

HIGH COURT OF DELHI: NEW DELHI

+ CRL. APPEAL NO. 295/2009

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SHAILENDER

..... Appellant

Through: Mr. Vijay Chaudhary,
Mr. Pradeep Kumar Arya,
Mr. Narinder Chaudhary,
Mr. Manjjeet Bal and
Mr. Vijay Chopra, Advs.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. M.P. Singh, APP for State

AND

CRL. APPEAL NO. 296/2009

%

BRAHAM SINGH & ANR.

..... Appellants

Through: Mr. Vijay Chaudhary,
Mr. Pradeep Kumar Arya,
Mr. Narinder Chaudhary,
Mr. Manjjeet Bal and
Mr. Vijay Chopra, Advs.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. M.P. Singh, APP for State

Judgment reserved on: 05th March, 2010

Judgment delivered on: 12th April, 2010

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J.

1. Both the appeals are being disposed of together as the same germinate from the judgment dated 2nd April, 2009 passed by the learned Additional Sessions Judge, Delhi, whereby appellants have been convicted under Sections 498-A/34 IPC and 304-B/34 IPC. Appellants Shailender, Braham Singh and Santosh are husband, father-in-law and mother-in-law of Sonia (deceased) respectively. Besides them, Deepak Kumar (*Dever*), Surinder Singh Panwar (*Nandoi*) and Neelam (*Nanad*) were also charged for the offences under Sections 498-A/304-B/34 IPC by the learned trial court but they have been acquitted by extending to them benefit of doubt.

2. Relevant facts are that deceased was married to Shailender on 13th February, 2005 according to Hindu rites and ceremonies. They were known to each other even prior to their marriage and it appears that they were in love. However, their marriage was solemnized with the consent of their family members. Both deceased and Shailender were engineers by profession. At the relevant time, deceased was pursuing her Master's degree in Technology from Delhi College of Engineering and was staying in Room No. 10 of Married Women Hostel within the college campus. Deceased

committed suicide in her hostel by hanging herself from the ceiling fan with the help of her *chunni*. Since deceased died an unnatural death within seven years of her marriage, inquest was conducted by SDM Jai Singh, who recorded statement of Prem Singh, father of the deceased, wherein he stated that sufficient dowry was given in the marriage; after about one month of marriage Shailender and his family members started torturing and maltreating the deceased for bringing insufficient dowry; Shailender used to beat the deceased in order to force her to leave matrimonial home; in the last week of July, 2005 deceased was pushed from the staircase by her husband, resulting in her hospitalization at Satya Bhama Hospital at Nangloi; he requested husband and in-laws several times not to mistreat his daughter but to no effect; husband and in-laws of the deceased told him that as long as car was not given to them they would continue to torture and harass the deceased; subsequently, this demand of car was replaced by demand for a plot of land; because of the financial constraints he could not fulfil their demand; deceased committed suicide as a result of torture at the hands of her husband and in-laws, on account of dowry. On the basis of this statement, FIR No. 410/2005 was registered at Police Station Bawana.

3. During investigation, police recovered a register from the room of deceased which contained two personal notes (Ex.PX1 and PY) written by her. As per report of Forensic Science Laboratory, (FSL) these notes were in the handwriting of the deceased. Autopsy of the deceased was got conducted and as per the doctor deceased died due to asphyxiation as a result of ante mortem hanging. Ligature mark and material was found around the neck of deceased.

4. Charges under Sections 498-A/34 IPC and 304-B/34 IPC were framed against the appellants. Alternate charge under Sections 306/34 IPC was also framed against Shailender and Santosh. Appellants pleaded not guilty to the aforesaid charges and claimed trial.

5. Prosecution examined eighteen witnesses to prove its case. After prosecution closed its evidence, statements of appellants under Section 313 Cr.P.C. were recorded separately wherein entire incriminating evidence, which had come on record during trial, was put to them. Appellants denied the same as being incorrect and claimed themselves to be innocent. They further stated that they had been falsely implicated in the case. Appellants also examined Constable Raju Khan as DW1, in their defence.

6. On the basis of evidence adduced by the parties learned trial court concluded that prosecution had succeeded in proving the guilt of appellants for having treated the deceased with cruelty and causing "dowry death". For arriving at this conclusion, testimonies of PW1 Prem Singh, PW3 Smt. Santosh and PW4 Smt. Krishna being the father, mother and aunt of the deceased respectively were found to be trustworthy and reliable, inasmuch as, same were considered having been duly supported by the Ex. PX1 and Ex.PY.

7. I have heard learned counsel for the appellants, learned counsel for the State and perused the trial court record carefully. From the statement of PW3, it appears that Shailender and deceased were known to each other even prior to their marriage; they were in love. Both the families consented to their marriage and thereafter marriage was solemnized according to Hindu rites and ceremonies; no dowry was demanded at the time of marriage. It is also evident that deceased as well as Shailender were well educated, inasmuch as, they were aware of each others' financial status. Deceased was pursuing Masters degree in Technology from Delhi College of Engineering and was staying in the hostel at the time of her committing suicide. No complaint of dowry demand or harassment was made either

by PW1, PW3 or PW4 or by deceased herself before any authority till her death. In Ex.PX1 and Ex. PY deceased has not mentioned anything about the demand of dowry. In this scenario, I am of the view that it will not be safe to place reliance on the vague and discrepant versions of PW1, PW3 and PW4 regarding harassment of deceased on the point of dowry, more so, when in Ex. PX1 and Ex. PY deceased has not stated that after her marriage she was harassed by her husband, father-in-law and mother-in-law for bringing insufficient dowry or that they demanded any article, inasmuch as, a car or a plot of land, as has been alleged by PW1 and PW3 in their statements made before the SDM/Police and later in the court.

8. English translation of above exhibits reads as under:-

Dated: 10/09/2005

Ex.PX1 - "I have become much fed up with my life. My heart suggests that I should go to the God after leaving everything. The person for whom I have put my carrier at stake and deserted my parents also and could not be loyal to them, even then, this man has deceived me in such a way that I have not been able to show my face to anyone else.

Today he again picked up a quarrel with me. He scolds me every time only for the sake of his mother who used to provoke him. He causes me mental torture every time and when I become much perturbed, he says, "Don't take so much tension

otherwise, you will become mentally sick.” On that day, when Shailender slapped me at the behest of his mother they both threatened to oust me from their house. He telephoned my mother and asked her to take me from their house otherwise, he would kill me. He called my parents at this house and committed their insult. I have forgiven them for this act also but even then they pass at comments at me daily on every issue and so, how much can I tolerate?

Dated : 15/09/2005

Ex. PY - “A person who can push me out again and again and who can insult me in the presence of his family members. What should I do of such a person and as to how should I make him understand that I love him a lot and he should not take undue advantage of my love and affection.

He is compelling me to die. The entire family members only watch this scene as spectators while Shailender taunts me on every issue. What should I do?

He has told me clearly that if I shall die, a new beautiful wife will come in his house who will be as beautiful as his mother (Santosh).

On every issue he taunts me that I have a dark complexion and on the contrary he says that his mother and sister are beautiful.

What is the deficiency in me? Am I not beautiful? If I am of a swarthy complexion, so what, I am well educated.

I also need my husband. I also wish to visit hither and thither for enjoyment and to discuss my talks with my husband happily but my husband is compelling me either to become an insane or to commit suicide by way of consuming poison.

Only five days have elapsed when that quarrel had ended. This man will not allow me to survive. He threatens to desert me on every issue. His mother use to taunt me on every issue and this man use to listen only and never say anything. He, while keeping mum, smiles on my helplessness. The helplessness which was opted by myself."

9. In the above-referred notes there is no reference of any demand of dowry by any of the appellants nor is there any reference of harassment on account of dowry. Had there been any demand of dowry made by the appellants, deceased would have certainly commented upon the same in the aforesaid exhibits. This creates a serious doubt about the veracity of version of PW1, PW3 and PW4 regarding harassment of deceased by her husband and in-laws on account of demand of dowry more so, when their deposition with regard to alleged incident of July, 2005 wherein deceased was allegedly pushed by the appellants from the staircase resulting in her hospitalisation at Satya Bhama Hospital is falsified in view of medical evidence adduced by the prosecution itself.

10. PW10 Dr. Gopal Sharma, Director of Satya Bhama Hospital categorically deposed that no external injury was noticed on the person of Sonia (deceased) nor she made any complaint in this regard, at the time of her admission. As per

PW10, deceased was got admitted in the hospital with the history of suffering “anxiety neurosis”, inasmuch, as she was having symptoms of “*ghabrahat*”, restlessness and difficulty in breathing without any physical illness. This clearly shows that deceased was not hospitalised in Satya Bhama Hospital on account of suffering any kind of injury. If a person is pushed from the staircase he or she would certainly suffer some kind of injuries if not major injury, then at least bruises. However, neither any injury was noticed on the person of deceased nor she made any complaint that she was pushed by her husband or her in-laws at the time of her admission in the hospital. Medical evidence clearly belies the story set up by the PW1 and PW3, that deceased was pushed by the appellants from the staircase resulting in injuries to her and the same leading to her hospitalisation. That apart, the conduct of PW1 and PW3 also makes their version regarding this incident doubtful. It was admitted by them that the deceased was hospitalised by her husband and in-laws. In fact husband and in-laws of deceased remained present in the hospital till she was discharged from there. On the contrary, PW1 and PW3 had visited the hospital only for one or two hours. Had any such incident would have taken place PW1 and PW3, being parents, would not have taken the matter lightly and left their ailing

daughter with their tormentors. In this case, appellants continued to look after the deceased while she was in the hospital as against PW1 and PW3 who chose to pay only a courtesy call. Be that as it may, the medical evidence clearly belies the story as propounded by these PWs regarding pushing of deceased from the stair case in the month of July, 2005.

11. In ***Sunil Bajaj vs. State of M.P.*** reported in ***(2001) 9 SCC 417***, Supreme Court preferred to place reliance on the letters written by the deceased to her parents soon before her death as against the vague and inconsistent statements of her parents and brother. In the said case also, no reference was made by the deceased regarding her harassment on account of demand of dowry in her letters; whereas brother and parents made statements regarding harassment of deceased on account of dowry. In para 10 of the judgment, it was observed as under :-

“As can be seen from this document on which much reliance is placed by both the Courts, there is absolutely nothing to indicate about the demand of dowry and there is not even a whisper about the same. If Suman was pressed by her husband to get money and if that was the cause for her sadness or difficulty, she could not have missed to write about the same, that too having written about the bad work of

appellant and his bringing girls to the house. With this evidence on record, it is clear that-

(i) There is no evidence of demand of dowry or subjecting Suman to cruelty for, or in connection with dowry other than general, vague and inconsistent statements of interested and motivated witnesses PWs 4, 5 and 6, being the parents and brother of Suman;

(ii) Not a single member, neighbor or a relative of parties either at Bhopal or at Saharanpur has come forward to speak about subjecting Suman to cruelty by the appellant in relation to demand of dowry;

(iii) It is the evidence of PWs 4, 5 and 6 that Suman had telephoned on 27-8-1995, a day earlier to her death; PW4, mother of Suman had talked on telephone in the house of neighbor; Suman told her that she was very much disturbed on account of two girls brought to her house who beat her; at that time also Suman did not tell her mother PW4 about demand of an amount of Rs.20,000/- by the appellant; neither the neighbor, in whose house PW4 received the telephone call, was examined nor any document was produced such as the telephone bill etc. to show that at least there was a call on that day at that time from the telephone number from which Suman talked to her mother PW4 on telephone number in the house of neighbor; Suman talking on telephone with PW4 on that day itself is not proved;

(iv) It has come in the evidence of these witnesses that the appellant and his family members were well-placed financially and the parents of Suman have big family, were not that comfortable financially;

(v) There was no demand of dowry at the time of marriage in 1991. Two children were born to them. There was no complaint

of demand of dowry even in the letter Exbt. D/3 dated 9-3-1995 written by Suman to her father and brother; Similarly, no mention was made about demand of dowry in her letter Extb. P/9, said to have been written soon before her death;

(vi) There is no evidence as to how father of Suman arranged money of Rs.20,000/- or 10,000/-;

(vii) PW4 did not tell PW5 after receiving telephone call from Suman on 27-8-1995 that any amount was demanded by the appellant. Even so PW5 states that he had carried with him Rs.10,000/-. The High Court says that oral evidence of these witnesses PWs 4, 5 and 6 is consistent with Exbt. P/9. As already noticed above, in Exbt. P/9 there is nothing to show about demand of dowry/amount;

(viii) There are material contradictions and serious omissions in the statements of PWs 4, 5 and 6, as can be seen from their evidence;

(ix) The conduct of the appellant bringing girls of bad character to his house and those girls troubling Suman appear to be the cause of her misery. From the evidence brought on record that Suman was subjected to mental cruelty on account of the same is clear but there is nothing to establish that this mental cruelty was for and in connection with demand of dowry; may be Suman could not withstand and tolerate conduct of her husband of being in the company of other girls of bad character and may be on account of the same, she has put an end to her life;

(x) PWs 4, 5 and 6, on account of Suman having died of burns, obviously were angry against the appellant and had every reason to involve the appellant for the offence under Section 304-B IPC.

12. In the present case also, appellants as well as family members of the deceased were educated and were aware of each other financial condition prior to their marriage; there was no demand of dowry at the time of marriage; there was no complaint of demand of dowry in Ex. PX1 and Ex. PY left behind by the deceased; the statements of PW1, PW3 and PW4 are vague, inconsistent and discrepant inasmuch as PW1 and PW3 had made an incorrect assertion that deceased was pushed from the staircase resulting in her hospitalization in the last week of July, 2005.

13. In my view, ocular version of PW1, PW3 and PW4, who are relatives of deceased, cannot be preferred as against Ex. PX1 and Ex. PY wherein there is no mention of demand of dowry by any of the appellants or harassment of the deceased by them on account of demand of dowry.

14. Section 304-B IPC reads as under :-

“Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purposes of this subsection, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961(28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

15. Section 113-B of Indian Evidence Act, 1872 reads as under :-

"Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death."

Explanation - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

16. A conjoint reading of Section 304-B IPC and 113-B of Evidence Act clearly shows that presumption regarding dowry death can be raised only if following essentials ingredients are established :-

"(i) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for, or in connection with, demand for dowry, and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

17. In this case, prosecution succeeded in establishing that deceased died an unnatural death within seven years of her marriage, however, it has failed to established that the deceased was subjected to cruelty or harassment by the appellants in connection with any demand of dowry, that too soon before her death. Thus, in my view, ingredients of Section 304-B IPC are not attracted in this case. Accordingly, appellants are acquitted of the charges under Section 304-B IPC.

18. However, perusal of Ex. PX1 and Ex. PY clearly indicates that deceased was not treated properly by her husband who used to taunt her, inasmuch as, he used to occasionally physically mistreat her. He had even asked her to leave the matrimonial home. Contents of above referred exhibits attracts the ingredients of offence under Section 498-A IPC against Shailender. So far as Braham Singh and Santosh are concerned, no specific allegations of harassment have been

levelled against them. Only allegation against Santosh is that she used to be a silent spectator to the deceased's victimization and sometimes used to instigate Shailender. Braham Singh has not even been named in these notes. Accordingly, appellants Braham Singh and Santosh are acquitted of the offence under Section 498-A IPC. So far as conviction of Shailender under Section 498-A IPC is concerned, same is upheld.

19. Next question which arises for consideration is as to whether Shailender can be held guilty of offence under Section 306 IPC in the facts of this case, having been convicted under Section 498-A IPC.

20. In ***Ramesh Kumar vs. State of Chhattisgarh***, reported in ***(2001) 9 SCC 618***, Supreme Court held as under:-

“Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and

necessarily be held guilty of having abetted the commission of suicide by the woman concerned.”

21. In the backdrop of legal position as emerges from the above observation of Supreme Court, in my view, appellant Shailender cannot be held guilty for the offence under Section 306 IPC merely because he has been held guilty of subjecting the deceased to “cruelty” within the meaning of Section 498-A IPC.

22. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment which may extend to ten years and with fine. Section 107 IPC defines “abetment” which reads as under:-

“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.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

23. In my view, present case is not one which may fall under clauses secondly and thirdly of Section 107 of IPC. The case has to be decided with reference to the first clause i.e. whether the accused/appellant abetted the suicide by instigating her to do so. Ex. PX1 and Ex. PY were written by the deceased on 10th and 15th September, 2005; whereas deceased committed suicide on 15th October, 2005 almost after about one month. All this while she was staying in the hostel though she might be occasionally meeting the appellant. Even otherwise, the subject matter of exhibits Ex. PX-1 & Ex.PY do not indicate that the appellant Shailender and Santosh instigated the deceased to commit suicide. It appears that there was marital discord between them wherein Shailender would make some utterances and taunts but this by itself would not be sufficient to conclude that Shailender played any overt act so as to instigate deceased to commit suicide, inasmuch as, date of suicide is not proximate as to the

dates when the above-mentioned exhibits PX-1 and PY were written.

24. In ***Randhir Singh vs. State of Punjab*** reported in ***(2004) 13 SCC 129***, Supreme Court observed as under:-

“this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced here to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

25. In ***Mahinder Singh vs. State of M.P.***, reported in ***1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157***, Supreme Court observed that it is common knowledge that the words uttered in a quarrel or in spur of moment or in anger cannot be treated as constituting mens rea. In the said case, appellant said to the deceased to “go and die” and as a result of such utterance, the deceased went and committed suicide however, the Supreme Court observed that no offence under

Section 306 IPC read with Section 107 IPC was made out since there was no element of mens rea.

(emphasis supplied)

26. In ***Bhagwan Das vs. Kartar Singh & Ors.*** reported in ***(2007) 11 SCC 205***, it was held that quite often there are disputes and discord in the matrimonial home and wife is harassed by husband or by her in-laws, this, however would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

27. In this case, from the readings of contents of Ex. PX1 and Ex. PY it appears that there was matrimonial disharmony between Shailender and deceased; there used to be quarrel between them wherein some utterances used to be made by Shailender, which were not to the liking of deceased, and she used to remain disturbed because of that. No evidence has come on record to suggest that Shailender had been making such utterances wilfully and intentionally in order to instigate the deceased in taking extreme steps of ending her life. In the facts of this case, prosecution has been unsuccessful in proving that there was element of mens rea on the part of Shailender, accordingly, in my view, ingredients of offence

under Section 306 IPC read with Section 107 IPC are not attracted.

28. Learned counsel for the respondent has contended that deceased had died within seven years of marriage, therefore, presumption under Section 113-A of Evidence Act, 1872 arises against appellant Shailender that the suicide by the deceased was abetted by him more so, when this Court has arrived at a conclusion that Shailender had subjected deceased with cruelty.

29. As already discussed above merely because this Court has held that Shailender is guilty of subjecting deceased with cruelty and has convicted him under Section 498-A IPC by itself, would not be sufficient to convict him under Section 306 IPC as well. That apart, I am of the view, presumption under Section 113-A of Evidence Act is not to be mandatorily inferred in each and every case. Other adverting circumstances have also to be taken note of before drawing such presumption.

30. Section 113-A of Evidence Act, 1872 reads as under :-

“When the question is whether the commission of suicide by a women 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 has 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 498-A of the Indian Penal Code (45 of 1860)."

31. Bare perusal of Section 113-A of Evidence Act shows that presumption under this provision is not mandatory; it is only permissive as the employment of expression "may presume" suggests that the court may or may not draw such presumption even if it is show that (i) the women has committed suicide (ii) such suicide has committed within the period of seven years from the date of her marriage (iii) husband or relatives who are charged had subjected her to cruelty. Before presumption under Section 113-A can be drawn, the court shall have to have regard to all other circumstances of the case as well. Such presumption can be drawn in the facts and circumstances attached to a given case and no straight jacket formula can be adopted in this regard.

32. In Ramesh Kumar's case (*supra*), Supreme Court held as under :-

"A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression-"the other circumstances of the case" used in Section 113-A suggests the need to reach a caused-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says-"Whenever it is provided by this

Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.” (emphasis supplied)

33. In the facts of this case, I have already concluded that deceased was not subjected to cruelty by the appellant Shailender on the point of demand of dowry. It appears that matrimonial discord was there between husband and wife because of which, she used to remain perturbed. The utterances to the disliking of the deceased and the other acts of Shailender may be sufficient to attract the ingredients of offence under Section 498-A IPC but the same would not be sufficient enough to draw a presumption that appellant Shailender had abetted her suicide keeping in mind the facts and circumstances of this case, as discussed above.

34. Yet another circumstance which goes in favour of appellant Shailender is that the deceased was suffering from “anxiety neurosis”. PW10 Dr. Gopal Sharma deposed that she was suffering from personality disorder, a type of mental illness and a patient suffering from such ailment can develop suicidal tendency. The circumstances induced by such a mental ailment i.e. patient becoming thoughtless and going to the extent of committing suicide, goes in favour of the

appellant Shailender and makes him entitled to benefit of doubt.

35. In view of above, I conclude that appellant Shailender is not liable to be convicted under Section 306 IPC.

36. Accordingly, conviction of Shailender under Section 498-A and sentence awarded therein is maintained. His conviction under Section 304-B IPC and sentence awarded therein are set aside.

37. Both the appeals disposed of in the above terms.

38. Copy of this order be sent to Superintendent Jail for necessary action.

A.K. PATHAK, J

April 12, 2010

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