parents who consoled her and told her to live with her husband who had promised to conduct himself properly. On the morning of the 6th January, 1995, however, while the first accused was still asleep, Jayamma the second accused started abusing the deceased. The first accused thereupon without speaking a word left the house whereas the third accused also left for his office a short while later. At about 9:00a.m. the deceased went into the bathroom to wash her face closely followed by Jayamma who was carrying a can of kerosene oil and after sprinkling the same on her person set her on fire. On hearing Latha's screams some of the persons from the neighbourhood came there and removed her to the hospital. Amongst these persons were PW 5, PW 10, PW 11 and PW 13. She was ultimately taken to the Victoria Hospital in Bangalore where she was examined by Dr. Trishula - PW 7 who recorded on the bed head ticket on her statement that she had made an attempt to commit suicide. Information with regard to the incident was also conveyed to the police station on

which PW 14, the Sub-Inspector, reached the Hospital and after taking an endorsement from one Dr. Anil Kumar recorded Latha's statement between 2 and 2:30p.m., and on its basis a First Information Report was registered against the three accused for offences punishable under Section 307, 498A/34 of the IPC. In the statement Exhibit P8, the deceased stated that she had been burnt by A2 with the association of the other accused. Latha subsequently died and on the completion of the investigation, the three accused were charged for offences punishable under Section 302/34, 498A of the IPC.

1.2 During the course of the trial, the prosecution relied on the evidence of the aforementioned witnesses as also the post mortem report which indicated 90 per cent burn injuries on the dead body. The trial court noted that the basic issue for deliberation was as to whether the death was suicidal or homicidal in nature. The trial court relying on the evidence of PWs 5, 7, 10, 11 and 13 observed that these witnesses had clearly stated that a dying declaration had been made to them by the deceased and this statement indicated a case of suicide. In this background, the statement Exhibit P8 and the evidence of PW 14 was rejected by the trial court. The accused were, accordingly, acquitted. The

matter was thereafter taken in appeal by the State of Karnataka. The High Court has, by the impugned judgment, allowed the appeal qua A2 Jayamma insofar as the charge of murder is concerned, but has also allowed the appeal qua all three accused with respect to the charge under Section 498A of the IPC. Jayamma appellant was, accordingly, sentenced to imprisonment for life under Section 302 but no separate sentence was awarded to her under Section 498A of the IPC whereas the other two accused were released on probation. It is in this situation that the appeal is before us at the instance of Jayamma alone.

2. We have heard the learned counsel for the parties. It may be seen that the High Court has given preference to the Statement Exhibit P8 and the oral evidence of PW 14 who had recorded the statement and also on the evidence of PW 1, the mother of the deceased that the story given in P8 was in fact the correct one. We, however, find that there is no discussion whatsoever by the High Court as to the veracity or otherwise of the evidence of Pws 5, 10, 11 and 13. We have gone through the evidence of these four witnesses very carefully and it reveals that several statements had been made by them in the course of their evidence that the deceased had stated that she had burnt herself in an attempt to

commit suicide. Curiously, the High Court has not even alluded to these statements. Likewise, we find that the evidence of PW 7 Dr. Trishul fully supports the theory of suicide. We see, therefore, that the evidence of Pws 5, 10, 11 and 13 is supported by the medical record that the deceased had burnt herself in an attempt to commit suicide.

3. We have also gone through the evidence of PW 1 who could be said have to some extent supported the theory of murder. We find that except for the fact that she stated that her daughter was being ill-treated even by appellant Jayamma she has not said a word about any dying declaration being made to her or as to how the deceased had suffered the injuries though as per her own showing, she had reached the hospital at about 9:30a.m.. We are, therefore, left with the solitary statement of PW 14 and the Report Exhibit P8. In this connection, it must be noted that Dr. Anil Kumar who had given the endorsement that the deceased had been fit to make a statement did not come to give evidence despite being served twice over. We are unable to fathom as to why coercive steps were not taken by Court as his evidence would have been relevant in proving the condition of the deceased at the time when her statement had been recorded at 2:30p.m., on the 6th January, 1995.

In the light of the fact that the trial court had on a consideration of the evidence recorded an acquittal in favour of the accused and taken a view which was clearly possible on the evidence, we feel that the High Court should not have interfered in this matter.

4. We, accordingly, allow the appeal insofar as the conviction of Jayamma under Section 302 of the IPC is concerned but dismiss the appeal qua Section 498A of the IPC. We also direct that the appellant will undergo six months imprisonment for the offence under Section 498A and also pay a fine of 5,000/- and in default of payment of fine to undergo three months rigorous imprisonment.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
MARCH 31, 2011.