

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

CRL.A.No. 1533 of 2005 ()

AGAINST THE JUDGMENT IN SC No.161/2000 of THE COURT OF ADDL. SESSIONS
JUDGE FAST TRACK COURT-II(ADHOC), THRISSUR DATED 24.08.2005

APPELLANT/ACCUSED NO.1:

UNNIMON @ UNNIKRISHNAN,
S/O.CHERADY VEETIL KUNHAPPU, NENMANI DESOM
THAIKKAD VILLAGE, CHAVAKKAD TALUK.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R, BY ADV. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.1533 of 2005

Dated 3rd June, 2015

JUDGMENT

This appeal is directed against the judgment in S.C.No.161 of 2000 of the Court of Additional Sessions Judge Fast Track Court-II (Adhoc), Thrissur. The appellant was the first accused in the said Sessions Case. He along with three other co-accused who are respectively his mother and brothers, were tried for the offence under Section 304B of the Indian Penal Code. But, the appellant alone was found guilty under Section 498A of the Indian Penal Code and the others were acquitted. For the conviction thereunder, the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 50,000/- within a period of six months failing which to undergo rigorous imprisonment for a further period of six months. The amount of fine, if realised, was directed to be paid equally to the children of the deceased and as they being minors it was ordered that the said amount shall be deposited in equal shares in their respective names in a Nationalised Bank till they attain majority.

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

The appellant married Sujana, the deceased, on 11.2.1990

and while they were living in the matrimonial house the appellant and the other accused who are his mother and brothers tortured her mentally and physically and subjected her to cruelty demanding more dowry and unable to bear the torture she committed suicide by sprinkling kerosene over her body and setting fire by herself at about 9.30 p.m. on 30.8.1996. Crime No.154 of 1996 of Guruvayur Police Station was registered and after the investigation a final report alleging commission of offence punishable under Section 498A read with Section 34 of the Indian Penal Code was laid before the Court of Judicial First Class Magistrate, Chalakkudy. Cognizance was taken thereon and it was taken on file as C.C.No.192 of 1998. On appearance of the appellant and the other accused and after hearing them as also the prosecution the learned Magistrate framed charge under Section 498A read with Section 34 IPC. It was read over and explained to them and they pleaded not guilty and claimed to be tried. Consequently, trial was conducted. PWs 1 to 9 were examined and Exts.P1 to P7 were marked. Thereupon, the learned Magistrate noticed that the incident took place on 30.8.1996 and the marriage of the deceased with the appellant herein was solemnised on 11.2.1990. Therefore, the death occurred within seven years of her marriage and the ingredients of Section 304B, IPC were attracted. Consequently, finding that the case is triable only by a Court of Session it

was converted and refiled as C.P.No.30 of 1999 and it was committed to Court of Session, Thrissur. It was taken on file as S.C.No.161 of 2000 and made over to the Principal Assistant Sessions Court, Thrissur and subsequently, it was transferred to the Court of Additional Sessions Judge Fast Tract Court-II (Adhoc), Thrissur. Thereafter, charge was framed by the trial court against the appellant and the other accused for offence under Section 304B, IPC. The said charge was read over and explained to them and they pleaded not guilty and claimed to be tried. To bring home the charge against the appellant and the others prosecution had examined PWs 1 to 23 and got marked Exts.P1 to P27 besides identifying MO1 to MO3 series. After the closure of the evidence of the prosecution the accused were questioned under Section 313, Cr.P.C. and they denied all the incriminating circumstances put to them. Finding that there was no reason for acquittal under Section 232, Cr.P.C. the accused were asked to enter on their defence. Consequently, DW1 and DW2 were examined and Exts.D1 to D11 were marked as defence evidence. After evaluating the evidence on record the trial court found the accused including the appellant herein not guilty of the offence under Section 304B, IPC. Though no charge was framed against them for offence punishable under Section 306, IPC the trial court considered the question whether they are guilty under Section 306, IPC and found them

not guilty for an offence punishable under Section 306, IPC. After entering into such findings and finding them not guilty of the offences punishable under Sections 304B and 306, IPC the trial court went on to consider the question whether the accused persons are guilty of the offence punishable under Section 498A, IPC. After such consideration it was found that accused 2 to 4 are not guilty of the offence punishable under Section 498A ,IPC and consequently, they were acquitted of the said offence. At the same time, the appellant herein was found guilty of the offence punishable under Section 498A, IPC and was convicted and sentenced as aforesaid. This appeal is filed in the said circumstances.

3. I have heard the learned counsel appearing for the appellant and also the learned Public Prosecutor.

4. Manifold contentions were raised by the learned Senior counsel for the appellant to mount challenge against the impugned judgment of conviction. It is contended that though no specific charge was framed against the appellant and the other co-accused for the offence punishable under Section 498A, IPC the trial court which framed charge against the accused only under Section 304-B, IPC upon finding

them not guilty under Section 304-B, IPC considered their culpability under Section 306, IPC and even after finding them not guilty thereunder continued with such consideration in relation to the offence under Section 498-A, IPC. The trial court finding the co-accused of the appellant viz., A2 to A4 not guilty under Section 498A, IPC relied on the evidence of PW1 and PW2 to certain extent and the oral testimonies of PW16 to PW18 and Ext.P18 to arrive at the finding of guilt of the offence punishable under Section 498A, IPC against the appellant erringly. It is submitted further that the evidence of the relatives of the deceased viz., PWs 1, 16 and 17 constitute hearsay evidence and as such inadmissible under Section 60 of the Evidence Act especially, in view of the acquittal of all the accused including the appellant herein under Section 304B and 306, IPC in the matter of consideration of the culpability under Section 498-A, IPC. However, their evidence were also relied on to enter on the finding of conviction against the appellant wrongly and illegally. It is contended that in view of the acquittal of the accused including the appellant for the offence punishable under Section 304-B and 306, IPC the cause of death of Sujana lost its significance as an element for deciding the culpability and in such circumstances, taking into account the cause of death and the circumstances leading to death as questions of relevance, was inadmissible as it would not fall under exception to

Section 32(1) of the Evidence Act. Such evidence of the relatives were also taken into account despite inadmissibility, for the purpose of entering into the conclusion of guilt against the appellant, it is contended. It is also contended by the learned Senior counsel for the appellant that in the light of the decision of the Hon'ble Apex Court in **Bhairon Singh v. State of Madhya Pradesh (AIR 2009 SC 2603)** and the decision of this Court in **Mony @ Suresh Kumar v. State of Kerala (2010 (1) KLD 81)** placing reliance on such evidence and in such circumstances explained above, is absolutely unsustainable. The learned Senior counsel further submitted that applying the dictum laid down by the Hon'ble Apex Court in **Bhairon Singh's** case (supra) the evidence of the relatives which fall into the category of hearsay evidence ought to have been found inadmissible under Section 60 of the Evidence Act and in such circumstances, the surviving evidence against the appellant for considering his culpability or otherwise as relates the offence punishable under Section 498A, IPC was only the twin dying declarations viz., Exts.P11 and P18. At the same breath it is contended that those dying declarations also could not have been relied on for the purpose of entering into a finding of conviction against the appellant as they are materially contradictory to each other and in the absence of any other evidence to corroborate Ext.P18. To buttress the said contention

the learned Senior counsel relied on the decisions of the Hon'ble Apex Court in **Lella Srinivasa Rao v. State of A.P. ((2004) 9 SCC 713)**, **Amol Singh v. State of Madhya Pradesh ((2008) 5 SCC 468)**, **Chinnamma v. State of Kerala ((2004) 12 SCC 244)** and **Sanjay v. State of Maharashtra ((2007) 9 SCC 148)**. It is further contended by the learned Senior counsel for the appellant that in view of the indisputable position obtained that Exts.P11 and P18, the two dying declarations available in this case, are mutually inconsistent and contradictory to each other and in the absence of any other piece of evidence to corroborate Ext.P18 and also in the light of the contentions raised based on the decision in **Bhairon Singh's** case (supra) there was absolutely no material at all to convict the appellant for the offence under Section 498A, IPC. The learned Senior counsel for the appellant further contended that the conviction of the appellant under Section 498A, IPC is unsustainable on another ground as well. It is virtually, an alternative contention. Without conceding the aforementioned contentions, it is contended that accusations made against the appellant to attract the offence under Section 498A, IPC in Ext.P18 and also the evidence of PW1, PW16 and PW17 were available against the other accused as well and therefore, having found them not guilty under Section 498A, IPC there was absolutely no reason or justification for

entering into a different finding as relates the appellant on the same set of evidence and in the absence of any other allegation of specific overt act. In that context, it is further contended that the trial court lost sight of the fact that in Ext.P11 dying declaration an explicit exculpatory statement was made by the deceased herself in respect of the appellant herein in the matter and even in the absence of any such favourable piece of evidence the others were acquitted for the offence under Section 498A, IPC and in such circumstances, the finding of guilty against the appellant for the offence under Section 498A, IPC is absolutely unsustainable. In short, it is submitted by the learned Senior counsel for the appellant that the impugned judgment of conviction warrants appellate interference. Per contra, the learned Public Prosecutor contended that the contention regarding the non-framing of specific charge under Section 498A, IPC is inconsequential in the light of the provisions under section 222, Cr.P.C. It is submitted that there can be no dispute regarding the position that offence under Section 498A,IPC is a lesser serious offence than offences under Sections 304B and 306, IPC. When specific charge was framed against the appellant for the offence under Section 304B, IPC the mere fact that he was found not guilty thereunder is not a reason for canvassing the position that in the absence of specific charge under Section 498A, IPC the appellant could

not be convicted thereunder in the light of the provisions under Section 222, Cr.P.C. The learned Public Prosecutor further contended that the evidence of the relatives viz., PW1, PW16 and PW17 also could not have been eschewed while considering the culpability of the appellant for the offence punishable under Section 498A, IPC and it is incorrect and unsustainable to say that their oral testimonies are inadmissible in evidence in the light of Section 60 of the Evidence Act. So also, it is contended that the decision relied on by the appellant in **Bhairon Singh's** case (Supra) is inapplicable to the facts and circumstances of the instant case. The learned Public Prosecutor further contended that the mere existence of two dying declarations is not a ground for ignoring them and in such circumstances, it is incumbent on the court to consider whether any of such dying declarations could be relied on for the purpose of considering the culpability of the accused/appellant. To bring home the said point the learned Public Prosecutor relied on the decisions of the Hon'ble Apex Court in **Laxman v. State of Maharashtra ((2002) 6 SCC 710)**, **Sher Singh v. State of Punjab (AIR 2008 SC 1426)** and also a Division Bench decision of this Court in **Biju v. State of Kerala (2012 (4) KLT SN 97 (C.No.88)**. It is also the contention of the learned Public Prosecutor that besides the evidence of PWs 1, 16 and 17 the evidence of PW18 with Ext.P18 would lead only to the irresistible

conclusion of guilt of the accused and therefore, the impugned judgment cannot be said to be suffering from any legal infirmity or illegality warranting appellate interference. For a proper appreciation of the rival contentions it is relevant to advert to the oral evidence as also the documentary evidence.

5. PW1 is the mother of deceased Sujana. She would depose that Sujana was given in marriage to the appellant in the year 1990 and that at the time of marriage 6¾ sovereigns of gold was given to her. She would further depose that when the appellant came with the proposal their inability to conduct the marriage was divulged to him and his relatives and then, the appellant and the relatives agreed to PW1 and their family that they would permit them to take six months' salary of Sujana who was working as a teacher in Manathala High School. She deposed further that father of Sujana, in fact, collected two months' salary of Sujana since the marriage. But, when he turned up to collect the salary thereafter he was scolded and attempted to be beaten up by the appellant and accused Nos.2 and 3 and since then he never went to the appellant's house. She would further depose thus:-

When it was learnt that Sujana was carrying PW17 who was her sister was sent to the appellant's house to bring Sujana for delivery.

However, the appellant and the second accused were unwilling to send her along with PW17 and later they came to know that Sujana delivered a child in a hospital. The appellant did not permit her to see Sujana, but on the 3rd day of her delivery Sujana came to her house and complained of being put to hunger and also about the total lack of aftercare and she left immediately and thereafter on the 56th day of delivery she again came back home complaining of illtreatment and manhandling from the part of the appellant. Sujana remained at home for about 10-20 days stating that she could not tolerate the torture meted out to her by the appellant and the other accused. Sujana came there on that day without the baby and later after mediation she was taken to her matrimonial home by her younger sister, her husband, the father of the deceased and a neighbour. Upon entering the house all the accused dragged Sujana inside and closed the door. The persons who accompanied Sujana to her matrimonial home further divulged to her that after Sujana was being dragged inside they heard only her cry from inside. Later, on coming to know that Sujana gave birth to another child she went to see the child but was driven out of the house by the appellant and since then she used to meet Sujana only from the school where she was then teaching. When she went to see Sujana in the hospital after being hospitalised, on sustaining the burns, Sujana told her about the serious

illtreatment and cruelty meted out to her and that her bones were broken by birching. Ext.P1 F.I. Statement was signed by her husband and he died subsequently and she identified his signature thereon and in Ext.P2 statement given before the Court of Judicial First Class Magistrate, Chavakkad.

6. PW2 is a neighbour of the appellant and he, in fact, is his cousin. He deposed that the appellant married Sujana in 1990 and he was not invited to the said marriage owing to the long standing dispute between the families of himself and the appellant and that he did not accompany Sujana to the hospital. He was declared hostile and was cross examined by the learned Public Prosecutor with permission of the court. During such cross examination he deposed that there is long standing family dispute regarding the property between their families and that was why he did not participate in the marriage of the appellant with Sujana. He would also depose that he was the Secretary and the appellant was the Treasurer of a *Samithi* constituted to help the members of the community in obsequial matters and denied the suggestion of existence of a dispute between himself and the appellant with respect to the withdrawal of an amount of ₹ 6,000/- and at the same time, he admitted that there was a joint withdrawal of ₹ 6,000/-

for him. He denied of any knowledge of illtreatment to deceased Sujana by the accused persons demanding dowry. PW3 is also another neighbour of the appellant and he too, turned hostile to the prosecution and deposed during cross examination that he saw ablazed Sujana coming to the house from outside. PW4 is yet another neighbour and she would depose that Sujana died of burns and further that she did not know the reason for the incident. PW5 is the Doctor attached to Jubilee Mission Hospital, Thrissur who examined Sujana on 30.8.1996 at 10.30 p.m. and issued Ext.P9 wound certificate. He deposed that the cause of injury was revealed to him by the bystanders as accidental burns on sprinkling of kerosene and also that at the time of examination she was found fully conscious though found suffering from excruciating pain. According to PW5, Sujana had burns all over the body and she was stinking with kerosene and even her hair had the said odour. He further deposed that the cause of injury may be accidental or suicidal and that Sujana died on 4.9.1996 at about 4.50 p.m. and Ext.P10 medical records pertaining to the deceased Sujana were marked through PW5. He would further depose that as per the said medical reports on 1.9.1996 at 3 p.m. the Doctor was called to the ward on the arrival of the Magistrate for recording dying declaration and the learned Magistrate also sought for a certificate from the Doctor. He also deposed that though such an

information was passed on to him he could not recollect the name of the informer and that he was not specifically told as to what kind of a certificate was to be issued. PW5 deposed that he knew Dr.Thimothi who recorded Ext.P11 dying declaration of deceased Sujana and that Dr.Thimothi was working as Chief Medical Officer in the said hospital. He identified his signature and deposed that Dr.Thimothi is no more. He deposed that Ext.P11 dying declaration was recorded by Dr.Thimothi on 31.8.1996 at 9.30 a.m. and in the light of the statements in Ext.P11 he further deposed that Sujana sprinkled kerosene on her saree and set herself to fire. Among other things she declared to Dr.Thimothi that she got no problems with her husband and specifically stated that the husband is not responsible for the incident and therefore, he should not be harassed in connection with the said incident and that he was an employed person going by Ext.P11 dying declaration. PW5 further deposed that the said document would further reveal that when Dr.Thimothi asked Sujana regarding the place of occurrence she replied that it occurred from the matrimonial house on the previous night at 9 O' clock and on being asked whether she got anything more to say she stated that the husband should not be implicated and that his job should not be affected in any manner. PW5 also deposed that he had given evidence before the Court of Judicial First Class Magistrate, Chavakkad

and admitted that Ext.P8 is the oral testimony given by him before the learned Magistrate. He also deposed that he is aware of the fact that the Magistrate had recorded another dying declaration of Sujana on 1.9.1996. PW5 deposed further that the records could not show that Sujana was unconscious on 1.9.1996 at 2.30 a.m. viz., the date and time in which Ext.P18 dying declaration was recorded by the Magistrate. During cross examination PW5 deposed that on 1.9.1996 when he examined Sujana, she was complaining of pain and headache and was expressing drowsiness and that the drowsiness might be on account of the medicines administered to her on 31.8.1996. But, he would also depose that on 1.9.1996 no medicines or fluids causing sedation was given to her. He deposed that extensive burns and cardiac respiratory arrest was the reason for her death. Evidently, he denied the suggestion of the defence that the patient with 100% burns could not speak and would reiterate that Sujana when brought to the casualty was in her senses and was fully conscious. He would depose that a person with 100% burns could speak provided no burn injury inside of the oral cavity.

7. PW6 was the Headmistress of the school where deceased Sujana was teaching. PW7 was a teacher in the said school. Both PW6 and PW7 got high esteem about the character of Sujana. PW8 issued

Ext.P13 certificate which would reveal that the house in which the incident occurred belonged to the father of the appellant. PW9 and PW10 are the attesting witnesses to Ext.P14 inquest report. Both of them admitted their signatures in Ext.P14. PW11 is the driver of the ambulance in which deceased Sujana was brought to the hospital immediately after the incident. PW12 is the attesting witness to Ext.P15 scene mahazar. He would admit his signature thereon. PW13 was the Police Constable who guarded the dead body of Sujana. PW14 would depose that he was working as Head Constable at Thrissur East Police Station at the time of the incident and on seeing the critical condition of Sujana he informed the said fact to Circle Inspector of Guruvayoor and on his direction intimation was given to the Doctor to record dying declaration. He deposed that Dr.Thimothi recorded the dying declaration from Sujana and the Doctor himself forwarded the same to the court.

8. PW16 is the younger sister of diseased Sujana. She deposed that marriage of Sujana with the appellant was solemnised on 11.2.1990 and Sujana was a teacher in a Government school and that at the time of marriage she was given 6¾ sovereigns of gold ornaments and further that the appellant and the members of his family had agreed to permit their father to receive salary of Sujana for six months. She

further deposed that their father received salary of Sujana for two months and thereafter he was ill-treated when turned up for collecting the salary. According to her, she was told by the father that Sujana was dragged inside the house and was manhandled. She also deposed that shortly after the delivery, on the 3rd day, and also on the 56th day Sujana visited their house and on those occasions the child was not with her. She also deposed that after mediation Sujana was taken to the house of the appellant and she too accompanied her. She would further depose thus:-

When they reached the house of the appellant the appellant along with the other accused dragged Sujana inside and closed the room and it is the subsequent ill-treatment that led Sujana to commit suicide. At the time of marriage of Sujana she was 17 or 18 years old and that she got four elder sisters and on two or three occasions after quarrelling with her husband Sujana came and stayed in the parental house. She was there in the hospital till the death of Sujana. At the time of recording of Ext.P18 dying declaration by the learned Magistrate herself, Suseela, Suvarna and Sulochana, the other sisters of Sujana were present in the room and the learned Magistrate had not asked them anything and that Sujana had to suffer cruelty and harassment at the hands of the accused. PW17 is the sister of PW1. She would depose

that 6¾ sovereigns of gold were given at the time of marriage to Sujana and there was also a promise from the part of the appellant and his family members that for six months Sujana's father would be permitted to collect her salary. She also deposed that from the 3rd month onwards salary of Sujana was not given to him and that she had visited Sujana about two years prior to her death in the school and then, Sujana told her about the illtreatment. She deposed that she was standing outside when the Magistrate recorded the dying declaration of Sujana. PW18 is the then Judicial First Class Magistrate-II, Thrissur and he would depose that on 1.9.1996 he recorded Ext.P18 dying declaration of Sujana at about 2.30 p.m. from Jubilee Mission Hospital, Thrissur. He would depose that the request for recording the dying declaration from the Circle Inspector of Chavakkad was received by him while he was in the quarters and owing to Onam holidays he was in additional charge of all the Magistrates of Thrissur District. On receiving such intimation at 2.10 p.m. on 1.9.1996 he went to the hospital and recorded the dying declaration of Sujana at 2.30 p.m. He also deposed that when he reached the hospital for the aforesaid purpose Doctors were not present there and a hospital employee and the Circle Inspector took him to the cot where Sujana was lying and that no Doctors were available for certifying the mental condition of Sujana and therefore, he himself asked

questions to Sujana to satisfy himself of her mental condition after introducing himself as Judicial First Class Magistrate-II, Thrissur. He also deposed that he put different questions and from the answers he received for such questions he was satisfied about the fitness of her mental condition for giving dying declaration and thereafter recorded Ext.P18 statement. He also deposed that thereafter it was read out to her and she admitted the same as true and her thumb impression was taken twice as the first thumb impression was not clear and that the recording of the dying declaration was over by 3 p.m. He would also depose that after recording the dying declaration he waited there for 45 minutes more for the Doctor and then a lady Doctor came there and on being asked to issue a certificate she refused to do so and he has endorsed it in the memorandum and left the hospital at 3.45 p.m. Ext.P19 is the letter by which the dying declaration was forwarded to the Judicial First Class Magistrate, Chavakkad. He would also depose that when he recorded the dying declaration nobody was present in the room. During cross examination he deposed that Sujana was lying at the end of a common ward and the cot was covered with mosquito net and she was not seen in a separate room. He also denied the suggestion that the declarant Sujana was not conscious and was not fit for giving dying declaration. During the re-examination PW18 admitted that Ext.P20

requisition from the Circle Inspector was received by him at his residence on 1.9.1996 at 2.10.p.m. PW18 would further depose that when Sujana was asked about the incident she replied that she poured kerosene over her body and set herself on fire. She stated that on the second day of Onam there occurred a quarrel between herself and the mother-in-law and the mother-in-law abused her when she came late from the bathroom to sitzbath her daughter. She further stated to PW18 that the appellant thereupon beaten on her face and dragged her and pushed inside the room. She has also stated that previously her husband took three of her bangles which were in the possession of the mother-in-law and gave them to his friend to help him to perform a function. PW18 would further depose that Sujana stated to him that the appellant and the other accused put her upside down and the brother of the appellant attempted to beat her. Sujana further told him about the incidents occurred immediately prior to the setting on fire. She stated that on the third day of Onam holidays when she was taking rest after preparation of meals her husband came there, scolded her for taking rest and caught hold of her hands and pulled and pushed her outside the room. Then, while sitting in the northern verandah of the house she thought why she should continue to live like that and then sprinkled kerosene all over her body and set fire using a match box and thereafter she regained

consciousness from the hospital. PW19, the chemical examiner who issued Ext.P21 certificate after examining the six material objects, deposed that in all of them presence of kerosene was found. PW20 conducted the inquest and he proved Ext.P14 as its report. PW21 was the then Dy.S.P. of Kunnamkulam who verified the investigation conducted by the Circle Inspector. PW22 proved Ext.P22 postmortem certificate issued by Dr.V.T.Augusti and deposed that the Doctor opined that Sujana died of burns. He deposed that the larynx was unaffected by the burns, going by Ext.P22. PW23 was the then Circle Inspector of Police who conducted the investigation. He deposed that on coming to know about the admission of Sujana at Jubilee Mission Hospital with burns and her critical condition he directed Head Constable Mohanan to give intimation to the Doctor to record the dying declaration of Sujana. Ext.P1 is the F.I. Statement based on which Ext.P23 F.I.R. was registered. He deposed that on 1.9.1996 he took up the investigation and prepared Ext.P15 scene mahazar and also seized MO1 to MO3 series and evidently, they were described in Ext.P15 scene mahazar. As noticed hereinbefore, PW12 was the attesting witness to the same. During cross examination PW23 would depose that owing to the presence of the husband and the in-laws Sujana was seen not in a position to give a statement and Ext.P1 statement was taken from the

father of deceased Sujana. PW23 would depose that it was the Doctors who had shown Sujana to PW18 to enable him to record the dying declaration.

9. DW1 is the sister of the appellant. She deposed that her brothers including the appellant and the mother had not harassed or treated deceased Sujana with cruelty and she proved Exts.D1 to D5 which are respectively the service book, insurance book, bank account records, policy certificate etc. of deceased Sujana and deposed that after the death of Sujana no amount was withdrawn. She also deposed that when Sujana was admitted in the hospital in the earlier days she attended her and she returned home only when the accused were arrested in connection with the incident. DW2 was the Manager of Canara Bank, Chavakkad during the relevant point of time. He would depose that an account was maintained jointly by Sujana and the appellant with the said branch and that after 15.10.1995 there was no withdrawal from the said account maintained by them and also that father of Sujana gave Ext.D11 request not to permit the appellant to withdraw any amount from the said account.

10. From the evidence on record as adverted above and the

rival contentions certain questions of relevance emerged for consideration. Admittedly, in this case, the appellant and also his co-accused were charged with and acquitted of the offence under Section 304B, IPC. So also, admittedly, the question of their culpability under Section 306, IPC based on the same set of facts and evidence was considered, without the charge being there for the same. Again, all of them were found not guilty thereunder. On the same set of facts and evidence on record the culpability of all the accused under Section 498A, IPC was also considered by the trial court though no specific charge was framed under Section 498A, IPC. After such consideration all the accused except the appellant were acquitted of the offence under Section 498A, IPC and the appellant alone was convicted for the offence under Section 498A, IPC. I will now, consider the legality of entering into a conviction under Section 498A, IPC without framing charge thereunder against a person who was chargesheeted for the offence under Section 304B and acquitted thereof. While considering the said question Sections 222 and 215, Cr.P.C. would assume relevance. There can be no dispute with respect to the position that a mere omission or defect in framing a charge does not disable a criminal court from convicting an accused for another minor offence in case the accused was chargesheeted for a major offence and if the ingredients of a particular

minor offence were proved against the said accused. Section 222, Cr.P.C. deals with the situation which enables a criminal court to convict a person of a minor offence even though the accused is not chargesheeted with it, if with respect to an offence consisting of 'several particulars' a combination of some only of which constitutes a complete minor offence and combination is proved, but the remaining particulars are not proved. In this case, admittedly, the appellant along with others were chargesheeted for the offence under Section 304B, IPC. It is an offence of higher degree for causing 'dowry death' and it is punishable with the minimum sentence of seven years of rigorous imprisonment and the maximum of life imprisonment. Section 306, IPC punishes abetment of suicide. The maximum sentence that could be awarded for the conviction thereunder is 10 years and the minimum sentence thereunder is not provided. As such, it is a lesser offence compared to Section 304B, IPC. When it comes to the offence under Section 498A, IPC the offence punishable thereunder is making of a woman subject to such cruelty falling under the explanation thereunder by the husband or the relatives of the husband of that woman. It is punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Therefore, evidently, it is still a lesser offence than Section 306, IPC. In such circumstances, in the light of the provisions

under Section 222, Cr.P.C. if a person is charged and acquitted under Section 304B, IPC, non-framing of charge under Section 306, IPC or under Section 498A, IPC are no grounds for not considering the question of his culpability either under Section 306 or under Section 498A, IPC subject, of course, of the existence of any evidence and invariably, the scope of conviction would depend upon the success of the prosecution in proving any such minor offence. In such circumstances, all such incriminating materials which constituted the said minor offence are also to be put to the accused before recording conviction, if conviction were to be entered into based on the evidence, to avoid failure of justice. Evidently, in the case on hand, all the incriminating circumstances were put to the appellant. Viewing the case on hand, in the light of the aforesaid position of law, the facts that the appellant herein was acquitted of the offence under Section 304B, IPC and found not culpable for the offence punishable under Section 306, IPC and also the finding of guilty of the offence under Section 498A, IPC despite non-framing of a charge thereunder are not grounds for appellate interference.

11. Now, the question to be decided is whether the conviction of the appellant for the offence under Section 498A, IPC is sustainable in view of the evidence on record. While considering the same the

contention raised by the learned Senior counsel for the appellant in the light of the decision of the Hon'ble Apex Court in **Bhairon Singh's** case (supra) and the decision of this Court in **Mony's** case (supra) are relevant. It is relevant for the purpose of deciding the evidentiary value of the oral testimonies of PWs 1, 16 and 17. The contentions raised by the learned Senior counsel for the appellant in the light of the decisions of the Hon'ble Apex Court in **Lella Srinivasa Rao's** case, **Amol Singh's** case, **Chinnamma's** case and **Sanjay's** case (supra) also have relevance and obviously, such contentions are taken up for the purpose of canvassing the position that Exts.P11 and P18 dying declarations cannot form the basis for the appellant's conviction inasmuch as, they are materially contradictory to each other. So also, the contention of the learned Senior counsel for the appellant that having acquitted accused 2 to 4 of the offence under Section 498A,IPC, based on the same accusation and on the same set of evidence there was absolutely no sustainable ground for conviction of the appellant under Section 498A, IPC also calls for serious consideration. Needless to say that consideration of the contentions raised by the learned Public Prosecutor in the light of the decisions in **Laxman's** case, **Sher Singh's** case and **Biju's** case (supra) is also inevitable in this case.

12. Indisputably, for arriving at the conclusion of guilt of the appellant the trial court relied on the oral testimonies of PW1, PW2 to certain extent and that of PW5, PW16, PW17, PW18 with Ext.P18. From the evidence on record it can be seen that the oral testimonies of PWs 1, 16 and 17 are the evidence available for considering the culpability or otherwise of the appellant for the offence under Section 498A, IPC. But, at the same time, their evidence, on close scrutiny for the said purpose, would reveal that they partake only the nature of hearsay evidence. The question is whether it is admissible in view of Section 60 of the Indian Evidence Act ? The discussion of evidence by the trial court in the impugned judgment would reveal that though the evidence of PWs 1, 16 and 17 are adverted to, the trial court found that those prosecution witnesses got no specific case at all to the effect that there was any harassment or cruelty by any of the accused in connection with any demand for dowry. At the same time, from the impugned judgment itself it is evident that the oral testimonies of PWs 1, 16 and 17 were insufficient to rather, inadmissible to enter into a finding of conviction against the appellant for the offence under Section 304B, IPC as the essential ingredient to be established for such offence was a demand for dowry soon prior to the death. Evidently, the oral testimonies of PWs 1, 16 and 17 was not found sufficient for the purpose of entering into a

finding of conviction against the appellant as also the other accused for the offence under Section 306, IPC. The evidence of PWs 1, 16, 17 as discussed above would undoubtedly reveal that they fall within the category of hearsay evidence. In this context, it is to be noted that it is not the case of the prosecution that they are eye witnesses. The question is whether the said evidence which indisputably fall within the category of hearsay evidence can be the materials for the purpose of conviction of the appellant under Section 498A, IPC. No doubt, such hearsay evidence is inadmissible in the light of Section 60 of the Evidence Act for the purpose of looking into the culpability or otherwise of the accused for offence under Section 498A, IPC. A scanning of the evidence of PWs 1, 16 and 17 would undoubtedly reveal that they did not actually witnessed any harassment and going by their own version they were told about such torture by the deceased Sujana. In such circumstances, to make the evidence tendered by them acceptable and admissible in law they will have to fall within the exception to Section 32 (1) of the Indian Evidence Act. I may hasten to add here that it is true that PW16 who is the sister of PW1 deposed that when she along with the father of the deceased Sujana took Sujana to the matrimonial home and when Sujana entered the house she was dragged inside and they heard a cry. The further evidence tendered by PW16 itself would reveal

that such piece of evidence got no relevancy as she herself deposed that it occurred years before and thereafter Sujana lived in that house along with the appellant and evidently, begotten a second child. I am of the view that a detailed discussion is not required to arrive at the finding that they are inadmissible in law in view of the decision of the Hon'ble Apex Court in **Bhairon Singh's** case (supra). It is only apropos to extract paragraph 11 of the decision in **Biron Singh's** case (supra) to answer the aforesaid question. It reads thus:-

11. The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498-A, IPC. In our considered view, the evidence of PW-4 and PW-5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32(1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transaction which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498-A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted.

(emphasis added)

The position as to what is the exception and when the exception, under Section 32(1) of the Evidence Act is applicable are clearly discernible from the aforequoted paragraph. In that case after considering as to what the deceased told the witnesses against the appellant/accused regarding the torture and harassment the Hon'ble Apex Court found that they got no connection with any of the circumstances of the transactions which resulted in the death of the deceased Ranjana Rani in connection with whose death the appellant/accused therein was tried. For an offence under Section 498-A, IPC simpliciter, the cause of death is not and cannot be an issue for consideration. The statements attributed to the deceased could be used only if they fall within the exception under Section 32(1) of the Indian Evidence Act. Such statement of a dead person is admissible in law only if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death is an issue for consideration. In the said circumstances, the statements, attributed to deceased Sujana in the oral testimonies of PW1, PW16 and PW17 cannot and will not fall within the exception available under Section 32(1) of the Indian Evidence Act. In the light of the said decision their depositions regarding what the deceased Sujana told them with respect to the torture and harassment could not have any evidentiary value in law to

establish the offence under Section 498A, IPC against the appellant as in respect of such an offence cause of death could not be an issue for consideration and therefore, they would not fall within the exception under Section 32(1) of the Evidence Act. In such circumstances, it is absolutely unnecessary to deal with the oral testimonies of PWs 1, 16 and 17 any further for considering the sustainability or otherwise of the conviction of the appellant under Section 498A, IPC. In such circumstances, what survives for consideration is what are the surviving materials available to decide on the culpability or otherwise of the appellant under Section 498A, IPC. Eschewing the evidence of PWs 1, 16 and 17 which were found inadmissible hereinbefore, what survives for consideration is the evidence of PW5 with Ext.P11 and the evidence of PW18 with Ext.P18 and also oral testimony of PW16 to the extent she deposed to have witnessed the action from the part of the accused persons including the appellant in dragging the deceased Sujana inside the house when Sujana was taken there by PW16 along with father of the deceased and yet another person.

13. A scrutiny of the impugned judgment would ultimately reveal that the real foundation for the conviction of the appellant herein for the offence under section 498A, IPC is Ext.P18 dying declaration. The

trial court found that PW18 recorded Ext.P18 dying declaration after satisfying himself about the fit state of mind of deceased Sujana to give proper declarations and after putting different questions. The evidence of PW5 to the effect that Sujana was not under the effect of sedation on 1.9.1996 was also taken note of. The learned Sessions Judge found that Sujana was apprehending death when she gave Ext.P18 statement and she narrated the incident of the day on which she set herself on fire and also with respect to the incident on the previous day. It was found that the cruelty meted out to her on the previous day thus narrated would reveal that it was the cruelty of her husband in pushing her out of the room and making her to remain there that led to the attempt to commit suicide. The trial court also found that in such circumstances Ext.P11 is silent as to the cause that prompted her to set herself fire while Ext.P18 dying declaration revealed the cause. After considering Exts.P11 and P18 it was found that Ext.P18 revealed the circumstances that led Sujana to set fire on herself after sprinkling kerosene over the body and therefore, it was held that Ext.P18 could be accepted as a dying declaration made truthfully and voluntarily. The trial court also held that it is corroborated by other evidence. Further it was held that Ext.P18 would reveal that the cruelty shown by the appellant herein would fall within the definition of 'cruelty' under Clause (a) of the Explanation to

Section 498A, IPC and though the other accused persons had also ill-treated her their acts would not fall within the definition of 'cruelty' defined under Section 498A, IPC. It was based on such consideration that the trial court arrived at the conclusion that the appellant had committed the offence under Section 498A, IPC. In view of the said circumstances, the question to be looked into, is whether the trial court was right in relying on Ext.P18 to enter into the finding of guilty against the appellant. As noticed hereinbefore, the learned Senior counsel for the appellant contended that Ext.P18 ought not to have been relied on in view of the existence of a previous dying declaration viz., Ext.P11 and that Exts.P11 and P18 are materially contradictory to each other. It is to be noted that the learned Public Prosecutor contended that even in such circumstances the dying declaration which relates cruelty which would fall within the definition of Section 498A, IPC as discernible from the statements in the declaration, could be relied on safely to arrive at a finding of guilt of an accused. In such circumstances, the question to be considered is when two materially contradictory dying declarations are in existence whether it would be safe to rely on any one of them to find guilt on the part of the accused concerned ? The fact that Exts.P11 and P18 are materially contradictory to each other is not at all disputed and in fact, the said fact is indisputable. A bare perusal of Ext.P11 would

reveal that it was recorded by Dr.Thimothy who was then attached to Jubilee Mission Hospital and it was proved through PW5. The state of mind of Sujana at the time of giving the said declaration revealed through Ext.P11 undoubtedly show that at that point of time she was apprehending death. No reason whatsoever has been given by the trial court as to why it should not be treated as a dying declaration. In this context, it is also to be noted that the categorical finding of the trial court on appreciating the evidence is that at the time of giving Ext.P18 dying declaration the deceased Sujana was apprehending death. It is evident from Ext.P11 that deceased Sujana was in a fit state of mind to give a dying declaration and that after narrating the incident she specifically stated that her husband viz., the appellant herein had no responsibility. It is stated in Ext.P11 thus:-

“ഭർത്താവായിട്ട് വല്ല പ്രശ്നങ്ങൾ ഉണ്ടോ? ഇല്ല. അദ്ദേഹം ഒരു വിധത്തിലും കുറ്റക്കാരനല്ല. അദ്ദേഹത്തെ ഒരു തരത്തിലും ഈ കാര്യത്തിൽ പിറപ്പിക്കുകയുണ്ട്. അദ്ദേഹത്തിന്നു ജോലിയുള്ള ആളാണ്. As against the question കൂടുതലായി വല്ലതും പറയാനുണ്ടോ? she answered; ഇല്ല. ഭർത്താവിനെ കുറ്റക്കാരനാക്കുകയുണ്ട്. അദ്ദേഹത്തിന്റെ ജോലിയെ ഒരു തരത്തിലും ബാധിക്കുകയുണ്ട്. It is also discernible from Ext.P11 that against the question എങ്ങിനെയാണ് തീ പിടിച്ചത്? she replied; സ്വയം മണ്ണെണ്ണ സാരിയിൽ ഒഴിച്ചു വിളക്കുകൊണ്ട് തീകൊളുത്തി.

Q. എന്തെങ്കിലും പ്രത്യേകിച്ചു കാരണം? A. കഷ്ടകാലത്തിന് ചെയ്തതാണ് .
 മാനസിക പ്രശ്നങ്ങൾ ഉണ്ട് . It is also relevant to note that as against the
 question വിവരിക്കാമോ ? she replied; പലതും ഉണ്ട് . ഭർത്താവിന്റെ വീട്ടുകാർ
 ആയിട്ട് അഭിപ്രായവ്യത്യാസങ്ങൾ ഉണ്ട് . It is thereafter that as against the
 question regarding the role of the husband she stated as mentioned
 hereinbefore. Ext.P18 was recorded subsequently by PW18. PW18 was
 the then Judicial First Class Magistrate-II, Thrissur. Going by Ext.P18
 dying declaration, deceased Sujana who had not attributed anything
 against her husband in Ext.P11 had attributed something against the
 husband and the other accused in Ext.P18. It is in such circumstances
 that I made the observation that Exts.P11 and P18 are materially
 contradictory to each other. When that be so, the question is whether
 Ext.P18 could have been relied on for the purpose of arriving at the guilt
 of the accused. In that context the decisions of the Hon'ble Apex Court
 in **Lella Srinivasa Rao's** case, **Amol Singh's** case, **Chinnamma's**
 case and **Sanjay's** case (supra) assume relevance. In **Lella Srinivasa**
Rao's case there were two dying declarations. In the first dying
 declaration the allegation was made against the mother-in-law by the
 declarant to the effect that she used to harass her. In the second dying
 declaration the declarant had given details relating the visit of her

parents on 4.9.1990 and harassment meted out to her by the appellant-husband after he came to know about the visit of her parents. Paragraph 8 thereunder would reveal that after considering such aspects the Hon'ble Apex Court found that in the first dying declaration there was only a general allegation against the mother-in-law who was accused No.2 in that case and in the second dying declaration allegation of harassment was made against the husband as well as the mother-in-law and also it was made clear that the immediate cause for the suicide was the harassment meted out to her by her husband who was the appellant. It is also to be noted that in that case the first dying declaration was recorded by the Magistrate after taking all necessary precautions and prior to the recording of the same her state of mind was certified by the treating physician and he was also present while the statement was being recorded. The second dying declaration was recorded by a Head Constable and it was so recorded just five minutes after the recording of the first dying declaration. The Hon'ble Apex Court held that having regard to the inconsistency in the two dying declarations it was unsafe to act solely on them to convict the appellant. It is also to be noted that even after taking note of the fact that in both the dying declarations allegations were made against the mother-in-law the Hon'ble Apex Court observed that it was in fact, unsafe to rely on the said dying declarations

to convict the second accused, the mother-in-law. In short, a scanning of the said decision would reveal that the dictum laid down by the Hon'ble Apex Court is that when more than one dying declarations are available and if such declarations are inconsistent with each other it would not be safe to act solely on them to convict the accused. Virtually, a scrutiny of the decision of the Hon'ble Apex Court in **Amol Singh's** case (supra) would reveal that the same view was restated in a case where multiple dying declarations were in existence. True that, the Hon'ble Apex Court held therein that when such multiple dying declarations are available it is the duty of the court to examine the nature of inconsistencies and also to probe into the authenticity. It is also held therein that inconsistencies in multiple dying declarations is a matter to be looked into and in such circumstances, it would be unsafe to convict the accused relying on such dying declarations. In **Chinnamma's** case (supra) two dying declarations were available. That was a case of death by burning. After considering the statements in each of them the Hon'ble Apex Court found that glaring contradictions are there in the dying declarations. It is to be noted that, it was also a case wherein no eye witnesses to the incident was available and the prosecution primarily relied only on two dying declarations to establish the guilt of the accused therein. A scanning of the said decision would

reveal that essentially, the dictum laid down in the cases referred above was restated by the Hon'ble Apex Court. In **Sanjay's** case (supra) multiple dying declarations were recorded and that was also a case of death from burn injuries. In the first dying declaration it was stated by the declarant that while she was pumping the stove it burst suddenly and her saree caught fire and that hearing her cry her husband rushed there and tried to save her. In the subsequent dying declaration she stated that being angry with her husband set her body ablaze. Thus, it is evident that in that case, in the first dying declaration there was nothing to implicate the accused/appellant whereas, in the second dying declaration the declarant stated that she poured kerosene on her body and set herself ablaze because she was angry with her husband. In paragraph 16 the Hon'ble Apex Court held that where the dying declarations are inconsistent with each other it would be unsafe to uphold the conviction and the convict should be given the benefit of doubt, in such circumstances. The learned Senior counsel for the appellant relied on those decisions to canvass the position that in view of the facts obtained in this case they are squarely applicable. I have also taken note of the fact that the two dying declarations in this case viz., Exts.P11 and P18 are materially contradictory to each other inasmuch as, in the first one nothing was attributed against the husband and at the

same time, she asserted the innocence of the non-involvement of her husband in the incident. In Ext.P18 dying declaration she attributed the accused/appellant and the other accused. Before adverting to the question whether in such circumstances the decisions referred above are applicable and whether the contentions raised by the learned Senior counsel for the appellant are to be sustained I think it only appropriate to consider the contentions raised by the learned Public Prosecutor. As noticed hereinbefore, the learned Public Prosecutor relied on the decisions in **Laxman's** case, **Sher Singh's** case and **Biju's** case (supra) to support and sustain the judgment. In **Laxman's** case (supra) the Hon'ble Apex Court was considering the question whether the absence of a Doctor's certification as to the mental fitness of the declarant would denude the validity of a dying declaration recorded by the Magistrate. In other words, the question is whether a Doctor's certificate is *sine qua non* for the credibility of the dying declaration recorded by a Magistrate. After considering all relevant aspects and also the provisions, the Hon'ble Apex Court held that it could not be said that a Doctor's certification regarding the mental fitness of the declarant is *sine qua non* for accepting the dying declaration recorded by the Magistrate. In other words, the absence of a Doctor's certificate recording the declarant's state of mind would not *ipso facto* render the dying declaration

unacceptable, it was held therein. There cannot be dispute with respect to the said position of law that mere absence of Doctor's certification as to the mental fitness of the declarant would not and could not render a dying declaration unacceptable. It is to be noted in this context that the appellant canvassed the position that Ext.P18 is unacceptable not on account of the absence of the Doctor's certification as to the mental fitness of the declarant. There can be no doubt with respect to the position that even in the absence of a Doctor a Magistrate could ascertain the state of mind of the declarant certainly, after putting certain relevant questions to assess the fitness of mind of the concerned declarant to give dying declaration. A perusal of **Laxman's** case (supra) would reveal that in such circumstances, even the absence of any noting with respect to the questions put by the concerned Magistrate to ascertain the state of mind of the declarant would not make it unacceptable and to make it acceptable it would suffice if evidence is given by the Magistrate who recorded it to the effect that before recording the same he ascertained the state of mind of the declarant by putting relevant questions. In **Biju's** case (supra) a Division Bench of this Court held that even if the cruelty alleged in a particular case would not fall under clause (b) of Explanation to Section 498A, IPC if it comes within the ambit of clause (b), such cruelty would become punishable under Section 498A, IPC. If

the accused is guilty of willful conduct, which would fall under cruelty going by the definition thereunder, it would constitute cruelty for the purpose of Section 498A, IPC. In **Sher Singh's** case (supra) multiple dying declarations were available. The first dying declaration was recorded by police immediately after the incident and there the declarant gave a story of the accidental burn and the same was recorded in the presence of the mother-in-law. The second dying declaration was recorded by the Magistrate inculcating all her in-laws and husband. In that case, there were three dying declarations and the 3rd declaration was consistent with the second declaration recorded by the Magistrate inculcating all her in-laws and husband. In such circumstances, it was held that the dying declaration recorded by the Magistrate could be relied on. True that, in the light of the decisions relied on by the learned Public Prosecutor the absence of a certification by the Doctor by itself would not make Ext.P18 dying declaration unacceptable. But, the question is whether Ext.P18 dying declaration is materially contradictory to Ext.P11. In this context, it is to be noted that Ext.P11 is the first dying declaration and it was recorded by the Doctor who treated her. It is also to be noted that in the said declaration the deceased Sujana exculpated her husband and at the same time inculpated husband as also the other accused in Ext.P18 dying declaration. When it is evident that

the two dying declarations are materially contradictory to each other going by the dictum laid down by the Hon'ble Apex Court in **Lella Srinivasa Rao's** case, **Amol Singh's** case, **Chinnamma's** case and **Sanjay's** case (supra) in the absence of any other corroborative evidence it would be absolutely unsafe to rely on Ext.P18 to record conviction against the appellant herein. I have already found that apart from the two dying declarations the other piece of evidence to look into the question of culpability of the appellant for the offence under Section 498A, IPC is the oral testimony of PW16. It is evident that the incident thus narrated during her testimony was one which occurred shortly after the birth of the first child. She would depose that after the birth of the first child without carrying the child the deceased Sujana came to the house of PW1 and thereafter after mediation she was taken to her matrimonial home by herself and the father of the deceased Sujana. Going by her deposition when Sujana had entered the house she was dragged by the appellant and the other accused. She would further depose that thereafter she had screamed. In this context, it is to be noted that going by the evidence on record it is evident that even thereafter the appellant and the deceased Sujana lived together as husband and wife and Sujana gave birth to a second baby. In other words, the incident whereby she sprinkled kerosene over her body and

set her on fire occurred years thereafter. The said solitary deposition of PW16 on the aforesaid lines is certainly insufficient to hold that the appellant/husband was showing cruelty to her and therefore, he is liable to be convicted under Section 498A IPC. In that context, another aspect also assumes relevance. Though PW16 had deposed against the other accused and their role was also stated in Ext.P18 the court found that accused Nos.2 to 4 could not be held guilty under Section 498A, IPC and in fact, they were all acquitted. In such circumstances, I have no doubt in my mind, what is stated in Ext.P18 and the aforesaid piece of statement made by PW16, in fact, the evidence of PW16 not at all sufficient to arrive at a conclusion that the prosecution has conclusively established the guilt of the appellant under Section 498A, IPC in the facts and circumstances of the case referred hereinbefore. As noticed hereinbefore, in the light of the dictum laid down by the Hon'ble Apex Court and taking into account the indisputable position that Exts.P11 and P18 are materially contradictory to each other, Ext.P18 and the other evidence referred above could not have been relied on by the learned Sessions Judge to convict the appellant for the offence under Section 498A, IPC. A scanning of the impugned judgment would reveal that these relevant aspects were not at all considered in the right perspective by the learned Sessions Judge and it was relying on Ext.P18 which ought

not to have been relied on in the light of the dictum laid down by the Hon'ble Apex Court that the trial court entered convicted under Section 498A, IPC against the appellant. In view of the position obtained in this case and in view of the circumstances explained hereinbefore, certainly it could not be said conclusively that the prosecution has succeeded in establishing the guilt of the accused to fetch a conviction for the offence punishable under Section 498-A, IPC. When that be the circumstance, I have no hesitation to hold that the impugned judgment invites appellate interference. In the said circumstances, the judgment of the Court of Additional Sessions Judge (Fast Track Court-II (Adhoc)), Thrissur in S.C.NO.161 of 2000 dated 24.8.2005 is set aside. The appeal is allowed. The appellant is set at liberty. His bail bond will stand cancelled.

Sd/-
C.T.RAVIKUMAR
Judge

TKS