

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.342 OF 1999

The State of Maharashtra,
Through Police Station Kasarshirsi,
Tq-Nilanga, Dist-Latur.

...APPELLANT

VERSUS

- 1) Harisarvottam s/o Govind Joshi,
Age-28 years,
- 2) Govind Madhavracharya Joshi,
Age-62 years,
- 3) Sow. Kusum Govind Joshi,
- 4) Ramkrishnacharya s/o Madhavacharya
Joshi,

All R/o- Aurad Shahajani,
Tq-Nilanga, Dist-Latur.

**...RESPONDENTS
(Ori. Accused)**

...
Mr. R.V. Dasalkar, A.P.P. for Appellant -State.
None present for Respondent Nos. 1 to 4.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 7TH JUNE,2017.

DATE OF PRONOUNCING JUDGMENT: 21ST JUNE, 2017.

JUDGMENT [PER S.S. SHINDE, J.]:

1. This Appeal is directed against the Judgment and order dated 31st May, 1999, passed by the Additional Sessions Judge, Nilanga in Sessions Case No.34 of 1998 (Previous Case No.184 of 1997), thereby acquitting Respondent Nos.1 to 4 (original accused Nos. 1 to 4), from the offences punishable under Section 304-B, 498-A, 306 read with 34 of the Indian Penal Code (for short "I.P. Code").

2. The prosecution case in nut-shell, is as under:-

A) A marriage of victim Archana was solemnized with accused No.1 - Harisarvottam Govind Joshi at Udgir in the month of May, 1995.

accused Nos. 2 and 3 namely Govind Joshi and Kusum Joshi are parents of accused No.1 - Harisarvottam. Accused No.4 - Ramkrishnacharya is uncle of accused No.1 Harisarvottam. The husband and his parents were residing together. Archana was being ill-treated by the accused persons in connection with demand of colour T.V. and of Rs.25,000/-. She was also being subjected to beating by her husband and parents of husband, on the ground that she could not conceive. Moreover, all the accused persons used to beat and humiliate Archana on trifling matters like cooking of excess food, non-cooking of food properly etc. They also used to cause her to rub her nose on the ground and to beg pardon for such trifling matters in presence of neighbours and relatives.

B) On 30th December, 1996 in the morning accused No.1 Harisarvottam asked Archana to serve him meals, when she was fetching water. Therefore, she asked him to get himself serve the food. On

such reply accused No.1 Harisarvottam got annoyed and beat her. Because of such beating and routine cruel treatment, Archana poured kerosene on her person and set herself on fire.

C) Accused No.1 Harisarvottam, on the very same day, took her to Civil Hospital, Latur and admitted her in the hospital. Concerned Medical Officer intimated the matter to the Police Station, Gandhi Chowk, Latur and accordingly first dying declaration of Archana came to be recorded by P.H.C. Narayan on 30th December, 1996 itself. A second dying declaration was recorded by police on 31st December, 1996 through Executive Magistrate, Latur.

D) On 5th January, 1997 Ramrao, father of Archana came to know from her about the details of the occurrence dated 30th December, 1996. Hence on 6th January, 1997 Ramrao lodged First Information

Report Exhibit-57 to Police Station Kasarshirsi specifying therein details of cruel treatment which was being given to Archana by her husband, parents and uncle of her husband, and also specified therein that all the accused persons poured kerosene on the person of Archana after beating her and set her on fire. On the basis of said First Information Report, a crime was registered by P.S.O. of Police Station, Kasarshirsi at Cr. No.3 of 1997 for an offence punishable under Sections 307, 323, 498-A, 34 of the I.P. Code and set criminal law in motion.

E) The Investigating Officer Mr. Walchand Munde, P.S.I. of Police Station, Kasarshirsi recorded statement of Archana by visiting Civil Hospital, Latur on 7th January, 1997. On the very day, he got recorded dying declaration of Archana through Mr. Pore, a Special Judicial Magistrate.

F) The Investigating Officer visited the place of occurrence on 8th January, 1997 and drawn panchnama of place of occurrence in presence of two panchas and also seized partly burnt clothes i.e. saree, petticoat, blouse of Archana, as well as one container containing 4 litres of Kerosene and also recorded statements of witnesses.

G) On 15th January, 1997 Archana died, hence inquest panchnama was conducted on the very day and dead body was referred for autopsy. The Medical Officer concerned expressed his opinion about a probable cause of death as "shock due to 56% burns".

H) Accused persons were arrested during the course of investigation. On completion of investigation, sufficient evidence was available on record for commission of offences punishable under Sections 498-A, 304-B, 323, read with 34 of

the I.P. Code. Hence charge-sheet was filed against the accused persons in the Court of J.M.F.C., Nilanga on 22nd April, 1997. The J.M.F.C., Nilanga has committed the case to the Court of Sessions in due course.

I) The trial Court framed charge against accused on 31st October, 1998 for the offences punishable under Sections 304-B read with 34 of the I.P. Code, 306 read with 34 of the I.P. Code and also for the offence under Section 498-A read with 34 of the I.P. Code. A charge was explained against all the accused persons. The accused persons pleaded not guilty and claimed to be tried. As per the defence of the accused, Archana was sensitive and short tempered lady by nature and her death was a result of her own act.

3. To prove the case, the prosecution has examined in all seven witnesses. After recording the evidence and conducting full fledged Trial,

the Trial Court acquitted all the accused persons from the offence punishable under Section 304-B, 498-A, 306 read with 34 of the I.P. Code. Hence this Appeal by the State.

4. Learned A.P.P. appearing for the State invites our attention to the evidence of PW-1 Vinayak, PW-2 Upendra, PW-3 Jankabai and PW-4 Ramrao and submits that if their evidence is read in its entirety, then it unequivocally indicates that there was ill-treatment and harassment to Archana at the hands of the accused. It is submitted that Archana committed suicide due to instigation and abetment by the accused. He submits that there was no reason for Archana to commit suicide other than ill-treatment and harassment at the hands of the accused. He further invites our attention to four dying declarations given by Archana and submits that in the dying declarations Archana has specifically stated that due to harassment and ill-treatment at the hands

of the accused she committed suicide. Therefore, he submits that the Appeal may be allowed.

5. We have given careful consideration to the submissions of the learned A.P.P. appearing for the State. With his able assistance we have perused the entire notes of evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

6. Prosecution examined PW-1 Vinayak Martandrao Kulkarni, uncle of Archana, PW-2 Upendra Dattatraya Kulkarni, husband of Archana's sister, PW-3 Jankabai Ramrao Kulkarni, mother of Archana and PW-4 Ramrao Martandrao Kulkarni, father of Archana, on the point of demand and ill-treatment, harassment to Archana at the hands of the accused. All these four witnesses have deposed that when they visited the hospital, Archana gave oral dying declaration to them.

7. Prosecution examined PW-5 Narayan Bhujangrao Ranzunjare, Police Head Constable, who recorded dying declaration of Archana (Exhibit-64) on 30th December, 1996. PW-6 Shashikant Janardhan Pore, Special Judicial Magistrate recorded dying declaration of Archana (Exhibit-69) on 7th January, 1997. PW-7 Walchand Pandharinath Munde, P.S.I. was the Investigating Officer.

8. Upon perusal of the evidence of the prosecution witnesses on the point of alleged harassment/ ill-treatment and unlawful demand, PW-4 Ramrao Martandro Kulkarni, father of Archana (deceased), in his deposition, stated that marriage of Archana with accused No.1 Harisarvottam was performed in the month of May, 1995 and after marriage Archana had been to her matrimonial house at Aurad-Shahajani. It appears that after one month of marriage he visited Aruad-Shahajani and the accused/Respondents told him

that Archana was not properly performing her household duties and they also complained about non-giving of certain articles in the marriage which were remained to be given by PW-4. It appears that accused told him about inexperience of Archana in cooking the food and further complained that she was cooking excess food. On the whole it appears that such narration by the accused was of trifle nature except that they asked PW-4 to give certain articles which were remained to be given in marriage. This is one part of the evidence of PW-4.

9. Evidence of PW-4 to the extent of unlawful demand of Rs.25,000/- and set of colour television by the accused persons can be considered as second part of ill-treatment and harassment given by the accused to Archana. If the evidence of other prosecution witnesses on the point of alleged harassment, ill-treatment and unlawful demand of Rs.25,000/- and set of colour

television is considered, more or less they have also stated like PW-4 in their evidence before the Court. So far actual incident dated 30th December, 1996 of pouring kerosene by Archana on her person and setting ablaze herself, according to PW-1 to PW-4, the same was on account of non-fulfillment of demand of Rs.25,000/- and set of colour television. All these four witnesses have stated that Archana told them that due to routine ill-treatment given to her by the accused, she poured kerosene on her person and set herself ablaze. If the evidence of PW-4 Ramrao and PW-3 Jankabai, father and mother of Archana is considered, they have stated that because of routine ill-treatment Archana had poured kerosene on her person and told her husband that she would get herself burnt. It is further stated that husband of Archana had thrown match box on the person of Archana which was lying on the platform of kitchen. If the evidence of these four prosecution witnesses i.e. PW-1 to PW-4, on the point of harassment, ill-

treatment and unlawful demand is considered in its entirety, it suffers from omissions, exaggerations, contradictions and improvements and makes it unbelievable to rely upon the same. If the cross-examination of PW-4 Ramrao is considered carefully, PW-4 admitted that on 30th December, 1996 nothing was disclosed to him by his daughter regarding the occurrence. When he was confronted with the document at Exhibit-57 which was scribed by him, he fairly stated that nothing to the effect that all the accused persons had subjected Archana to beating and poured kerosene and set her on fire was stated to him by Archana. He stated that Exhibit-57 was scribed by him on the basis of suspicion only. As already discussed, the evidence of PW-1 to PW-4 can be divided into two parts, firstly harassment by the accused on account of trifling grounds of not properly performing the daily work in the house such as cooking excess food, wastage of remaining food and asking her by the accused to beg pardon by rubbing nose in front

of relatives in case of wastage of food, and secondly on account of ill-treatment and non-fulfillment of unlawful demands by the accused, Archana poured kerosene on her person and set herself ablaze, and according to PW-3 and PW-4 accused No.1 Harisarvottam threw match box on her person, which is not stated by other two witnesses.

10. So as to appreciate the charge framed for the offences punishable under Section 304-B read with 34 of the I.P. Code and also Section 306 read with 34 of the I.P. Code is concerned, unless ingredients of said Sections and Section 107 of I.P. Code are attracted, merely because there was some sort of harassment on account of trifling grounds by the accused, it may not be appropriate to reverse the acquittal of the accused. In order to appreciate the aforesaid aspect, it would be apt to make reference to four dying declarations of Archana. Dying declaration at Exhibit-64 was

recorded by PW-5 Narayan Bhujangrao Ranzunjare, Police Head Constable on 30th December, 1996. Second dying declaration at Exhibit-71 was recorded by Taluka Executive Magistrate on 31st December, 1996. Third dying declaration at Exhibit-69 was recorded by PW-6 Shashikant Janardhan Pore, Special Executive Magistrate on 7th January, 1997. Fourth dying declaration at Exhibit-72 was recorded by PW-7 Walchand Pandharinath Munde, Investigating Officer on 7th January, 1997.

(i). On 30th December, 1996 statement of Archana (Exhibit-64) was recorded by PW-5 Narayan. In said dying declaration, she has stated about incident of 30th December, 1996 that at about 9.00 a.m. her husband - accused No.1 Harisarvottam asked why she has not cooked the food and in reply she stated that there was some delay in cooking the food on that day, and on that count there was some quarrel between the couple. On account of

such quarrel, Archana got angry and in anger she poured kerosene on her person and set herself ablaze. She specifically stated that she herself poured kerosene on her person and took the match box which was lying on the kitchen platform and set herself ablaze. She has specifically stated that when she shouted, her husband and neighbourer Shantabai Vasantrao Kulkarni poured water on her person and extinguished the fire. Husband took her to the hospital by private vehicle at Aurad Shahajani and thereafter she was shifted to the Government Hospital at Latur. Admittedly, Archana survived for fifteen days after said incident and the prosecution had occasion to record her four dying declarations. In the dying declaration at Exhibit-64, as discussed herein above, she has not stated anything about any harassment, ill-treatment or unlawful demand either by the husband or by other co-accused except that on the ground of not cooking the food within time, there was some quarrel between herself and her husband

Harisarvottam.

. Said dying declaration at Exhibit-64 has been proved by the prosecution by examining PW-5 Narayan Bhujangrao Ranzunjare. In his deposition, PW-5 stated that he recorded statement of Archana on 30th December, 1996 in between 1.00 p.m. to 1.30 p.m. It was stated by Archana that on the ground of non-cooking of food within time, there was quarrel between herself and her husband and in anger she poured kerosene on her person and set herself ablaze. He has specifically stated in his evidence that contents of statement were read over to Archana and she signed the said dying declaration. During cross-examination he stated that she was able to speak and was conscious to give such statement and he got satisfied that patient was conscious and in a position to give the statement.

(ii). It appears that on 31st December,

1996 statement of Archana was recorded at about 10.45 a.m. by Taluka Executive Magistrate. Said dying declaration is at Exhibit-71, which is in question-answer form. It appears that when she was asked about the incident, she stated the date and time of the incident and that in anger she poured kerosene on her person and set herself ablaze. At the time of incident, only husband and herself were present. Her husband wanted to go to the agricultural field and therefore he asked Archana why she has not cooked the food yet and said that he will go to the agricultural field without having food. There was some quarrel. Archana got angry and poured kerosene on her person and set herself ablaze. Husband poured water on her person and extinguished the fire and she was taken to the hospital by the husband. She stated that she herself poured kerosene on her person and set herself ablaze and nobody was responsible for the said incident. It appears that she has further stated that there was no any dispute with anybody

and in heat of anger she herself poured kerosene on her person and set herself ablaze. It appears that though the prosecution did not examine the said witness, the defence examined the said witness and the said dying declaration Exhibit-71 was considered by the trial Court. If the dying declaration at Exhibit-71 is considered, she has not attributed anything against any accused except quarrel took place on that day between herself and accused No.1 Harisarvottam.

(iii). It appears that another dying declaration of Archana, Exhibit-69, was recorded on 7th January, 1997 by the Special Executive Magistrate, Latur i.e. PW-6 Shashikant Janardhan Pore. In the said dying declaration, she stated that her marriage was performed one and half year before the incident dated 30th December, 1996. There was some harassment by father-in-law and mother-in-law on account of not cooking the food properly. She further stated that her husband

wanted to go to the agricultural field on 30th December, 1996 and there was some delay in cooking the food. Her husband told her to pack his tiffin immediately and he uttered some abusive words. In reply, Archana also scolded her husband. When this quarrel was going on, husband started to proceed to agricultural field, however she caught hold his hand and asked him to have the meal and there was quarrel between the couple. However, her husband had meal and when he went in bathroom to wash his hands, she poured kerosene on her person and set herself ablaze. On her shouts, husband immediately rushed to her and poured water on her person and extinguished the fire. Husband told her not to worry, and he will take her immediately to the hospital, and accordingly she was taken to the hospital of Dr. Kukade, by her husband. She stated that other co-accused are also causing some harassment to her on account of cooking excess food and also on an allegation of wastage of food. She has specifically stated that, she had no any

grievance or grudge against the husband, and she has grievance against her father-in-law and mother-in-law. The said dying declaration was recorded one week after recording dying declaration at Exhibit-64, which was recorded on 30th December, 1996. If the contents of both the dying declarations at Exhibit-64 and Exhibit-69 are conjointly read, in the first dying declaration at Exhibit-64 neither she has mentioned about any harassment or ill-treatment at the hands of husband or co-accused except quarrel took place between the couple on account of non-cooking the food within time. In dying declaration at Exhibit-69, as already observed, she has mentioned about the harassment at the hands of husband and other co-accused on trifling grounds or for non performing her duties in the house promptly. In both these dying declarations, there is no mention of an unlawful demand of Rs.25,000/- and set of colour television.

(iv). Fourth dying declaration was also recorded on 7th January, 1997 by Investigating Officer PW-7 Pandharinath Munde, which is at Exhibit-72. Upon careful perusal of the contents of the said dying declaration, there is no signature of the declarant though it is stated that Archana was conscious and said statement was read over to her. It appears that in said dying declaration, Archana stated about harassment and ill-treatment at the hands of accused persons on trifling grounds. However, so far incident dated 30th December, 1996 is concerned, she has again reiterated that in the heat of anger she herself poured kerosene on her person and set herself ablaze. There is no overt-act attributed to husband or any other accused. It is true that if the contents of the said dying declaration are read in its entirety, she has narrated about the harassment by the accused on account of not cooking food within time, cooking excess food and wastage of food etc. As already observed, neither

the said statement is signed by Archana nor there is any thumb impression. Be that as it may, even if the contents of the said dying declaration are taken as it is, at the most it can be observed that there was quarrel between Archana and accused No.1 on account of trifle grounds. In all the four dying declarations, she has not stated about unlawful demand of Rs.25,000/- and set of colour television and on that count there was harassment and ill-treatment at the hands of the accused.

11. If the contents of all the dying declarations are read conjointly, there is no any whisper about unlawful demand of Rs.25,000/- and set of colour television and there was harassment and ill-treatment at the hands of the accused on that count. Therefore irresistible conclusion is that the evidence of prosecution witnesses i.e. PW-1 to PW-4 that there was oral dying declaration to them and Archana told them about ill-treatment on account of unlawful demands, deserves no

consideration.

12. In the light of discussion in foregoing paragraphs, the evidence brought on record by the prosecution is not sufficient to attract the cruelty as contemplated under the provisions of Section 498-A of the I.P. Code. In absence of proving an unlawful demand for any property or valuable security or is on account of failure by wife or any person related to her to meet such demand, harassment on account of same has not been proved by the prosecution in as much as, as already observed Archana in her four dying declarations at Exhibit-64, Exhibit-69, Exhibit-71 and Exhibit-72 has not stated single word about unlawful demand of Rs.25,000/- and set of colour television. Therefore, the cruelty and harassment of the woman as contemplated under the provisions of Section 498-A of the I.P. Code is not proved by the prosecution. In that view of the matter charge for the offence punishable under Section 498-A

read with 34 of the I.P. Code shall fail. We do not find any perversity in the findings recorded by the trial Court while dealing with the aforesaid charge for the offence punishable under Section 498-A read with 34 of the I.P. Code.

13. In the present case charge was also framed for the offence punishable under Section 304-B read with 34 of the I.P. Code. The provisions of Section 304-B of the I.P. Code reads as under:-

"304-B. 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 sub-section, "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."

14. In the light of discussion in foregoing paragraphs that the prosecution failed to prove cruelty or harassment by the Respondents- accused in connection with any demand for dowry, an inevitable conclusion is that the findings of acquittal recorded by the trial Court deserves no interference.

15. The Hon'ble Supreme Court had occasion to consider the scope of Section 304-B of the I.P. Code in the case of Satvir Singh and others vs. State of Punjab and another¹. In Para 14 of the Judgment, it is held that :-

¹ (2001)8 S.C.C. 633

"14. The essential components of Section 304-B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304-B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstance". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence."

16. The Supreme Court in the case of Rajinder Singh vs. State of Punjab², in Para 23 observed as under:

"We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B."

17. It is true that in the facts of the present case, death of Archana occurred within seven years from the date of marriage and death occurred otherwise than under normal circumstances. However, as already discussed in all the four dying declarations at Exhibit-64,

² AIR 2015 S.C. 1359

Exhibit-69, Exhibit-71 and Exhibit-72 of Archana, there is nothing to suggest that soon before the death of Archana she was subjected to cruelty and harassment in connection with demand of dowry by the accused.

18. The charge was also framed for the offence punishable under Section 306 read with 34 of the I.P. Code. So as to appreciate the said charge in the light of evidence brought on record by the prosecution, it will have to be seen whether the ingredients of Section 107 and Section 306 of I.P. Code are attracted in the facts of the present case and then only it is possible to hold that alleged offence under Section 306 of the I.P. Code is disclosed against the Respondents-accused. The prosecution has not brought on record cogent and convincing evidence so as to prove that within the proximity of alleged incident dated 30th December, 1996 the Respondents-accused abetted, intentionally aided or instigated in

alleged commission of suicide by Archana.

19. The Supreme Court, in recent Judgment in the case of Heera Lal and another vs. State of Rajasthan (Criminal Appeal No.790 of 2017) decided on 24th April, 2017, in Para 6 to 10 held thus:

"6. Having heard the learned counsel appearing for the parties and having gone through the evidence, we are of the opinion that Section 113A of the Indian Evidence Act requires three ingredients to be satisfied before it can be applied i.e. (i) that a woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage and (iii) the husband or his relatives who are charged had subjected her to cruelty.

7. This Court in an illuminating Judgment in Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618 has stated

the law as follows:-

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. 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 cause - 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 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."

8. We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide.

9. In the absence of this vital link, the mere fact that there is a finding of harassment would not lead to the conclusion that there is "abetment of suicide".

10. On the facts, therefore, we find, especially in view of the fact that the appellants have been acquitted for the crime under Section 498 A of the Code, that abetment of suicide under Section 306 is not made out."

20. Therefore, keeping in view the evidence brought on record by the prosecution and the exposition of law in the aforementioned Judgments by the Supreme Court, in the present case in absence of any evidence on record suggesting any instigation, abetment or aid on the part of the Respondents-accused in commission of pouring kerosene on her person by Archana and setting her ablaze, it will have to be held that the alleged offence under Section 306 of the I.P. Code is not disclosed.

21. In the light of discussion in foregoing paragraphs, we are of the considered view that the findings of acquittal recorded by the trial Court

are in consonance with the evidence on record and there is no perversity as such. The view taken by the trial Court is plausible and therefore there is no reason to cause interference in the order of acquittal. It is settled principle of law that when the plausible view is taken on the basis of material on record, in that case even if another view is possible, is no ground to interfere in the order of acquittal.

22. For the reasons aforesaid, there is no merit in the Appeal. Hence the Appeal stands dismissed. The Bail Bonds of the Respondents-accused stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

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