

* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 09.07.2009
Judgment delivered on: 13.08.2009

Crl. Rev. P. 277/2009

RAMESH CHANDER SIBBAL Appellant

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Appellant : Mr Anupam S. Sharma, Advocate
For the Respondent : Mr Amit Sharma, Addl. Public
Prosecutor

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is a petition filed under the provisions of Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') assailing the charge framed by the learned Addl. Session Judge vide his order dated 02.04.2009, against the petitioner-accused. By the impugned order the petitioner-accused has been charged under the provisions of Section 306/448 of the Indian Penal Code, 1860 (in short the 'IPC').

1.1 At the outset the learned counsel for the petitioner-accused has restricted his challenge only to the charge framed against the petitioner-accused under Section 306 of the IPC. He has, on instructions, submitted before me that he does not wish to press the present petition, in so far as, the charge as has been framed

against the petitioner-accused under Section 448 of the IPC. In these circumstances, I am called upon to decide only as to whether in the given facts and circumstances, the charge, against the petitioner-accused ought to have been framed under Section 306 of the IPC.

2. In order to decide this application, it would be relevant to record as to what is the prosecution's case. Briefly, the prosecutions' case is:

2.1 On 04.12.2007 the police station, at Rajouri Garden, Delhi received information, which is recorded in DD No. 16A that a woman had committed suicide at C-224, Tagore Garden Extn., Delhi. Sub-Inspector O.P. Mandal reached the spot where the crime was committed. The deceased was identified as one, Komal Kapoor. The body of the deceased was sent for post-mortem. The statement of Mr Amit Kapoor, son of the deceased, who is also the complainant, was recorded by the police. On 05.12.2007 at about 12.15 p.m. a FIR was registered based on Amit Kapoor's complaint.

2.2 It is alleged that, family of the deceased ran a paint brush business, and that they knew the petitioner-accused for last ten years, since he was instrumental in their acquiring house no. C-225, Tagore Garden, Delhi. Since the family of the deceased suffered acute losses in their business because of a sealing drive in Delhi, the deceased discussed with the petitioner-accused, the possibility of selling their movable, and an immovable property situated at Rohini. The petitioner-accused, in this connection, fraudulently obtained signatures of the deceased. The deceased

also discussed the possibilities of selling another plot owned by the family, situated in the Bawana Industrial Area. The petitioner-accused gave the deceased to believe that certain documents had to be executed before the plot could be sold and, on this pretext, again got the deceased to sign and execute blank documents. The petitioner-accused allegedly paid to the deceased, a sum of Rs 5 lacs in the first instance, and thereafter, a sum of Rs 3 lacs for the plot situated in Bawana Industrial Area, as against the market value of approximately Rs 28 lacs, with an assurance that the rest of the amount would be paid in due course after execution of a proper conveyance deed.

2.3 Around Dussehra time in 2007, the petitioner-accused approached the deceased that he be given an accommodation on a temporary basis for a period of ten to twelve days, on the ground floor of her house situated at C-224, Tagore Garden, Delhi, on the pretext that his own house was under renovation. The deceased, believing the petitioner-accused, allowed him occupation of two rooms on the ground floor of the aforementioned house. It is alleged that while the deceased was away to Haridwar, just before festival of Diwali, the petitioner-accused encroached upon one more room, in the said house. Upon the petitioner-accused being asked to vacate the said premises by the deceased he is said to have responded by saying that, he had paid a sum of Rs 24 lacs and that it was his house, he therefore, would not vacate the premises. It is alleged that both the petitioner-accused and his son threatened the deceased and her family to vacate the house or else they would ruin them. It is also alleged that on the deceased asking the petitioner-accused

as to when she will get rid of this problem, he is said to have replied that she could get rid of this only after her death. This was followed by the petitioner-accused sending a legal notice dated 01.12.2007, to the deceased, which was received by her on 03.12.2007. The deceased, it is alleged, was asked by the petitioner-accused that as to whether she had received the said notice. The deceased, while confirming the same entreated with the petitioner-accused that she had trusted and relied upon him despite which she had been brought to this pass, and wondered as to when she would be relieved of her travails. To which the petitioner-accused is said to have responded by saying that she would be relieved only after her death. Resultantly, the deceased went into a depression. It is alleged that aforementioned events coupled with the threats extended by the petitioner-accused; propelled Komal Kapoor to commit suicide on 04.12.2007, at about 7.30 a.m., by hanging herself from a ceiling fan, by using a scarf ('chunni').

2.3 Upon completion of investigation a chargesheet was filed, whereby the petitioner-accused was sent up for trial. However, the names of the wife and son of the petitioner-accused, that is, Suman Sibbal and Gaurav Sibbal were mentioned in column no. 2 of the chargesheet. It is important to note that in the chargesheet the prosecution has referred to the fact that initially a transaction was entered into by the deceased with respect to the DDA plot no. 512, Block -C, Pocket No. 3, Sector- 28, Rohini, admeasuring 60 sq. mtrs. Further investigation, made pursuant to the orders of the learned ASJ during the pendency of the bail application, revealed that the deceased had executed an

agreement to sell dated 25.02.2007 with one Gagan Kapoor for a total sale consideration of Rs 24.11 lacs. The petitioner-accused was one of the witnesses to this agreement to sell. However, upon inquiry being conducted it was found that this transaction did not materialize. The aforesaid plot thereafter was subject matter of another agreement to sell dated 18.05.2007 executed between one, Alka Midha w/o N.K. Midha r/o Flat No. C-16, Shakti Apartment, Sector – 9, Rohini, Delhi – 85. The petitioner-accused was not a witness to this agreement.

2.4 Similarly, an enquiry conducted vis-à-vis plot located in the Bawana Industrial area revealed that a General Power of Attorney (in short 'GPA') dated 31.08.2007 was executed by the deceased, in favour of one, Mr Anil Kumar Handa son of Shri R.K. Handa r/o C-7/9, Mian Wali Nagar, Paschim Vihar, New Delhi. The said GPA was registered with the Sub-Registrar's Office in Amritsar, in the State of Punjab. The petitioner-accused is neither a witness to this GPA nor was he instrumental in the said transaction being entered into between the deceased and the GPA holder. As regards the third property in issue, i.e., C-224, Tagore Garden, Delhi the petitioner-accused entered into an agreement to sell dated 30.06.2007, with the deceased. The petitioner-accused who is shown as the purchaser, in the said agreement, was required to pay a sum of Rs 35 lacs for the said property. Out of the total sum of Rs 35 lacs the petitioner-accused was required to pay Rs 5 lacs at the stage of execution of the agreement, another Rs 5 lacs by 07.07.2007 and a further sum of Rs 5 lacs by 15.07.2007. The balance was payable within 90 days of the execution of the agreement to sell. There are

three receipts dated 30.06.2007, 07.07.2007 and 15.07.2007 on record. Besides these receipts there is also an undated receipt in the hand writing of the deceased for a sum of Rs 15 lacs, wherein it is recorded that she has handed over possession of the ground floor, in lieu of having received Rs 15 lacs from the petitioner-accused, and only when she would repay the said sum of Rs 15 lacs would she seek return of the possession of the ground floor, portion of the said property (i.e., Tagore Garden property). There is another receipt, also in the hand writing of the deceased, dated 01.09.2007, wherein the deceased has acknowledged the receipt of Rs 1 lac. In the said receipt, it is reiterated that the deceased in all owes a sum of Rs 16 lacs to the petitioner-accused. The said receipt, is witnessed by one Vijay Kumar.

2.5 Based on these documents, it is the prosecution's case that the deceased had taken a loan from the petitioner-accused and, the petitioner-accused in order to grab the property of the deceased had got the agreement to sell dated 30.06.2007, pertaining to C-224, Tagore Garden, Delhi executed in his favour, and thereafter, sent a legal notice dated 01.12.2007 through his advocate, which was received by the deceased on 03.12.2007. The petitioner-accused who was, already in occupation of a portion of the aforesaid property (i.e., Tagore Garden property) since Dussehra, by this act lent credibility to Komal Kapoor's worst fear of losing her property. This act of sending a legal notice was in a sense a last straw on the camel's back, which plunged Komal Kapoor into depression; feeling harassed and boxed-in she took the extreme step of committing suicide. The

petitioner-accused, thus according to the prosecution, has clearly abetted the suicide committed by Komal Kapoor.

2.6 To be noted the prosecution has also brought to fore the fact that during further investigation it was revealed that the property situated at C-224, Tagore Garden, Delhi; is mortgaged with the Oriental Bank of Commerce, Tagore Garden, Delhi; that there is a loan outstanding against the said property; and that original papers with respect to the said property, are with the Oriental Bank of Commerce.

3. In the background of the aforesaid case set up by the prosecution the learned counsel for the petitioner submitted that the ingredients of an offence under Section 306 of the IPC were not present in the instant case. As a matter of fact the learned counsel for the petitioner went further to say that this is not a case of suicide, rather is, a case of homicide. For this purpose he took me through the postmortem report, and also the literature (Pathology of Neck Injury by Peter Vanezis). On being told that since the trial was on and hence, the evidence could not be appreciated at this stage, the learned counsel decided to give up the arguments initially advanced on this aspect of the matter.

3.1 As regards whether a charge could be framed under Section 306 of the IPC, the upshot of his submissions was that even if the entire material/evidence placed on record by the prosecution is fully accepted to be correct, no offence under Section 306 of the IPC is made out against the petitioner-accused. For this purpose the learned counsel for the petitioner took me through the suicide note dated 04.12.2007, the

statement of the sons of the deceased Amit Kapoor (the complainant) and Sumit Kapoor, as well as, the report of the Forensic Science Laboratory. It was his submission that merely because the petitioner-accused is named in the suicide note and has been referred to as the reason which propelled the deceased to take the extreme step of suicide, it would still not fall within the realm of Section 306 of the IPC. It is contended that for the provisions of Section 306 of the IPC to be attracted, the offence of abetment of suicide has to fall within the ambit of the provisions of Section 107 of the IPC. The learned counsel submitted that for petitioner-accused to be charged with the offence of abetment of suicide, it would have to be shown that he instigated the deceased, that is, goaded, urged, provoked, or even encouraged the deceased to commit suicide. The learned counsel for the petitioner-accused contended that, assuming without admitting, the petitioner-accused had harassed the deceased, that by itself would not bring it within the realm of the provisions of Section 306 of the IPC in the absence of mens rea. In other words it would have to be demonstrated that there was material on record to prima facie show that the petitioner-accused intended that Komal Kapoor should commit suicide, before the petitioner-accused is charged with an offence under Section 306 of the IPC. In order to buttress his submission the learned counsel relied upon the following judgments:

Netai Dutta vs State of West Bengal 2005 (1) Crimes 352 (SC); Heera Lal Jain vs State 2000 (2) JCC 478 (Delhi); Sanju @ Sanjay Singh Senger vs State of M.P. 2002 SCC (Crl.) 1141; Swamy Prahaladdas vs State of M.P. & Anr. 1995 SCC (Crl.) 943; Mahender Singh & Anr. Gayatri Bai vs

State of M.P. 1995 SCC (Crl.) 1157, Kartar Singh & Ors vs CBI 2006 (2) JCC 1134, Sarbans Singh & Ors Vs State of NCT of Delhi 2005 Crl. L.J. 2625; Avinash J Mahale & Ors vs State of Maharashtra 2006 Crl. L.J. 3123.

4. As against this Mr Amit Sharma, the learned APP submitted that for framing of charge the court was required to inquire into, as to whether, based on the material placed on record by the prosecution, was there a 'strong suspicion' that the petitioner-accused had committed an offence of which he was accused. The learned APP submitted that a perusal of the suicide note as well as the statements of Amit Kapoor and Sumit Kapoor, the sons of the deceased would show that the necessary ingredients of an offence of abetment of suicide, with which the petitioner-accused has been charged, are present. He submitted that the report of the hand writing expert, which is on record, would show that the signatures of the deceased have been identified on the suicide note. It was the learned APP's contention that reading of the suicide note as well as the statement of the complainant would show that the deceased was harassed. The petitioner-accused had got her to execute documents whereby he had illegally taken possession of her house. It was the learned APP's submission that a cumulative effect of these events led Komal Kapoor to commit suicide. On the issue as to whether harassment by the petitioner-accused would constitute abetment, the learned APP relied upon the following judgments:

Bhagwan Das vs Kartar Singh & Ors (2008) 1 SCC (Cri) 664; Gurbachan Singh vs Satpal Singh & Ors. (1990) 1 SCC 445; Devi Lal vs State of Rajasthan JT 2007 (12) SC 114; Arvind Kumar & Anr vs State of Madhya Pradesh (2007) 12

SCC 681; Pawan Kumar & Ors vs State of Haryana (1998) 3 SCC 309.

5. In rejoinder the learned counsel for the petitioner-accused, apart from reiterating that which had been submitted in the opening, made additional submissions to the effect that in so far as the Forensic Science Laboratory report is concerned the expert had been able to compare only the signatures and not the hand writing of the deceased. He submitted that the case set up by the prosecution as is evident from the perusal of the chargesheet was that the deceased had taken a loan from the petitioner-accused, and in order to secure this loan she had executed the receipts which showed that the deceased of her own volition had given possession of a portion of the property i.e., C-224, Tagore Garden, Delhi, to the petitioner-accused. As regards the judgments cited by the learned APP, the counsel for the petitioner-accused submitted, that the aforesaid judgments were distinguishable on the ground that all of them related to offences under Section 498A read with Section 304B of the IPC, apart from Section 306 of the IPC. In those cases by virtue of the provisions of Section 113A of the Indian Evidence Act, 1872 (in short the 'Evidence Act') a presumption of abetment of the suicide is drawn, if death takes place within seven years of the marriage. It was his contention that ratio of those judgments will have no applicability to the facts of the present case.

6. The main issue which arises for consideration before me is, whether based on the material and evidence which the prosecution has placed on record, which if accepted to be true and correct in its entirety, even before it is refuted by subjecting

it to cross-examination or rebutted by evidence, if any, placed by the defence, would the acts of the accused constitute an offence within the meaning of Section 306 read with Section 107 of the IPC. In this context, it would perhaps be relevant to extract for the sake of convenience, the said provisions:

“107. Abetment of a thing. – A person abets the doing of a thing, who –

First. – Instigates any person to do that thing; or

Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. – Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. – A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

“306. Abetment of suicide. – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. It is clear that for a person to be charged with an offence under Section 306 of the IPC, that is, abetment of suicide; the abetment should be such as would fall within the definition of Section 107 of the IPC. Section 107 of the IPC broadly categorizes, and therefore, defines abetment as constituting:

- (i) Instigating a person to commit an offence;
 - (ii) Engaging in a conspiracy to commit such an offence;
 - or
 - (iii) Intentionally aiding a person to commit an offence.
- (see observations in ***Sanju @ Sanjay Singh Senger*** *supra*) at page 1144 in paragraph 6)

8. Instigation which is synonymous with abetment is defined as an act whereby one goads, urges, provokes, incites or encourages a person to commit an offence, and in the present case the offence of suicide. [see ***Hiralal Jain*** (*supra*) and Black's Law dictionary 6th edition at page 799]. Therefore, for the prosecution to prove that the petitioner-accused abetted the commission of suicide by the deceased, it would necessarily have to prove that the petitioner-accused firstly; instigated, goaded, urged and provoked the commission of suicide. Secondly, the principal offence was committed, which in this case, is suicide. And lastly, that the accused intended to aid or encourage the commission of the principal offence. In other words, the presence of mens rea is of utmost importance, before a person can be charged with offence of abetment of the principal offence. Let us examine the material placed on record in the present case. The most relevant material would be the suicide note in the instant case. An official translation of the suicide note was obtained. The suicide note, even though, quite lengthy being crucial to the case is extracted hereinbelow:-

"This Ramesh Sibbal, his wife Suman and his son Gaurav.

I am committing suicide for the reason that the aforesaid persons who are residing in our house forcefully, used to say that he was to do white wash so please allow him to keep some of his articles. But after some time, when I came, I saw that the aforesaid person has completely occupied my house as his own house. When my children objected to his aforesaid act, he said that he was to stay there only for a period of 04 days and that he would perform Diwali worship 'pooja' ceremony at his own house but he did not vacate the house. When I had gone to Haridwar, he occupied front room of my house as well after giving beatings to my children. I know this person since that day when he had got my plot of Rohini disposed off. As we both (husband and wife) had not read those papers (relating to disposal of our Rohini plot) so this person kept on obtaining our signatures on the stamp papers relating to our House No. C-224 on the pretext that these papers were required to execute the lease. My husband was ill and I used to remain busy in looking after him. Whenever, he came to us he used to show urgency in taking our signature by stating that the sale proceed of our plot would be given to us that day itself. He kept on giving payment time to time to us and we kept on receiving the same.

Written on the top of page 411

<i>This man gave me only a sum of Rs 05 lacs of my plot situated in Bawana, but he obtained my signature on Rs 15 lacs as I did not read the contents thereof.</i>
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When this man got our Bawana's plot sold, he took the file from us but I do not know as to what he had done with that amount. He used to say that he had given us the entire amount. Whatever amount he gave to us he used to take in writing on a paper. After giving his amount, when I asked for the file, he demanded Rs. 05 lacs otherwise, he would reveal it to my daughter that the file was lying with him. He also threatened me to sign the paper without raising any objection otherwise, he would get our children grandson and granddaughter kidnapped. On this, I used to scare and this man used to succeed in getting the stamp papers signed by me. When he got our plot of Rohini sold, he started obtaining my signatures. But at the time when the plot of Rohini was sold, he told me that the plot

situated in Bawana has been sold and he asked us to accompany him to sign the papers. Thereafter, he said that the person with whom he has kept the file was saying to him that he could take away the file from that person but only in lieu of keeping the papers of some other house with that person. When this man (suggested) me to keep other file (of property) in lieu of taking the said file from that person and this man (also assured me) that he would return those papers of property to me as and when the plot of Bawana would be sold. On this, I handed over the file of property no. C-225 to this man. After that, he told that the plot was not getting higher price and so he offered us to take some amount, if required by us urgently whereupon, this man gave us a sum of Rs 3 Lacs but he kept on taking an interest at the rate of 10%. This man gave us Rs 5 Lacs earlier and Rs 3 Lacs later so he kept on taking an interest on Rs. 8 Lacs. Before Diwali, I gave him a cheque of Rs 2,50,000/- and also gave a sum of Rs 3 Lacs in cash to his son. Thereafter, I gave a sum of Rs 2 Lacs in cash and his son knows the account of it whose name is Gaurav. When I gave money, I asked him to give me the written paper as I have returned the money whereupon, he (Gaurav) said that since he had no paper with him that time so the same would be returned to her by his father. This man's son Gaurav and wife Suman are together involved (in this conspiracy). His son also used to do my fake signatures. Whenever, I demanded my file back from him, he used to ask me to return Rs 15 Lacs first. On this, when I asked him as to how the amount of Rs 5 Lacs became to Rs 15 Lacs? He replied that it had become Rs 15 Lacs including interest thereon. I kept on giving him interest because of the fear of my family. He has also grabbed my entire money which I had taken on loan basis from somewhere. I kept on giving him interest only for the reason that since he used to promise me to return the papers that day itself or on the next day.

Written on the top of page no. 415

He said that the money of Bawana's (plot) has been sent by his father and he asked me to write down a receipt of Rs 04 lacs and when I wrote a receipt of it, he said that the money was kept in the motorcycle and he was first giving me the cash but this man's son did

<i>not give me the said cash.</i>

He asked me to sign the papers related to Bawana's (plot) first and then he would return the paper as well as the money to me. On reaching the house, I demanded the money and paper from him whereupon he said that he had the paper written by me and that he would show that paper to my son and when my son asked him to return the paper, he replied that he would not return the paper as his mother had taken a sum of Rs 15 Lacs from him. Kindly take it guaranteed that out of aforesaid Rs 15 Lacs I have returned a sum of Rs of Seven and a half Lacs to him. After that, this man's son came to me and said that his father was saying to give papers of property no. C-225 to you and in lieu thereof he asked me to show him the file of lease. On this, when I started to show him the said file to him then, this man's son Gaurav said that he was just giving me the said paper and saying this he took away the lease file from me and since then, he had not returned me the said paper. Kindly save my house. Please save my children from this person. I have not visited any court to sign. One day these persons crossed all the limits when his wife said that she was agreed to return all the papers in lieu of giving a receipt of the same in writing. After that, they gave me the amount of sale proceeds of Rohini and Bawana's properties. She brought fake papers which were related to some other person's property, to me. I saw that those papers were fake papers and were in English language and when I showed those papers to someone, it was found that those papers were not related to my plot. When I went to this man's house to show him that those papers were not related to my plot, his wife said that since there was no electricity in her house that time so they had given some other's property paper to her mistakenly and that they were just sending their son Gaurav to give me the correct papers but Gaurav did not come to me till today. Thereafter, we started receiving threats from Gunda elements that they would harm us in different ways. I have no proof of the money returned by me. This man used to say to my female friends that he would show them after purchasing my house by hook and crook. He used to spread rumour in the street that I, Komal have sold out my house to him and

that there were several cases pending related to that house.

I pray, with folded hands, that keeping in view the illness of my husband, my house and the papers related thereto may please be restored to me. This man's wife Suman and their son Gaurav are most dishonest persons. His wife Suman used to talk in such an artificial way as she was telling a truth. One of my sons has died due to cancer and if I am dishonest to anyone, my rest of both children may also die from cancer. You can verify these facts from the residents of the street as to how many houses(families) has been ruined by this person. This man is supported by some reputed persons who use to give him money but he did not return their money. He kept on keeping papers of our property with him and used to lend our money on interest to other persons. This man intends to grab my house. My matter may please be decided. This man Ramesh Sibbal, his wife Suman and son Gaurav may be punished so that they may not commit such an act with anyone in future. He kept on threatening me while involving my daughter-in-law that he would do this and that. Since the day this man entered my house, everything has been ruined by him. I may please be imparted justice.

sd/- Komal Kapur

(In English)

Written on the top of page no 417

<i>The notice which has been got sent by him reveals an amount of Rs 09 lacs of property No. C-225 also.</i>
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There is no any fault of those reputed persons as this man had not given their money back to them which I had returned to this man.

I am going leaving behind my husband who is in dire need of me at this juncture and as to who will serve him now?"

9. A perusal of the suicide note brings to fore the fact that the petitioner-accused is not only named but his illegal occupation of

the house of the deceased is stated to be the one of the primary reasons for Komal Kapoor, to have committed suicide. The statement of the sons of the deceased, Amit Kapoor and Sumit Kapoor, is primarily on the same lines. The issue for consideration is that, even if it is assumed at this stage, that the suicide note was written in the hand writing of the deceased and the statement of Amit Kapoor is believed to be true in its entirety would it be sufficient to charge the petitioner-accused with the offence of abetment of suicide by Komal Kapoor. In my view the answer is in the negative. The mere fact that the actions of the petitioner-accused, that is, forcible occupation of the portion of the house of the deceased, led her to take the extreme step of committing suicide would not bring his act within the definition of abetment as there is no material or evidence placed by the prosecution on record to show that he intended or had the necessary mens rea that the Komal Kapoor should take the extreme step of committing suicide. As long as there is absence of material and/or evidence on record to show that the abettor had intended to aid or encourage the commission of the principal offence, the accused cannot be charged with the offence of abetment and, therefore, in the present case, abetment to commit suicide. Nor I am persuaded by the submission that because the name of the petitioner-accused appears in the suicide note it would be sufficient to charge him with an offence under Section 306 of the IPC. In this context see observation in ***Sanju @ Sanjay Singh Senger*** (*supra*) and ***Mahender Singh*** (*supra*). In both the cases not only was the accused named in the suicide note but they were also cited as the reason for committing

suicide by the deceased. The learned APP may perhaps be correct in his submission that the agreement to sell dated 30.06.2007 was executed by the petitioner-accused, only to grab the property of the deceased after a receipt had been executed by the deceased acknowledging that she had taken a loan from the petitioner-accused in the first instance in the sum of Rs 15 lacs and thereafter, another sum of Rs 1 lac, but then, this aspect of the matter will get unraveled only after a full-fledged trial. I do not wish to comment any further on this aspect of the matter as it could impact both, the case of the prosecution as well as that of the defence, and perhaps wisely, therefore, even the learned counsel for the petitioner-accused has not assailed the charge framed under Section 448 of the IPC.

10. This brings me to the judgments cited by the learned APP. A perusal of the judgments cited by the learned APP would show that all of them referred to facts and circumstances where the victim was a married lady who had died within seven years of marriage. The accused, in those cases were charged under Section 498A read with Section 304B and Section 306 of the IPC. The said judgments, therefore, as rightly contended by the learned counsel for the petitioner-accused were governed by the provisions of Section 113A of the Evidence Act. It would therefore, be relevant to extract the said provision for the sake of convenience:

113A. Presumption as to abetment of suicide by a married woman. - *When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within*

a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation – For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

11. For the Court to presume abetment of suicide by the husband or the relative of the husband the following ingredients would have to exist.

- (i) The suicide must be committed within seven years of marriage.
- (ii) The husband or the relative of the husband should have subjected the victim to cruelty as defined under Section 498A of the IPC.

11.1 While bearing in mind the above, in order to determine whether the victim has been subjected to cruelty, the attendant facts and surrounding circumstances must be taken into account. This presumption is not mandatory and is certainly rebuttable. In the facts of the instant case, therefore, the ratio of the judgments cited by the learned APP have no, applicability in view of the fact that the provisions of Section 113A of the Evidence Act are not applicable to the instant case.

11.2 I must also point out that, the Learned APP had in addition to the cases referred to above, also brought to my notice an order of the Supreme Court ***State of Haryana vs Surinder Kumar (2000)***

10 SCC 337 and the judgment in the case of ***Dammu Sreenu vs State of A.P. dated 28.05.2009 passed in Crl. Appeal No.681/2003***. In so far as the case of ***Surinder Kumar (supra)*** is concerned, it is a brief order by which the appeal has been allowed. However, since the facts are not set out in detail it is not possible to discern as to what crucial facts prevailed with the Supreme Court in setting aside the judgment of the High Court.

11.3 As regards the judgment of ***Dammu Sreenu (supra)***, it is clear that what prevailed with the Supreme Court is the proximity in time and space between the act of the accused which is indulging in illicit relationship with the wife of the deceased and the commission of the principal offence of suicide. It is in these circumstances that the Supreme Court sustained the conviction of the accused under Section 306 of the IPC. The Supreme Court further held that the accused had been found guilty consistently by all courts below and hence, no interference was called for. In my view, the facts in the instant case are clearly distinguishable. Therefore, in my view, mere harassment will not bring the act of the accused within the ambit of Section 306 read with Section 107 of the I.P.C. [(See observations in Paragraph 10 at Page 114 of ***Sanju @ Sanjay Singh Senger (supra)***)]

12. For the aforementioned reasons, I am of the opinion that it is a fit case in which this Court should exercise its revisional and inherent powers to quash the charge framed against the petitioner-accused under Section 306 of the IPC. The revision petition is thus partially allowed. The charge framed against the petitioner-

accused under Section 306 of the IPC shall be dropped. The trial court will continue with the trial of the petitioner-accused in respect of the remaining charge framed against him.

13. The petition is accordingly disposed of.

August 13, 2009
kk

RAJIV SHAKDHER, J