

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1456 OF 2005

JAYAMMA Appellant (s)

VERSUS

STATE OF KARNATAKA Respondent(s)

Date: 31/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s) Mr. Ashok Shrivastava, Sr. Adv.
Mr. A.T.M. Rangaramanujam, Sr. Adv.
Mr. S. Ashok Kumar, Adv.
Ms. Gouri Karuna Das Mohanti, Adv.
Ms. Anu gupta, Adv.
Mr. Prakhar Sharma, Adv.
Ms. Rani Jethmalani, Adv.

For Respondent(s) Mr. V.N. Raghupathy, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the
signed order.

(KALYANI GUPTA)
COURT MASTER

(VINOD KULVI)
COURT MASTER

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[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1456 of 2005

JAYAMMA

..... APPELLANT

VERSUS

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

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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

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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

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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 the4 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

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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

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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.