

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.99/2002

- 1] Balaji s/o Digambar Hemke
Age-22 years, Occu-Tailoring
and Agri, R/o Pimpalkautha
(Magare) Tq. Mudkhed
Dist.Nanded.
- 2] Kantabai W/o Digambar Hemke
Age 50 years, Occu-Household,
R/o As above ..Appellant
[Orig.Accused

Versus

The State of Maharashtra,
(Copy to be served on Public
Prosecutor, High Court of
Judicature at Bombay
Bench at Aurangabad) ..Respondent

Mr.U.B.Bondar, Advocate for appellant
Mr. A.V.Deshmukh, APP for Respondent-State

**CORAM : V.L.ACHLIYA,J.
RESERVED ON : 31/08/2016
PRONOUNCED ON : 27/10/2016.**

JUDGMENT :-

Being aggrieved by the judgment and order dated

18.02.2002 passed in Sessions Case no. 168/2000 by first Ad-hoc Additional Sessions Judge, Nanded, whereby the appellants were held guilty of committing offences under Sections 498-A and 306 read with 34 of IPC and sentenced to undergo R.I. for two years and to pay fine of Rs.500/- each and in default, to suffer R.I. for One month, the appellants have preferred this Appeal.

2] In brief, the prosecution has approached with a case that few days after the marriage the appellant-accused have ill-treated and harassed deceased Mangala the wife of accused no.1 on account of non fulfilment of demand of Rs.25,000/-. Because of continuous ill-treatment and harassment, the deceased committed suicide by jumping into well.

3] On 28/7/2000, Dhondu Khandare father of deceased lodged complaint alleging therein that his daughter Mangala (hereinafter referred to as deceased) was married with accused no.1 about four years back. For the period of 8 months from the marriage, there was no ill treatment and harassment to her. Thereafter the accused no.1 visited his house and requested to provide him Rs.25,000/- to settle dispute with his uncle. On his

refusal to provide such amount, the accused no.1 got annoyed and left his house. Thereafter, accused no.1 and 2 started illtreatment and harassment to his daughter. In the complaint lodged, the complainant has suspected that his daughter Mangala who was missing from his house and later on her dead body recovered from the well, committed suicide due to ill treatment and harassment which she was suffering at the hands of accused. On the basis of said complaint dated 28/7/2000, the offence under Section 306, 498-A read with Section 34 of IPC came to be registered vide Crime No.96/2000 with police station, Bhokar. Prior to registration of offence, case was registered as accidental death and enquiry was conducted. During the course of enquiry, statements of various witnesses were recorded. On conclusion of the investigation, charge sheet was prepared and filed in the Court of Judicial Magistrate, First Class, Bhokar. Since offence under Section 306 of IPC triable by Court of Sessions, case was committed to Sessions Court, Nanded.

4] On 2/7/2001, the charge was framed against the accused. All of them pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution has examined eight

witnesses. The accused have taken defence of total denial and false implication at the instance of family members of the deceased. On conclusion of trial the learned Additional Sessions Judge found the accused guilty of offence under Sections 306, 498-A read with Section 34 of IPC and convicted them as stated above.

5] Mr.Bondar, learned counsel for the appellants strenuously contended that the trial Court has not considered the evidence in its proper perspective, which has resulted into causing serious miscarriage of justice to appellants. He submitted that even if the evidence as adduced by the prosecution is taken in its entirety to be true still no offence under Section 498-A and 306 of IPC proved against appellants. According to him, there is no cogent, convincing and reliable evidence to sustain the conviction. He has pointed out that not a single witness examined from the vicinity where the appellants and deceased were residing. The trial Court has failed to take into consideration the material fact that the prosecution has failed to prove that the deceased has committed suicide. The evidence on record clearly suggests that the deceased had accidentally fell down in the well which has resulted into her death. The

witnesses examined by the prosecution are closely related with the deceased and highly interested persons to see that the accused being convicted. He further submits that the testimony of the witnesses examined by the prosecution are full of omissions, contradictions and material improvements and they cannot be treated as reliable witnesses. By referring the reasons and findings recorded by trial Court, the learned counsel submitted that the reasons and findings recorded by the trial Court are perverse and not sustainable in law. He therefore, urged to acquit the accused.

6] On the other hand, learned APP has supported the judgment and order passed by the trial Court and submitted that the evidence as adduced by the prosecution is cogent, convincing, reliable and sufficient to prove the guilt of the accused beyond reasonable doubt.

7] In order to appreciate the submissions advanced, I have carefully scrutinised the oral and documentary evidence as adduced by prosecution and further perused the reasons and findings recorded by the trial Court to convict the appellants.

8] In order to prove that deceased was subjected to ill treatment and harassment by the accused and they had made her life so miserable that she left with no option except to commit suicide, the prosecution has examined six witnesses which includes Dhondu Khandare (PW2) father of the deceased and complainant in the case. Besides P.W.2, the prosecution has examined Laxmibai Khandare (PW3) mother of the deceased, Ranoji Khandare (PW4) uncle of deceased, Madhav Hamade (PW5) maternal uncle of deceased. Besides said witnesses, prosecution has examined Balaji Achkulwar (PW6) and Madhav Karpe (PW7) the friends of Dhondu (PW2) father of deceased.

9] In short, the prosecution has approached with a case that the appellant no.1 has demanded Rs.25000/- from Dhondu (PW2) the father of the deceased to settle the dispute with his uncle. On refusal to pay the amount the deceased was ill treated and harassed by the appellants which ultimately resulted into commission of suicide by her.

10] In order to sustain the charge under Sections 306 of IPC it was incumbent upon the prosecution to prove that the deceased

died a suicidal death. There is no direct evidence to support case of the prosecution that deceased died a suicidal death. Prosecution has not examined the autopsy surgeon who conducted the post mortem. The post mortem report (Exh.36) has been admitted in evidence with the consent of defence. As per the post mortem report, cause of death of deceased found to be "Asphixia due to Drowning". The contents of the post mortem report reveals that though certain lacerations were noted over the lower eyelids, lower lip, tip of the nose and second toe of both the foot but same were found due to eating by aquatic animals. Tongue was found to be within oral cavity, reddish frothy fluid oozing through mouth and nostril. As such, no abnormal circumstances detected at the time of autopsy of dead body of deceased. At the time of examination of the stomach and its contents, the autopsy surgeon has found the stomach found to have semi digested food which indicates that the deceased had taken food few hours prior to her alleged death due to drowning. Therefore, the post mortem report is of no avail to establish that the deceased died suicidal death or it was an accidental death. Since the prosecution has come out with a case that deceased died suicidal death, it was expected that the prosecution should have examined the Medical Officer

to establish the death of deceased was suicidal.

11] The learned Additional Sessions Judge appears to have recorded the conclusion that the deceased died suicidal death only for the reason that deceased died within a period of seven years from her marriage and prior to her death there was ill treatment and harassment to her. The testimony of the prosecution witnesses, no way leads to establish that the deceased died a suicidal death. If we consider the complaint lodged by the complainant Dhondu (PW2) which is at Exh.27, then he has alleged that for non fulfilment of demand of Rs.25,000/- the deceased was ill treated by accused and she was kept on starvation and due to this reason, she committed suicide. As discussed, the post mortem report itself reflects that the deceased had taken food few hours before her death as semi digested food was detected in her stomach. In this view, case of the prosecution that the deceased committed suicide due to reason that she was not provided with the food and kept on starvation by the accused no more sustained in the light of post mortem report Exh.36. The prosecution has not examined any witness from the village and particularly a neighbourhood of the deceased and accused to show that the deceased was

continuously subjected to ill treatment and harassment of the nature so as to drive her to commit suicide or even to prove that the accused were ill treating and harassing the deceased.

12] It is useful to refer the testimony of Maroti Pakalwar (PW1) the panch witness to inquest panchanama (Exh.18) as well as the spot panchanama (Exh.39). P.W.1 is admittedly resident of village Pimpalkautha, Tq.Mudkhed, Dist.Nanded where the deceased was living with accused. He has categorically deposed that he had visited the site and in his presence the dead body of the deceased was taken out from the well and inquest panchanama was prepared as per Exh.18. He admitted that the well from which the body of the deceased was recovered had no protection wall and same was at the ground level. He further deposed that at the time of taking body, the parents of the deceased i.e. P.W.2, P.W.3 and other relatives were present. He further deposed that he saw the foot-wear of Mangala (deceased) and one bucket was lying by the side of well. He has categorically deposed that he noticed on spot that there were marks of skating of legs and possibility of deceased might have fallen in the well while fetching water can not be ruled out. He further deposed that the water level in the well

was about 1 or 2 ft. below the ground level. At the time of making inquest panchanama, parents of deceased made no complaint about death of their daughter Mangala. He has specifically deposed that he had never noticed the quarrel amongst accused and Mangala. He categorically stated that they were living happy married life. He further deposed that at the time of post mortem of dead body, Balaji (PW6) Municipal Councilor, Umri who accompanied Dhondu (PW2) had asked maternal uncle of accused no.1 to pay money to parents of deceased Mangala. P.W.1 was resummoned and learned APP has cross examined the witness. However, nothing has been elicited in his cross examination to discard or discredit the testimony of P.W.1 as to facts deposed by him about the situation existing on the spot, the marital life of the deceased and accused, as well as the fact that no complaint was made by the parents of deceased after the body of the deceased taken out from the well.

13] The spot panchanama which is at Exh.39 corroborates the testimony of P.W.1 to the extent that there was no protection wall constructed around the well and it was at the ground level. P.S.I. Suresh (PW8) the Investigating Officer has also admitted

in the cross examination that the well was in dilapidated condition and there was no protection wall constructed around the well and the water level of the well was upto the ground level. He admitted that when he reached on the spot, the father of the deceased i.e. Dhondu (PW2) was present. He further admitted that till 4 a.m. nobody from the village Umri lodged complaint. Admittedly the complaint Exh.27 was lodged on 28/7/2000 i.e. the next day i.e. after the funeral of the deceased was over. Before lodging complaint on 28/7/2000, no grievance made by the father of the deceased as well as other relatives against accused. P.W.2 (complainant) has deposed that on 27/7/2000 he gave letter Exh.26 to police wherein he has requested to take search of his daughter. In the letter Exh.26, there is absolutely no whisper about the ill treatment. Laxmibai (PW2) has admitted in her cross examination that when dead body was taken for post mortem at Bhokar the police personnel were present. P.S.I. enquired from her as well as her husband (PW2), Ranoji (PW4), as to how the incident occurred and they have narrated the incident. As discussed, the Investigating Officer Shetkar (PW8) has deposed that before lodging complaint Exh.28, no complaint was made by the family members of deceased and her relatives. In this view, entire

allegations made against the accused about alleged ill treatment and harassment were made first time on 28/7/2000.

14] Mr.Bondar, learned counsel for the appellant has invited attention to testimony of the complainant (P.W.2) the father of the deceased. In cross examination P.W.2 has admitted in uncertain words that the complaint Exh.36 was lodged after due deliberation and discussion with other family members. He has deposed that on the next day of funeral they discussed as to how the incident occurred and gathered that must have been murdered as they saw strangulation marks around her neck and her eyes were seems to be protruded. He further deposed that after the discussion, they decided to lodge report in police station and as per their discussion the complaint Exh.36 was lodged. He further deposed that the discussion was taken place at 11 a.m. on 28/7/2000 and in that discussion, it was discussed what should be informed to the police and then he lodged FIR at Bhokar police station. The relevant admission brought in cross examination of P.W.2 reads as under :

“It is true that on the next day we discussed as to how could have incident occurred. In that I gathered that my daughter must have been

murdered. I feel like because when I saw her dead body I found strangulation marks around her neck and eyes protruded. We then decided to lodge F.I.R. in police station about the incident. Our discussion was at 11.00 a.m. on 28/7/2000. We discussed what should be informed to the police. I then lodged F.I.R. at Bhokar police station as discussed at Umri. After filing F.I.R. police did not come to us at Umri for investigation. It is true that at the time of inquest panchanama post mortem and during my visit at Pimperkautha police accompanied me.”

15] Thus the report Exh.36 is not the report lodged in natural course by the father of the deceased but it was outcome of due deliberation and discussion held with members of family and other persons. Everything was discussed and finalised in the meeting held on 27th and 28th July 2000. As per the discussion and decision taken the complaint was lodged on 28/7/2000. In this view, it is necessary to closely scrutinise the evidence of prosecution witnesses with great care and caution as the possibility of accused being falsely implicated at their instance cannot be ruled out.

16] As discussed the inquest panchanama, the post mortem report noway suggest that the deceased died a homicidal death. It is nowhere noted in the inquest panchanama and post

mortem report that the injury marks of strangulation found around the neck of the deceased. Thus It exposes the tendency on the part of the complainant-father of the deceased and other witnesses examined by the prosecution who are closely related persons of deceased to make exaggeration and their determination to ensure that any how the accused to be convicted.

17] If we consider the testimony of Dhondu (PW2)-the complainant and a prime witness examined by the prosecution, then it is highly unsafe to place reliance upon testimony of this witness that to base the conviction of appellants. He has testified as per Exh.24. As per the facts deposed by P.W.2, the father in law of his daughter Mangala died 1½ year after the marriage. For about 8 to 9 months, the deceased lived happily with her in-laws. After the death of her father-in-law, there was dispute between accused no.1 and his uncle on account of the well in the field. Due to dispute with uncle the accused no.1 Balaji alongwith Anil Hemade i.e. husband of his sister and his friend Datta came to his house at Umri and disclosed about the dispute between him and his uncle and urged to provide him Rs.25,000/- so as to settle the dispute with his uncle. He has

deposed that he expressed his inability to accused no.1 to provide such amount. Due to this reason, the accused no.1 got annoyed and left his house. After 5 to 6 days from the date of incident, there was Diwali festival. He went to house of accused to bring his daughter for Diwali festival. When his daughter was brought to his house she disclosed that the accused have started giving ill treatment to her due to reason that the money as demanded by accused no.1 was not given to him. She further disclosed that accused had ill treated assaulted and abused her in filthy language. They are even not giving sufficient food to her. She disclosed this fact to Laxmibai (P.W.3). Thereafter the deceased stayed with him for six months. The accused no.1 did not come to fetch her. Thereafter, he alongwith his brother Ranoji (PW4), Digambar, Madhav Karpe went to the house of accused and convinced accused no. 1 not to ill-treat her. Thereafter, there was no ill treatment for a period of five to six months. Thereafter the accused again started ill treating her for non fulfilment of demand. He brought her to his house and during the stay the deceased stated that accused have again started harassing her for non payment of amount of Rs.25,000/-. For the period of 8 to 10 days she stayed with him. On 28/7/2000 when he saw dead

body of deceased, her eyes were protruded and there was no water in her stomach. He further noticed strangulation marks around her neck. He had shown the same to police. However, police told him that those marks were due to Mangalsutra.

18] In the cross examination, the witness has admitted that accused no.1 owns 5 and ½ acres of agricultural land and there is a well in the field and electric pump also lying installed in the well. He admitted that before marriage of his daughter the accused no.1 and his two uncles by name Datta and Sambhaji had separate residence. He admitted that till the death of father of accused no.1, marital life of accused no.1 and his daughter was happy. He further deposed that after Dhondiba Karpe and Madhavrao left his daughter to the house of accused, she lived happily with her in-laws for about 6 months. He categorically admitted that his daughter was left by Dhondiba to house of accused about one and half year before her death. He contradicted his earlier statement that deceased was treated well for the period about two years after she was left by Dhondiba made as per portion marked "A" from complaint. However, P.W.8 the investigating officer has deposed that statement to that effect was made by Dhondu (P.W.2) and

same was recorded as per his narration.

19] In further cross examination of P.W.2, it has come on record that deceased had visited her parents house atleast for 20 to 25 times. It is therefore, difficult to believe that irrespective of such strained relationship, ill treatment and harassment, the deceased was frequently visiting her parents house. In the cross examination, P.W.2 has admitted that deceased gave birth to male child on 11/6/1999. He admitted that after the birth of child, accused no.1 came to his house to take her back and they sent her to her matrimonial house by honouring and giving clothes to deceased and her husband. He further admitted that at the time of Shimga festival, preceding her death, he visited his daughter at her matrimonial house with *Gathi*. At that time, he stayed in her house and also took dinner and brought her to his house. She stayed for eight days and thereafter returned back to her matrimonial house. Thereafter he did not meet her till her death. Thus, the evidence brought on record clearly reflects that immediately prior to the death of the deceased there was no ill treatment and harassment of a nature to drive her to commit suicide. On the contrary the testimony of P.W.2 reflects that there was no serious dispute or strained relations between

deceased and accused prior to her death.

20] It is pertinent to note through the cross examination of P.W.2 it has been brought on record that the accused was financially sound and possessing 5 and ½ acres of irrigated land. Besides taking crop of Sugar Cane the accused was doing business of rewinding of electric motors and earning about Rs.4000/- to 5000/- from said business. It has come on record that the land owned by accused was inherited by him from his father and same was an irrigated land. It is therefore, difficult to believe that the accused was ill treating and harassing the deceased on account of non payment of Rs.25000/- demanded to settle the dispute with his uncle. Therefore, the entire story of the prosecution appears to be cooked up story. As discussed, the complaint was lodged after due deliberation. In this view, it is highly unsafe to place reliance on the testimony of P.W.2 the father of the deceased.

21] The defence has brought on record that all the material facts deposed by P.W.2 and other material witnesses were by way of improvement. P.W.8 Investigating Officer has admitted in cross examination that P.W.2 has not stated before him

anything about the dispute between accused no.1 and his uncle on account of well as well as visit of accused no.1 and demand of money as deposed by P.W.2. He has also not stated before him that accused told him that the well had fallen to his share and his uncle was demanding money for relinquishing right in said well. He has also not stated that he should take money from his mother. He has also not stated before him that accused ill treated his daughter and she was assaulted and abused in filthy language. He has not also stated before him that accused was convinced and asked to maintain his daughter properly. He has also not stated before him that he suspect that accused may have killed his daughter. He has also not stated before him that the eyes of the deceased were protruded and there was no water in her stomach and there were strangulation marks around her neck. Thus, if we consider the entire testimony of P.W.2 then it is full of omissions, improvements and exaggeration. In this view, no reliance can be placed on the testimony of such witness to base the the conviction and more particularly for the reason that P.W.2 is highly interested person being father of deceased. In this view, the trial Court has erred in placing reliance upon the testimony of P.W.2.

22] If we consider the testimony of Laxmibai (PW3), Ranoji (PW4) and Madhav (PW5) i.e. the mother, uncle and maternal uncle of the deceased, then facts deposed by them are nothing but repetition of facts deposed by P.W.2 whose testimony itself found to be unworthy of reliance. The defence has proved that the material facts deposed by P.W.2 are by way of improvement. P.W.3 admitted that accused no.1 and uncle were residing separately even ten years prior to the marriage of his daughter and they were living separately much prior to the marriage of deceased with accused no.1. She further admitted that during the life time of father of accused no.1, the accused no.1 was taking crops like banana and other crops by drawing water from same well, which was in possession of father of accused no.1. She further admitted that after the death of father of accused no.1, continued to remain in possession of the field. She contradicted the facts deposed by P.W.2 that he visited his daughter at the time of Shimga. She has deposed that his daughter had not come to her house at the time of Shimga and thereafter till her death. She too stated that at the time of taking out dead body of the deceased, there was no water in her stomach and noticed, injury over back lower portion. In this view, I am of the view that the testimony of P.W.2, P.W.3, P.W.4

and P.W.5 as relied by the prosecution to establish ill treatment and harassment to the deceased on account of non fulfillment of demand of Rs.25,000/- cannot be believed. Prosecution has not examined any independent witness. The witnesses as examined by prosecution are relatives of deceased and highly interested persons. Their testimony are not safe to be relied.

23] Thus, on due consideration of the overall evidence adduced by the prosecution, I am of the view the evidence is not sufficient to sustain the charge under Section 498-A as well as 306 of IPC. It is quite settled position of law that all types of harassment not amounts to "cruelty" within the meaning of Section 498-A of IPC. To attract Section 498-A of IPC the prosecution has to establish the conduct on the part of accused was of such a nature as likely to drive a woman to commit suicide. The entire case of the prosecution based upon alleged demand of Rs.25,000/- the accused no.1 made to his father-in-law to settle the dispute with his uncle. The alleged demand was admittedly made about more than three years prior to the death of the deceased. It has come on record through testimony of father of the deceased that for initial period of one and half year there was no ill treatment to deceased. Similarly, there was

no ill treatment for the period of two years after she was reached to her matrimonial house. There is ample evidence to show that the deceased was regularly visiting his parents house and accused was also visiting house of his in-laws. It has also come on record that accused no.1 was looking after his agricultural field and taking crops like sugar cane and banana. He had irrigation facility in five and half acres of land owned by him. It has also come on record through testimony of P.W.2 that accused was also doing business of rewinding of electric motors and earning about Rs.4000/- to 5000/- per month. In this view, it is difficult to believe that for years together the deceased was ill treated and harassed by the accused for alleged non fulfillment of demand of Rs.25,000/- made by accused no.1.

24] In order to sustain the charge under Section 498-A, there must be willful conduct on the part of the accused of a nature to drive the woman to commit suicide or to cause injury to her life. As discussed prosecution has failed to bring on record evidence to show that the deceased was subjected to continuous ill treatment and harassment by accused to coerce her or her relatives to meet the unlawful demand. Even if we accept the case of the prosecution that accused no.1 has demanded

Rs.25000/- for the purpose of settling the dispute and non payment of said amount the accused no.1 was annoyed still cannot be termed as demand of dowry or otherwise. In our society, such instances of request to temporarily provide money to meet some urgent requirement of individual or family is not unusual. Therefore, the alleged request of the accused no.1 to father of deceased to temporarily provide Rs.25,000/- to enable him to settle dispute with his uncle cannot be treated as act of cruelty. There is no evidence to show that the accused no.1 was consistently making the demand of Rs.25,000/- and for non-fulfilment of such demand he had subjected the deceased to continuous ill-treatment and harassment. Therefore, there is no convincing evidence to establish the cruelty as defined under Clause (a) or (b) of Section 498-A of IPC.

25] In order to sustain the charge under Section 306 of IPC it is incumbent upon prosecution to prove that the deceased has committed suicide and such act of suicide was abetted by the accused. In order to attract the offence under Section 306 of IPC, there must be intention on the part of the accused to aid or abet commission of suicide by the deceased. Mere allegation of harassment without any positive action, proximate to the time of

occurrence on the part of accused which led or compelled the person to commit suicide, the conviction in terms of Section 306 of IPC is not sustainable. In this context, it is useful to place reliance on the decision of Apex Court in the case of **Amalendu Palalias Jhantu V/s State of West Bengal reported in AIR 2010 S.C. 512**, wherein in para 15 and 16 the Apex Court has observed as under :

“15] Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.

16. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission

of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 of IPC.”

26] Learned Judge of the trial Court has observed that as the death of the deceased was occurred within seven years and there is evidence to show that deceased was subjected to ill treatment and harassment, the presumption under Section 113-A of Indian Evidence Act is attracted. In my view, the learned Judge has erred in drawing presumption as contemplated under Section 113-A of Indian Evidence Act as the presumption under Section 113-A of the Indian Evidence Act is not attracted automatically only for the reason that the married woman has committed suicide within seven years of marriage. In order to attract the presumption under Section 113-A, there must be satisfactory evidence to show that the husband or any relative of her husband has subjected deceased to such cruelty as defined under Section 498-A of IPC. As discussed in foregoing paras the testimony of witnesses on this count found to be unworthy of placing reliance. In this context, it is useful to refer the decision of the Apex Court in the case of **Mangat Ram V/s State of Haryana reported in AIR 2014 S.C. 1782** wherein in

para 26 the Apex Court has observed as under :

“26] We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case that such suicide has been abetted by her husband or by such relative of her husband. The term “ the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act. In this connection, we may refer to the judgment of this Court in *Hans Raj V. State of Haryana* (2004) 12 SCC 257: (AIR 2004 SC 2790 : 2004 AIR SCW 1283) wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that unlike Section 113-B of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the Court to raise

such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A of IPC.”

27] Thus on due consideration of overall evidence adduced by the prosecution, in the light of settled position of law, I am of the view that reasons and findings recorded by the trial Court are perverse and based upon improper appreciation of evidence. The prosecution has failed to establish that the deceased had died a suicidal death. In the light of the facts and circumstances of the case, possibility of the deceased may have died due to accidental death cannot be ruled out. So also there is no satisfactory evidence to establish the cruelty, as defined in Clause (a) and (b) of Section 498-A of IPC. Similarly there is no credible evidence to show that the deceased was subjected to such ill treatment and harassment that she was left with no option except to commit suicide. There is no evidence as such to establish abetment to commit suicide by accused. In this view, the accused are entitled to be given benefit of doubt. I am therefore, inclined to allow the Appeal and set aside the impugned judgment and order.

28] In the result, the Criminal Appeal is allowed. The impugned judgment and order is set aside. Fine amount if any deposited, be refunded to the appellants/accused.

29] In this view, the Suo-Motu Revision No.2/2002 stands disposed of in terms of disposal of Appeal.

(V.L.ACHLIYA,J.)

umg/