

(2015) 12 KAR CK 0021
In the Karnataka High Court
Case No : Criminal AppealNo. 190 of 2014

Jayanna and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357-A
Evidence Act, 1872 — Section 113A, 113-A
Penal Code, 1860 (IPC) — Section 304, 306, 34, 498A, 498-A

Citation : (2015) 12 KAR CK 0021

Hon'ble Judges : H. Billappa, J.

Bench : Single Bench

Advocate : Santhosh S. Gogi, Advocate, for the Appellant; Chetan Desai, HCGP, for the Respondent

Final Decision : Allowed

Judgement

H. Billappa, J.—This appeal by the appellants/accused Nos. 1 to 3 is directed against the judgment and order dated 06.02.2014 passed by the II Addl. District & Sessions Judge, Davanagere, in S.C. No. 9/11.

2. By the impugned judgment and order, the learned II Addl. District & Sessions Judge, Davanagere, has convicted the appellants/accused Nos. 1 to 3 for the offence punishable under Sections 498-A r/w Sec. 34 of IPC. Further, the appellant No. 1/accused No. 1 has been convicted for the offence punishable under section 304 of IPC. For the offence punishable under section 498A r/w section 34 of IPC, the appellants 2 and 3 i.e., accused Nos. 2 and 3 have been sentenced to undergo S.I. for a period of 3 years and to pay a fine of Rs. 500/- each and in default of payment of fine amount, to undergo S.I. for a period of two months.

3. For the offence punishable under section 498-A r/w. section 34 of IPC, the appellant No. 1/accused No. 1 has been sentenced to undergo S.I. for a period of three years and to pay a fine of Rs. 2,000/- and in default of payment of fine

amount, to undergo S.I. for a period of six months. Further, for the offence punishable under section 304 of IPC the appellant No. 1/accused No. 1 has been sentenced to undergo R.I. for a period of 10 years and to pay a fine of Rs. 5,000/- and in default of payment of fine amount, to undergo S.I. for a period of one year.

4. Aggrieved by the conviction and sentence imposed, the appellants/accused Nos. 1 to 3 have filed this appeal.

5. Briefly stated the case of the prosecution is as follows:

That P.W. 1-Parvathamma is the complainant. Ex. P. 1 is the complaint i.e., first information. In Ex. P. 1, it is stated that about 9 months prior to the alleged incident, the deceased was married to accused No. 1-Jayanna. After the marriage, for some time, the accused No. 1 and the deceased were cordial. Thereafter, the accused No. 1 started harassing the deceased physically and mentally stating that the deceased does not know the household and agricultural work. It is alleged, the accused No. 1 used to abuse and assault the deceased. P.W. 1 used to advise the deceased and ask her to live happily with her husband. Thereafter, the accused No. 1 started suspecting the character of the deceased and used to harass her. On account of the cruelty inflicted by the accused No. 1, the deceased on 24.3.2010 at about 3.30 p.m. poured kerosene and set fire on herself. As a result of that, the deceased sustained burn injuries. The accused No. 1 informed P.W. 1 about the incident and told her that the deceased was taken to Jagalur Government hospital and from there they are taking the deceased to Davanagere hospital and asked P.W. 1 to come to Davanagere hospital. Thereafter, P.W. 1 and her children went to C.G. hospital, Davanagere at about 9.30 p.m. and saw the deceased. They noticed burn injuries on the body of the deceased. She was not in a position to talk. It is prayed to take action against accused No. 1.

6. Based on Ex. P1, a case in Cr. No. 48/2010 of Jagalur P.S. has been registered against the accused No. 1 for the offences punishable under Sections 498-A and 306 of IPC.

7. After investigation charge sheet has been filed against accused Nos. 1 to 3 i.e., the appellants herein for the offences punishable under Sections 498-A and 306 r/w Sec. 34 of IPC.

8. In the course of trial, charge has been framed for the offence punishable under section 304 of IPC also.

9. At the trial, the prosecution has examined in all 21 witnesses i.e., P.Ws. 1 to P.W. 21 and Ex. P. 1 to Ex. P. 33 and M.Os. No. 1 to 4 have been marked.

10. On appreciation of the evidence on record, the trial court has convicted appellants/Accused Nos. 1 to 3 for the offences punishable under Sections 498-A of IPC. Further, the appellant No. 1 i.e., accused No. 1 has been convicted for the offence punishable under section 304 of IPC. The appellants/accused Nos. 1 to 3

have been sentenced as stated in paras 2 and 3.

11. Aggrieved by the conviction and sentence imposed, the appellants/accused Nos. 1 to 3 have filed this appeal.

12. The learned counsel for the appellants contended that the impugned judgment and order cannot be sustained in law. He also submitted that the trial court has failed to consider the evidence on record in proper perspective. Further he submitted that P.Ws. 1, 5, 6 and 7 are interested witnesses and therefore, the trial court has erred in believing the evidence of P.Ws. 1, 5, 6 and 7. Further, P.Ws. 8, 10, 11 and 12 are neighbours and they are independent witnesses. They have deposed that the relationship between the deceased and the accused persons was cordial and the deceased herself was responsible for the alleged incident. The dying declaration Ex. P. 24 suffers from serious infirmities. It is difficult to believe that the deceased who had sustained 70% to 80% burn injuries could have made dying declaration. Further, P.Ws. 1, 5, 6 and 7 have deposed that they were present at the time when the dying declaration was recorded. P.W. 17 or P.W. 20 have not identified the thumb impression of the deceased in Ex. P. 24. The evidence of P.Ws. 1, 5, 6 and 7 is totally inconsistent. Their presence at the time of recording the dying declaration renders the dying declaration invalid and it is a tutored one. Therefore, the Trial Court was not justified in convicting the appellant/accused No. 1 for the offence punishable under section 304 of IPC based on Ex. P24 dying declaration. Further, the cruelty alleged has not been established. On the other hand, the evidence of P.Ws. 8, 10, 11 and 12 who are the neighbours clearly show that the relationship of the deceased with the accused persons was cordial and there was no quarrel and the death of the deceased was due to self infliction by the deceased herself. Therefore, the prosecution has failed to establish the guilt of the accused for the offences punishable under section 498-A , 306 or 304 of the IPC. The Trial Court was not justified in convicting the appellants/accused Nos. 1 to 3 for the offences punishable under Section 498-A of IPC and appellant No. 1 for the offence punishable under Section 304 of IPC. Further, the evidence of P.Ws. 1, 5, 6 and 7 shows that the accused No. 1 used to bring back the deceased whenever she used to visit her parents house. This clearly shows that the relationship between the accused and the deceased was cordial. He also submitted that no complaint was lodged regarding cruelty at any point of time. Therefore, the impugned judgment and order cannot be sustained in law. In support of his submission he placed reliance on the following decisions:

(1) 2007 (3) SCC (CrI) 94

(2) Surinder Kumar Vs. State of Haryana,

(3) Dandu Lakshmi Reddy Vs. State of A.P.,

13. As against this, the learned Government Pleader Sri Chetan Desai submitted that the impugned judgment and order does not call for interference. He also submitted that the trial court on proper consideration of the material on record

has rightly convicted the appellants/accused Nos. 1 to 3 and therefore, the impugned judgment and order does not call for interference. Further, P.Ws. 1, 5, 6 and 7 have consistently deposed regarding the cruelty inflicted by the accused persons. Their evidence shows that the accused persons used to abuse and assault the deceased stating that the deceased does not know how to cook or do agricultural work. Further, the accused used to suspect the character of the deceased. Therefore, the evidence of P.Ws. 1, 5, 6 and 7 clearly proves the cruelty inflicted by the accused persons on the deceased. Further, the deceased has made dying declaration as per Ex. P24 before P.W. 17. It is clear from Ex. P24, the accused persons used to harass the deceased and on the date of alleged incident, the husband i.e., accused No. 1 pushed the deceased on the burning stove and as a result of that, the deceased sustained injuries. There is no reason to disbelieve the dying declaration of the deceased. It clearly indicates that the accused No. 1 pushed the deceased on the burning stove and therefore, the deceased sustained injuries. Further, the charge is also framed under section 306 of IPC. Even assuming that the deceased herself has committed suicide, then also, it attracts section 306 of IPC. Therefore, the presumption under Section 113-A of the Evidence Act needs to be raised. The burden is on the accused persons to show that they were not responsible for the death of the deceased. The material on record clearly establishes the guilt of the accused. Therefore, the Trial Court was justified in convicting the appellants/accused Nos. 1 to 3. Therefore, the impugned judgment and order does not call for interference. He also brought to the notice of the court the judgment of this court regarding victim compensation.

14. I have carefully considered the submissions made by the learned counsel for the parties.

15. The points that arise for my consideration are?

- (1) Whether the death was homicidal or suicidal?
- (2) Whether the trial court was justified in convicting the appellants/accused Nos. 1 to 3 for the offence punishable under Section 498-A read with Section 34 of IPC?
- (3) Whether the trial court was justified in convicting appellant/accused No. 1 for the offence punishable under Section 304 of IPC?
- (4) Whether the impugned judgment and order calls for interference?

16. Point No. 1:

It is relevant to note, the prosecution alleges that the accused persons inflicted cruelty on the deceased and that has resulted in the death of the deceased. The prosecution also contends that the husband of the deceased was responsible for the death of the deceased.

17. The prosecution relies upon the evidence of P.Ws. 1, 5, 6, 7, 14, 17, 18 and

20 and Exs. P1, P20 and P24.

18. P.W. 1 is the mother of the deceased. She has deposed, for few months after the marriage the deceased lived happily in the house of the accused persons. After about two or three months the accused persons started ill-treating the deceased stating that she does not know agricultural and house hold work. It is also stated, the accused used to suspect the character of the deceased and abuse her. Thereafter, on the date of alleged incident the deceased took food to her mother-in-law i.e., accused No. 2. The accused No. 2 abused the deceased and refused to take food and threw the food on the face of the deceased. Thereafter, the accused No. 1 assaulted the deceased. The deceased informed P.W. 1 through phone. On the same day, the accused No. 1 informed P.W. 1 stating that the deceased has burnt herself by pouring kerosene and she is taken to Jagalur hospital. Thereafter, they went to Davangere hospital on coming to know that the deceased is taken to Davanagere hospital. It is stated, the deceased was not in a position to talk. She regained conscious after two days. Thereafter, the deceased told P.W. 1 that when she was cooking the food her husband picked up quarrel with her and pushed her on the burning stove. As a result of that, the deceased caught fire and sustained burn injuries. P.W. 1 has also stated that she has given statement as per EX. P1.

In the cross examination of P.W. 1, it is elicited that after the marriage the deceased visited her parents house 10 or 15 times. Whenever the deceased visited her parents house the accused No. 1 used to go there and bring back the deceased. It is also elicited that accused No. 3 was working with his brother at Bengaluru. Further, it is stated, accused No. 3 used to stay both at Bengaluru and also at Donnehalli village. It is elicited that when deceased gave dying declaration to the Tahsildar P.W. 1 and others were present in the hospital. They have not given any complaint regarding harassment. P.W. 1 has denied the suggestion that the deceased herself set fire and died.

19. P.W. 5 is the sister of the deceased. She has deposed the accused used to harass the deceased saying that she does not know how to cook food or work in the field. The accused No. 1 had illicit relationship with some other woman and used to come late to the house. When the deceased questioned it, the accused No. 1 used to abuse her and assault her. Further, she has stated one day when the deceased took food to her mother-in-law, her mother-in-law refused to take the food and threw the food on the deceased. In this connection there was a quarrel between the deceased and the accused No. 1. Accused No. 1 abused the deceased and has thrown the burning stove on the deceased. As a result of that, the deceased sustained injuries. Accused No. 1 informed P.W. 1 that the deceased has burnt herself. They went to Davanagere C.G. hospital and saw the deceased and noticed burn injuries. The Tahsildar visited the hospital and recorded the statement of the deceased. The deceased told about the harassment before them and also the Tahsildar.

In the cross examination of P.W. 5, it is elicited that whenever the deceased used

to visit her parents house the accused No. 1 used to go there and bring back the deceased. The Tahsildar visited the hospital on the third day. When the Tahsildar visited the hospital, P.W. 5, her mother and brothers were there. They do not know what was recorded by the Tahsildar. It is also elicited that the deceased was not in a position to talk. Next day when the doctor treated the deceased, the deceased told them about the incident. It is stated, they have not lodged any complaint regarding the ill-treatment by the accused persons.

20. P.W. 6 is the brother of the deceased. He has also deposed regarding harassment which is similar to the evidence of P.Ws. 1 and 5. Further, he has stated one day the deceased had taken food to her mother-in-law. Her mother-in-law refused to take food and threw the food on the face of the deceased. When the deceased informed this to her husband i.e., accused No. 1 he picked up quarrel with the deceased and assaulted the deceased and pushed the deceased on the burning stove. As a result of that, the deceased sustained injuries. Further, he has stated that the deceased regained the conscious on the next day and talked to them. The Tahsildar recorded the statement of the deceased. The deceased told the Tahsildar that the accused harassed her and her husband pushed the deceased on the burning stove.

In the cross examination of P.W. 6, it is elicited that the deceased visited their house three times. She used to go with her husband and return. When the Tahsildar came to the hospital and recorded the statement of the deceased, his sister was also present in the hospital. They have not lodged any complaint regarding the harassment given by the accused persons.

21. P.W. 7 is the brother of the deceased. He has also deposed regarding the harassment given by the accused persons. His evidence is similar to the evidence of P.Ws. 1, 5 and 6. Further he has stated that about one month prior to the alleged incident, the accused No. 1 had taken the deceased to Bengaluru and left in the house of his brother. P.W. 7 went to the house of A1's brother and enquired the deceased. She told that accused No. 1 had illicit relationship with some other woman. He brought the deceased to Chitradurga and left in their house. Thereafter, the accused No. 1 took the deceased to his village. On 24.03.2010 he came to know about the burn injuries sustained by the deceased and went to Davanagere hospital. He noticed the burn injuries on the face, chest and other parts of the body. The deceased was not in a position to talk. After one day the deceased regained her conscious and informed about the incident. The deceased told that accused No. 1 picked up quarrel in connection with the carrying of food to the accused No. 2 and pushed the deceased on the burning stove. As a result of that, the deceased sustained injuries. The Tahsildar recorded the statement of the deceased.

In the cross examination of P.W. 7, it is elicited that on 24.03.2010 the Tahsildar visited the CG Hospital to enquire the deceased. P.W. 7 had told his sister to lodge the complaint regarding harassment, but she has not lodged any complaint.

22. P.Ws. 8, 10, 11 and 12 are the neighbours.

23. P.W. 8 has deposed that they know the accused and the deceased. The deceased died by burning herself. The accused never used to harass the deceased. The deceased was happy in her husband's house. The deceased used to ask her husband to stay at Chitradurga. But the accused No. 1 used to say that he cannot leave his mother and the lands and if the deceased want, she can go to Chitradurga. It is also stated that the deceased used to say that her husband is not willing to come to Chitradurga or to her mother's house and therefore she would commit suicide.

In the cross examination of P.W. 8, the suggestions made by the prosecution have been denied. Nothing is elicited in the cross-examination of P.W. 8.

24. P.W. 10 who is the neighbour of the accused has deposed that the deceased was happy with the accused persons. Accused No. 1 is a good person. She does not know whether the accused persons were suspecting the character of the deceased. One day the deceased set fire on herself.

In the cross examination of P.W. 10, some suggestions have been made and they have been denied.

25. Similarly, P.W. 11 has deposed that she knows the accused and the deceased. The deceased was staying in the house of the accused. She was happy. She does not know whether the accused were harassing the deceased. One day the deceased set fire on herself. The accused were not responsible for the death of the deceased.

In the cross examination of P.W. 11, some suggestions have been put and they have been denied.

26. P.W. 12 is the neighbour of the deceased and the accused. She has deposed that the accused persons were treating the deceased very well. They were not harassing the deceased. About one year back, the deceased set fire on herself and died. The accused were not responsible for the death of the deceased.

In the cross examination of P.W. 12, some suggestions have been put and they have been denied. Nothing is elicited.

27. P.Ws. 14, 18 and 20 are the doctors.

28. P.W. 14 Dr. Nagaveni has deposed that she conducted post mortem alongwith Dr. Drakshayini. The deceased had sustained injuries on her face, neck, chest, back, thighs and knees.

In her cross examination, P.W. 14 has stated that if a person sets fire on herself by pouring kerosene, such injuries could be caused.

29. P.W. 18 is Dr. Vasantha Nayak. He has deposed that on 24.03.2010 when he was working in the Government Hospital at Jagalur, at about 4.35 p.m., the deceased was brought to the hospital with the history of burn injuries. The

husband of the deceased took the deceased to the hospital for treatment. On examination he noticed the injuries on the head, hands, chest, back, neck, right and left legs. The patient was conscious. She was talking. He gave the first aid treatment. Thereafter, the deceased was sent to C.G. Hospital, Davanagere, for better treatment.

In the cross examination of P.W. 18, it is elicited that the deceased had sustained 60% burn injuries. The hands were completely burnt. He has denied the suggestion that the deceased was not capable of holding the pen or putting her thumb impression. Further he has stated, even if a person on his own pours kerosene and sets fire such injuries could be caused.

30. P.W. 20 is Dr. N.S. Kirani. He has deposed that on 25.03.2010 when he was on duty, at about 8.30 a.m., the head constable of Jagalur police station went to him and told him that they want to record the statement of the deceased. The doctor needs to certify as to whether the deceased was capable of making the statement or not. At about 9.00 a.m. the Tahsildar, Davanagere taluk came to the hospital. P.W. 20 examined the deceased and noticed that she had sustained 75% to 80% burn injuries. She was capable of talking. She gave answers to the questions put to her. The Tahsildar recorded the statement of the deceased. P.W. 20 certified that the deceased is conscious and capable of making the statement. Ex. P24 is the statement of the deceased recorded by the Tahsildar. His signatures are at Ex. P24(a) and (b). He has issued endorsement as per Ex. P25. His signature is at Ex. P25(a). Ex. P26 is the requisition.

In the cross examination of P.W. 20, it is elicited that the deceased was admitted to hospital on 24.03.2010 at about 8.30 p.m. He has not treated the deceased when she was admitted. On 25.03.2010, at about 9.00 a.m., when the Tahsildar came for the first time P.W. 20 saw the deceased. At the time of recording the statement of the deceased, the Tahsildar, Head Constable and relatives of the deceased were present. P.W. 20 and Tahsildar signed Ex. P24 and none others. It is denied that the deceased was not capable of talking. He has admitted the suggestion that if a person on his own pours kerosene and sets fire, such injuries could be caused.

31. P.W. 17 is the Tahsildar who has recorded the dying declaration Ex. P24. He has deposed that on 24.03.2010 he was requested by the PSI, Jagalur, to record the statement of the deceased. He went to CG Hospital. P.W. 20 Dr. Kirani was present there. He informed that the deceased is in the burn ward. P.W. 17 went there and talked to the deceased. She was conscious. The doctor certified that the deceased is capable of making the statement. On 25.03.2010, between 9.00 a.m. to 10.15 a.m., P.W. 17 recorded the statement of the deceased in the burn ward at C.G. Hospital in presence of the doctor, it is stated, questions were put to the deceased and answers were taken and recorded. The deceased has put her thumb impression. The doctor has also signed Ex. P24. He has stated that he kept EX. P24 with him. He has identified the signatures of the doctor as Ex. P24(a) and 24(b) and his signature as Ex. P24(c). The certificate issued by P.W.

20 is Ex. P. 25. The requisition is Ex. P26. He has stated that the deceased was giving clear answers and the deceased stated that she was pushed on the burning stove and therefore, she sustained injuries. The statement of the deceased is at EX. P24(d). Thereafter, he came to know that the deceased died on 31.03.2010. He conducted inquest on 1.4.2010 and Ex. P3 is the inquest report.

In the cross examination of P.W. 17, it is elicited that requisition was given on 24.03.2010. He visited the hospital at 11.00 p.m. on 24.03.2010. Next day on 25.03.2010 he recorded the statement of the deceased. Some correction made in Ex. P24 is admitted.

32. Ex. P. 1 is the complaint. In Ex. P1 there are no allegations against the accused Nos. 2 and 3. It is alleged, the accused No. 1 was harassing the deceased stating that the deceased does not know the household work and agricultural work. He used to abuse and assault the deceased. It is also alleged that the accused No. 1 used to suspect the character of the deceased. It is stated in EX. P1 that the deceased at about 3.30 p.m. on 24.03.2010 poured kerosene on herself and set fire. This was informed by the accused No. 1 to P.W. 1. Thereafter, P.W. 1 and her children went to C.G. Hospital at Davanagere and saw the deceased. The deceased had sustained burn injuries.

33. P.Ws. 1, 5, 6 and 7 are the mother, sister and brothers of the deceased. They have deposed that the accused used to harass the deceased stating that the deceased does not know how to cook food or work in the field. The accused were also suspecting the character of the deceased. On the date of alleged incident, the deceased had taken food to her mother-in-law who was working in the field. The mother-in-law refused to take the food and threw the food on the face of the deceased. The deceased came back and informed her husband. In this connection the husband of the deceased picked up quarrel and pushed the deceased on the burning stove. Therefore, the deceased sustained injuries. This is the version of P.Ws. 1, 5, 6 and 7.

34. On the other hand, we have the evidence of P.Ws. 8, 10, 11 and 12 who are the neighbours. All of them have consistently deposed that the deceased was looked after very well by the accused persons and she was staying with the accused persons happily. The deceased on her own poured kerosene and set fire on herself. The deceased was never ill treated by the accused persons.

35. We have two different versions. One version by P.Ws. 1, 5, 6 and 7 who are the relatives of the deceased. The other version is by P.Ws. 8, 10, 11 and 12 who are the neighbours and independent witnesses.

36. In EX. P1, there are no allegations of any harassment by the accused Nos. 2 and 3. The only allegation is against accused No. 1. It is alleged, the accused No. 1 used to harass the deceased stating that she does not know household and agricultural work. It is vaguely alleged, the accused No. 1 used to suspect the character of the deceased. In Ex. P1, it is stated that the deceased poured

kerosene and set fire on herself. Immediately after the incident the deceased was taken to the hospital at Jagalur. EX. P28 is the extract of MLC register. It shows that the history furnished was "self attempt". The prosecution relies upon the evidence of P.Ws. 1, 5, 6 and 7 who are the relatives and dying declaration. In so far as the evidence of the relatives is concerned, they have stated, the accused used to harass the deceased. On the date of alleged incident, the accused No. 1 pushed the deceased on the burning stove and therefore, the deceased sustained injuries.

37. P.W. 17 is the Tahsildar. He has recorded the dying declaration of the deceased as per EX. P24. EX. P24 shows that the deceased had married accused No. 1 about 8 months prior to the alleged incident. The accused persons used to harass the deceased. On 24.03.2010, the deceased prepared "uppittu" and asked her husband to take "uppittu" to his mother. In this connection, the husband of the deceased assaulted her. In spite of that, the deceased took food to her mother-in-law and her mother in law refused to take the food. The deceased came back and prepared the food and asked her husband to take the food to his mother. At that time, the accused No. 1 pushed the deceased on the burning stove. As a result of that, the deceased caught fire and sustained injuries. The husband of the deceased poured water and thereafter, she does not know what happened.

38. It is clear from the dying declaration Ex. P24, there are no specific allegations of any harassment by the accused persons. On the date of alleged incident, the deceased requested her husband to take the food to his mother. Her husband pushed the deceased on the burning stove and therefore, the deceased sustained injuries. P.Ws. 1, 5, 6 and 7 have deposed that the deceased took food to her mother-in-law and asked her mother-in-law to take the food. Her mother-in-law refused to take the food and threw the food on the face of the deceased. The deceased herself has not stated that she took the food to her mother-in-law and her mother-in-law refused to take the food and threw the food on the face of the deceased. The deceased has stated, she requested her husband to take food to his mother. Then, the accused No. 1 pushed her on the burning stove and she caught fire. Her husband poured water. She does not know what happened thereafter. The evidence of PWs 1, 5, 6 and 7 is inconsistent with the dying declaration.

39. We have the evidence of P.Ws. 8, 10, 11 and 12 who are neighbours and independent witnesses. All of them have consistently stated that the deceased was happy with the accused persons. The accused persons never ill treated the deceased. The deceased herself set fire and died. In the cross-examination nothing is elicited to disbelieve the evidence of P.Ws. 8, 10, 11 and 12. It is clear, the deceased was happy with the accused and the alleged incident is due to self infliction on the part of the deceased and the deceased herself was responsible. No doubt, the Tahsildar has recorded the statement of the deceased as per Ex. P24 and PW-20 has certified that the deceased was capable of making the

statement. But, the fact remains before recording the dying declaration, the family members of the deceased namely P.Ws. 1, 5, 6 and 7 have visited the deceased and talked to her. It is also elicited, at the time of recording of the dying declaration the relatives of the deceased namely P.Ws. 1, 5, 6 and 7 were present.

40. The learned counsel for the appellant relied upon the decision of the Hon''ble Supreme Court in Mohan Lal and others Vs. State of Haryana reported in 2007 (3) SCC (Crl.) 94 to contend that the dying declaration is a tutored version and it cannot be believed. In the decision relied upon by the learned counsel for the appellant, it has been held, before dying declaration was recorded the relations of the deceased including father and mother of the deceased were present with her and were subsequently asked to leave the room when dying declaration was recorded. The dying declaration itself was clearly the result of tutoring and was not a free and voluntary one.

41. In Surinder Kumar Vs. State of Haryana, , it has been held that the death was caused by 95% to 97% burn injuries. The Executive Magistrate who recorded the dying declaration stated that the deceased put her thumb impression. It is not clear, when the whole body was burnt and bandaged, how the thumb impression of the deceased was obtained. Therefore, the dying declaration was rejected.

42. Similarly, in Dandu Lakshmi Reddy Vs. State of A.P., it has been held, when the father and mother of the deceased have stated that the deceased was not mentally sound, the court cannot ignore the said evidence of the parents of the deceased. If the court has even a slight doubt about the mental soundness of the author of the dying declaration it would be not safe to base a conviction on such a statement.

43. In the present case, it is in the evidence of the doctors that the deceased had sustained 60% burn injuries according to P.W. 18 and 75% to 80% according to P.W. 20. None of the witnesses have identified the thumb impression though P.W. 17 has deposed that the deceased put her thumb impression to the dying declaration. It is in the evidence that both the hands were burnt. It is not clear, whether the deceased was capable of putting her thumb impression or not. The dying declaration suffers from serious infirmities. The relatives of the deceased have talked to the deceased. They were present at the time of recording the dying declaration. Further, it is alleged by the prosecution that the deceased committed suicide due to cruelty inflicted by the accused. Therefore, the dying declaration Ex. P24 cannot be believed or acted upon. There are two versions. One version stating that the deceased was pushed by the accused No. 1 on the burning stove and therefore, she sustained injuries. The other version is that the deceased sustained burn injuries on her own and they are self inflicted. The independent witnesses P.Ws. 8, 10, 11 and 12 have deposed that the deceased sustained burn injuries on her own and the accused were not responsible. In the FIR it is stated that the deceased poured kerosene and set fire on herself. The

MLC register extract Ex. P25 shows that the history furnished was "self attempt". Therefore, from the evidence on record it can be inferred that the alleged incident is a case of self infliction i.e., suicide and not homicidal.

44. The post mortem report Ex. P20 shows that the death was due to septicemia, secondary to extensive superficial deep burns. Further, EX. P22 FSL report shows that the sample found in articles 1 and 2 i.e., plastic can and stove is kerosene. It is opined that the sample found in the can and stove is kerosene. From the evidence on record, it can be inferred, the death was suicidal and not homicidal. Point No. 1 answered, accordingly.

45. Point Nos. 2, 3 and 4:

They are considered together. It is the case of the prosecution that the accused used to harass the deceased and as a result of that, the deceased has committed suicide. P.Ws. 1, 5, 6 and 7 have deposed that the accused used to harass the deceased and on the date of alleged incident the deceased took food to her mother-in-law and she refused to take the food and threw the food on the face of the deceased. The deceased came back. Thereafter, the accused No. 1 quarrelled with the deceased and pushed the deceased on the burning stove. As a result of that, the deceased sustained injuries. P.Ws. 1, 5, 6 and 7 have not deposed that the deceased committed suicide due to the cruelty inflicted by the accused persons. Ex. P1 shows that the allegations are made only against the husband i.e., accused No. 1. There are no allegations against the accused Nos. 2 and 3 at all. There is no demand for dowry. The allegations are that the accused used to say that the deceased does not know household and agricultural work. It is in the evidence, whenever the deceased used to go to her parents house, the accused No. 1 used to bring her back. PW-1 used to advise her daughter to reconcile and live with her husband happily. The allegations are not of that nature which would drive a woman to commit suicide.

46. On the other hand, the evidence of P.Ws. 8, 10, 11 and 12 who are the independent witnesses show that the relationship between the deceased and the accused persons was cordial. The accused persons never ill-treated the deceased. In fact, the deceased set fire on herself and it is a case of suicide. Therefore, the alleged incident is not relatable to the conduct of the accused persons. There is no material on record to sustain conviction for the offence punishable under Section 498-A or 304 or 306 of IPC. Unless it is proved that the deceased was subjected to cruelty which has driven her to commit suicide, the presumption under Section 113-A of the Evidence Act cannot be raised. In the present case, the prosecution has failed to prove that the accused treated the deceased with cruelty and it has resulted in suicide. Therefore, the presumption under Section 113A of the Evidence Act cannot be raised. The prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Therefore, the Trial Court was not justified in convicting the appellants/accused Nos. 1 to 3 for the offence punishable under section 498-A r/w section 34 of IPC and appellant No. 1/accused No. 1 for the offence punishable under section 304 of

IPC. The Trial Court has failed to consider the evidence on record in proper perspective. Therefore, the impugned judgment and order cannot be sustained in law.

Accordingly, the appeal is allowed and the conviction and sentence passed by the II Additional District and Sessions Judge, Davanagere, in S.C. No. 09/2011 for the offences punishable under Sections 498-A and 304 of IPC is hereby set aside. The appellants/accused Nos. 1 to 3 are acquitted of all the charges.

The appellant No. 1 i.e., accused No. 1 shall be released forthwith, if he is not required in any other case.

It is stated, the appellants 2 and 3 are on bail. Their bail bonds shall stand cancelled.

Registry is directed to communicate the operative portion of the judgment to the concerned Jail authorities for necessary action.

It is in the evidence of P.W. 1 who is the mother of the deceased that they incurred expenses when the deceased was in the hospital. The District Legal Services Authority, Davanagere, is directed to initiate proceedings under Section 357-A of Cr.P.C. and consider the claim to pay compensation after informing PW-1.

Send a copy of this judgment to the District Legal Services Authority, Davanagere, for necessary action.