

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

**BENCH AT AURANGABAD.**

**CRIMINAL APPEAL NO.543 OF 2001.**

Dagadu s/o Waluba Jadhav,  
age 25 years, occu. -  
r/o Anturli (Kh),  
Tq. Pachora, Dist. Jalgaon.

**... APPELLANT.**  
(Ori. Accused No.1).

**Versus**

The State of Maharashtra.

**... RESPONDENT.**

...  
Mr.G.V. Wani, Advocate for appellant.  
Mr.K.S. Patil, Addl. P.P. For respondent / State.

...

**CORAM : V.L. ACHLIYA, J.**

Reserved on: 12<sup>th</sup> January, 2017.  
Pronounced on: 11<sup>th</sup> April, 2017.

**JUDGMENT:**

1. This appeal is directed against the judgment and order dated 6<sup>th</sup> December, 2001 delivered in Sessions Case No.29 of 1999 by the 1<sup>st</sup> Ad hoc Additional Sessions Judge, Jalgaon. By the impugned judgment and order, the learned Additional Sessions Judge has convicted appellant – original accused No.1 for the offence punishable under Section 306 of IPC and sentenced him to suffer R.I. for four years and to pay a fine of Rs.1000/-, in default of payment of fine, to suffer R.I. for two

months.

2. In brief, the facts of the prosecution case as unfolded during the course of trial are summarized as under:

- (a) The appellant (original accused No.1) along with co-accused Waluba Sandu Jadhav (accused No.2) and Chandrakala @ Jijabai Waluba Jadhav (accused No.3), father and mother of accused No.1, were tried for the offences punishable under Sections 306, 498A r.w. 34 of IPC. On conclusion of the trial, the learned Additional Sessions Judge has acquitted them for offences under Section 498A of IPC. The accused Nos.1 and 2 were also acquitted for offences under Section 306 r.w. Section 34 of IPC. However, the accused No.1 was convicted for the offence punishable under Section under Section 306 of IPC.
- (b) On 6.4.1998, Hari Bhika Danke, (PW-1), father of Chhayabai (herein after referred to as the deceased) lodged complaint with Police Station Pachora, district Jalgaon, alleging therein that his daughter Chhayabai was married with accused No.1 about two years prior to

lodging of the complaint. After marriage, she started cohabiting with accused Nos.1 to 3 at their matrimonial house at village Anturli. Accused Nos.1 to 3 used to ill-treat and harass her. After 15 days of marriage, he visited the house of accused to fetch his daughter. However, the accused refused to send her and made grievance against his daughter that she is not able to do household work. When he brought his daughter to his house, she disclosed that her husband and in-laws used to taunt her since she could not do the household work and her husband beat her as watch was not given in marriage. When her father-in-law came to fetch her, he gave him watch of his brother. After 2 to 3 months thereafter, the complainant went to the house of accused to fetch his daughter. But the accused did not allow her to talk to him. Her husband and in-laws demanded money for construction of house. He told them that he has no money to pay them. The accused refused to send his daughter with him. In the previous month, he received inland letter from father-in-law of his daughter. By that letter, he was informed that his daughter is suffering from typhoid and she may not

survive more than 4 - 5 days and asked him to immediately come to see her. He, therefore, went to the house of the accused along with his wife to see his daughter. At that time, accused No.1 told them that he and Chhayabai (deceased) would come to their house to attend marriage of his cousin brother. Accordingly, on 20<sup>th</sup> March, 1998, accused No.1 and his daughter came to their house and they stayed there for four days. At that time, Chhayabai disclosed that accused continued to ill-treat her. She asked him to give Rs.3000/- to her. He told her that he has no money to pay to her. Thereafter, the accused and his daughter went to their matrimonial house. Thereafter, he received letter from accused No.1 wherein, he asked him to urgently pay him Rs.5000/- and by money order or bring it personally. A few days thereafter i.e. on 5.4.1998, the accused No.2 and two persons came to his house and enquired as to whether his daughter had come to his house. They disclosed that Chhayabai was found missing from their house since Friday. On next day, he along with family members and relatives went to Anturli when he came to know that the dead body of his

daughter was found in a well in the village. After performing the last rites on the dead body of his daughter, the complainant visited the police station on 6.4.1998 and lodged complaint alleging therein that the deceased committed suicide due to continuous ill-treatment, at the hands of accused. On the basis of the complaint lodged by P.W.1, the offence punishable under sections 306, 498-A r/w 34 IPC came to be registered vide C.R. No.33 of 1998 against accused with Police Station, Pachora.

- (c) Ashok Karpe (PW-5), PSI attached to Pachora Police Station conducted the investigation. Prior to registration of offence, on the basis of information received from Police Patil of village Anturli, Accidental Death No.23 of 1998 was registered. After registration of the offence, investigating officer made inquest panchanama of the dead body of deceased and referred the dead body of deceased for postmortem. The investigating officer visited the spot of incident and made Panchanama. From the spot of incident, he seized one plastic tin, used for the purpose of latrine.

He recorded the statements of the witnesses such as Laxmibai Danke (PW-2) - mother of the deceased, Ukhardu Narayan Danke (PW-3) - uncle of the deceased, Kaduba Bhika Danke (PW-4) - uncle of the deceased. During the course of investigation, the complainant produced four letters which he had received from the accused persons. He seized those letters. He arrested the accused. After completion of investigation, the investigating officer prepared a charge sheet and filed it in the Court of J.M.F.C. Pachora. In due course, the case was committed to the Court of Sessions. On committal of the case, charge under sections 306, 498-A r/w 34 of IPC came to be framed against the accused. All of them pleaded not guilty and claimed to be tried. In this view, the case proceeded against the accused.

3. In order to prove its case, prosecution has examined five witnesses and proved certain documents. The defence of accused appears to be of total denial and false implication at the instance of the complainant and other family members. On conclusion of the trial, the learned Additional Sessions Judge has reached to the conclusion that prosecution has

failed to prove the charge under section 498-A r/w 34 of IPC against the accused Nos.1 to 3. However, the learned additional Sessions Judge found accused No.1 alone to be guilty of offence punishable under section 306 of IPC and convicted him to undergo sentence as stated above. Being aggrieved, the appellant has preferred this appeal on the various grounds set out in the memo of appeal.

4. I have heard Mr. Wani, learned counsel for the appellant and Mr. Patil, learned APP for respondent State and carefully perused the record and proceedings.

5. Mr.Wani, learned counsel for the appellant assailed the reasons and findings recorded by the trial Court with contention that same are self-contradictory and based upon misreading of evidence. He further submitted that the reasons and findings recorded by the trial Court are perverse. He has pointed out that the trial Court has observed that prosecution has failed to prove that deceased was subjected to any harassment. The evidence adduced by the prosecution of alleged demand of money as well as wrist watch, the trial Court has disbelieved the witnesses vis-a-vis story of prosecution. While acquitted the accused under Section 498A

of IPC, convicted the appellant for the offence punishable under Section 306 of IPC based upon same evidence. The learned Counsel submitted that once the trial Court has reached to the conclusion that the prosecution has failed to prove the guilt under Section 498A of IPC, the conviction of appellant under Section 306 of IPC is not sustainable in law. In this context, learned Counsel has referred and relied upon the decision of the Apex Court in the case of ***Raja Babu vs State of Madhya Pradesh***<sup>1</sup>. He submitted that there is absolutely no evidence to show that the appellant - accused abetted commission of suicide by the deceased. The learned Counsel submitted that presumption under Section 113A of the Indian Evidence Act, 1872 is not attracted in the case for the sole reason that there is no evidence as such to establish harassment and demand by the appellant. By referring the impugned judgment, the learned Counsel submitted that the trial Court has convicted appellant only for the reason that the deceased died within two years of her marriage. It is pointed out that the trial Court has disbelieved prosecution witnesses namely, Hari Bhika Danke (P.W.1) father of deceased, Laxmibai Haribhan Danke (P.W.2) mother of deceased, Ukhardu Narayan Danke (P.W.3) uncle of deceased,

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<sup>1</sup> 2008(17) SCC 526;

Kaduba Bhika Danke (P.W.4) uncle of deceased, who were examined by prosecution to establish cruelty and demand on the part of the present accused. But, the trial Court has convicted the appellant by taking recourse to section 113A of the Indian Evidence Act. He submitted that only for the reason that death has occurred within two years of marriage, presumption cannot be raised as to abetment of suicide by a married woman unless the prosecution adduce evidence that soon before her death, such woman had been subjected by the accused to cruelty or harassment. By referring to reasons and findings recorded by the trial Court, the learned Counsel pointed out that the trial Court has observed that prosecution has failed to prove harassment as well as demand of dowry by accused - appellant, still convicted the appellant – accused. He submitted that in absence of evidence of harassment or demand of dowry, the trial Court has erred in raising the presumption under Section 113A of the Indian Evidence Act and convicting the appellant.

6. On the other hand, learned APP has supported the judgment and order passed by the trial Court and submitted that reasons and findings recorded by the trial Court are

quite consistent with the evidence on record. By referring the testimony of P.Ws.1 to 4, learned APP submitted that prosecution has proved that there was demand made by the accused to pay Rs.5000/- by father of the deceased. So also on account of not giving wrist Watch in the marriage, the deceased was subjected to ill-treatment and harassment. He further submitted that the deceased was found to have committed suicide within two years of her marriage. In the background of the testimony of P.Ws.1 to 4, learned APP submitted that the trial Court was fully justified in convicting appellant for the offence punishable under Section 306 of IPC. He further submitted that the offences punishable under Section 498A and 306 of IPC are altogether different offences and acquittal of appellant – accused of the offence punishable under Section 498A of IPC, would not automatically result into acquittal of accused of the offence punishable under Section 306 of IPC.

7. If, we consider the judgment and order passed by the trial Court which is impugned by way of appeal, then the appellant – accused was tried for committing offences punishable under Sections 306, 498A r.w. 34 of IPC along

with co-accused Waluba Sandu Jadhav (accused No.2) and Chandrakala @ Jijabai Waluba Jadhav (accused No.3), father and mother of appellant - accused No.1. On conclusion of trial, the trial Court has acquitted accused Nos.2 and 3. So also the appellant – accused No.1 came to be acquitted of the offence punishable under Section 498A of IPC. However, he has been convicted for the offence punishable under Section 306 IPC.

8. If, we peruse the reasons and findings recorded by the trial Court to convict appellant – accused for the offence punishable under Section 306 of IPC, then the conviction is mainly recorded on the basis of conduct of the appellant – accused after deceased was found to be missing from house. The relevant reasons and findings recorded by the trial Court to convict appellant – accused for the offence punishable under section 306 of IPC read, as under:

“ When the deceased had left house assuming for a moment to attend the nature's call, was it not the duty of accused No.1 to go in search of her when she had not returned at home. Instead of searching her, accused No.2 after about 2 days wen at the place of complainant to inform that his daughter was missing. When legal obligation was cast upon the accused No.1 at least to inform to the parents of the deceased while she was

missing, he did not do anything. That shows his guilty conscious. Even information was not given to the police about missing of the deceased Chhayabai on the material time, place & date. No plausible explanation has put forth by the side of accused persons as to how and when she left the house. On the contrary, accused No.2 made wilful mis-representation and wilfully concealed the fact of the suicide of the deceased Chhayabai in the well, situated in Anturli outskirt. Thus there appears instigation by wilful concealment of suicidal death of the deceased Chhayabai on the material time, place and date, on the part of accused No.1 when she was living in his company. Though the fact was well within the knowledge of accused No.1 that his wife did not return for a long time at home, he did not give information of the same to the parents of the deceased. The reason must be that he abetted the commission of her suicide. Having considered all the above facts and circumstances, coupled with improbable defence, I am of the considered opinion that the accused No.1 abetted the commission of her suicide for which he has to be held guilty u/s 306 of the I.P.C. Even the subsequent conduct of accused No.1 not remaining present for the last rites of the deceased at Pachora shows his guilty conscious. P.W.1 in clear terms has stated that accused No.1 & 3 were not present at the time of last rites of the deceased performed at Pachora, which is not seriously challenged by the side of defence. For the first time, the complainant on 6-4-98 learnt from one Nana Patil resident of village of the accused that dead body of Chhayabai was found in the well. P.W.2 also states that for funeral only accused No.2 was present. Having considered all these aspects of the matter, I am of the firm view that though accused No.1 was under legal obligation to inform to the parents of the deceased, he did nothing and thus instigated the abetment of suicide of the deceased. I answer this point accordingly."

9. Thus, if we consider reasons and findings recorded by the trial Court, to convict appellant – accused for the offence

punishable under Section 306 of IPC, then it can be safely stated that conviction is based mainly on the inference drawn by the trial Court as to conduct of the appellant – accused after the deceased was found to be missing. There is no reference to any other evidence adduced in the case to form the basis to hold that the appellant – accused has aided and abetted the commission of suicide by the deceased.

10. If, we consider the judgment and order passed by the trial Court, then the trial Court has held that the prosecution has failed to prove that the accused have acted in furtherance of common intention and subjected deceased to cruelty and thereby committed offence under Section 498A of IPC. While dealing with Point No.1 formulated for consideration, the trial Court has scrutinized the evidence as adduced in the case and reached to the conclusion that there is no cogent, convincing and reliable evidence to establish cruelty on the part of accused within the meaning of word “cruelty” as explained in Clause (a) or Clause (b) of Section 498A of IPC.

11. It is pertinent to note that the case of prosecution is mainly based upon oral testimony of P.Ws.1 to 4 coupled with

three letters at Exhs.17, 18 and 19, alleged to be written by the appellant – accused to his father-in-law i.e. Hari Bhika Danke P.W.1. The learned Additional Sessions Judge has found the testimonies of Hari Bhika Danke (P.W.1), Laxmibai Haribhan Danke (P.W.2), Ukhardu Narayan Danke (P.W.3) and Kaduba Bhika Danke (P.W.4) are anyway helpful to prove offence under Section 498A of IPC as well as section 306 of IPC against the accused. So far as the letters at Exhs.17, 18, and 19 are concerned, the learned Additional Sessions Judge observed that the prosecution has failed to establish that the letters in question were written by the appellant - accused and bears the signature of accused No.1. It is further observed that the letter (Exh.19) appears to be sent by accused No.2. It is further observed that even the contents of letter nowhere disclose the commission of any act on the part of accused No.1 so as to infer that the accused has anyway abetted the commission of suicide by deceased. Thus, neither the oral evidence adduced by prosecution nor the letters at Exhs.17, 18 and 19 found sufficient to convict the appellant. As stated above, the conviction is mainly based upon the inference drawn by the trial Court on the basis of conduct of the appellant - accused after deceased was found

missing.

12. In my view, the reasons and findings recorded by the trial Court to convict the appellant for the offence punishable under Section 306 of IPC are not sustainable in law. There is no cogent, convincing and clinching evidence to support the conviction of the appellant for the offence punishable under Section 306 of IPC. In my view, the reasons and findings recorded by the trial Court are wholly based upon surmises and conjectures and there is no evidence as such to establish that the accused aided or abetted the commission of suicide by the deceased.

13. It is quite settled position in law that in order to bring the case within the purview of section 306 of IPC, there must be a case of suicide and a 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. In order to sustain the charge under Section 306 of IPC, the prosecution must prove that the act was abetted by the accused. The word “abetment” employed in section 306 of IPC has been defined under Section 107 of

IPC which reads, as under:

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

*First- Instigates any person to do that thing; or*

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

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

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

***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.”*

14. Thus, upon plain reading of section 107 of IPC, it can be said that a person abets the doing of thing, when – (1) he instigates one person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by any act or illegal omission, the doing of that thing. The meaning of the word “instigate” refers to an act to provoke, incite, urge or bring about

persuasion to do any thing. If, we consider the case of the prosecution in hand as against the appellant – accused, then it is no where the case of the prosecution that appellant – accused entered into any conspiracy with one or more persons to abet the commission of suicide by the deceased. The entire case of the prosecution based on allegations that the accused aided and abetted commission of suicide by the deceased by causing her ill-treatment, harassment, humiliation and the ill-treatment caused to the deceased was of such nature, which left her with no option except to commit suicide.

15. In the case of ***Randhir Singh and another vs State of Punjab***<sup>2</sup>, the Apex Court has observed that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. Therefore, the intention of a person is of vital importance while analyzing the evidence to ascertain whether the act alleged against the accused, even if proved, makes out a case of nature that such person has committed those acts or omission with an intention to drive deceased to commit suicide. While assessing such evidence, the Court is also expected to take

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<sup>2</sup> 2004(13) SCC 129;

into account the act committed by accused immediately prior to commission of suicide by the deceased. The Court is expected to be extremely careful in assessing the facts and circumstances and the evidence adduced in the case to ascertain as to whether cruelty meted out to victim in fact, induced her to end life by committing suicide. The Court is also expected to analyse evidence to see 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. The Court is expected to satisfy itself that the nature of the evidence is such that the deceased was left with no alternative except to commit suicide.

16. No doubt, in a case relating to offence punishable under Section 306 of IPC, normally direct evidence would not be available and it is the circumstances in which death took place, the conduct of the accused and nature of the crime is expected to be taken into account. It is, therefore, necessary that in such type of cases, the Court is expected to examine the facts and circumstances of the case very carefully and also assess the evidence before it in order to find out whether

cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. There must be proof of direct or indirect incitement to the commission of suicide. The conviction under Section 306 of IPC cannot be recorded merely on the basis of allegation of harassment without any positive action, proximate to the time of occurrence, on the part of accused which led or compelled a person to commit suicide.

17. As observed, the learned Judge of the trial Court has found the testimonies of P.Ws.1 to 4 coupled with letters at Exhs.17,18 and 19, as not sufficient to hold that the deceased was subjected to ill-treatment and harassment by the appellant – accused. If the trial Court has reached to such conclusion, then in absence of any evidence that deceased was ill-treated and harassed, the finding of conviction under Section 306 of I.P.C. could not have been recorded. The Courts are expected to record the findings based upon evidence adduced in the matter and not merely on the basis of its own assumption, presumption, having no foundation on record. The reasons and findings to be recorded must have basis on record to sustain such conclusions. In my view, the

reasons and findings recorded by the trial Court in the instant case are recorded merely on the basis of assumption and presumption drawn by the trial Court without any evidence to that effect on record. The conviction is mainly based upon inference drawn on the basis of conduct of accused. It is pertinent to note that as per prosecution case, deceased was found to be missing from 4.4.1998. Hari Bhika – P.W.1 father of the deceased and complainant in the case has categorically deposed that on 5.4.1998 accused No.2 - father-in-law of deceased visited his house along with two persons to enquire as to whether Chhya had come to his house and told that she was missing since yesterday i.e. 4.4.1998. The dead body of the deceased was recovered from a well on 6.4.1998. If deceased was found to be missing on 4.4.1998 and on 5.4.1998, accused No.2 visited house of her father in search of deceased, then such conduct no way leads to draw inference that appellant – accused No.1 had concealed the fact of missing of Chhaya from her parents and failed to immediately report them that their daughter was missing from home. In natural course, whenever any person is found to be missing, the family members, relatives and friends of such person make efforts to search such person by making

inquiry with neighbours, friends and persons in the vicinity and near ones and thereafter they try to find out whereabouts of such person by contacting relatives of such person. The visit of accused No.2 i.e. father-in-law of deceased to her parents in search of the deceased on the next day of her missing and informing them that their daughter is missing, is quite natural conduct on the part of accused and there is nothing unusual in their conduct to draw inference and convict the appellant – accused. So also there is no evidence to show that the appellant – accused No.1 had not attended funeral so as to draw inference that he abetted commission of suicide. In this view, the reasons and findings recorded by the trial Court are perverse and not sustainable in law.

18. The learned APP for the State has argued that the deceased was found to have committed suicide within two years of marriage and, therefore, there is presumption under Section 113A of the Evidence Act. In counter to the submissions advanced, learned Counsel for the appellant has contended that in order to attract presumption under Section 113A of the Evidence Act, prosecution has to first establish that deceased was subjected to cruelty. He submits that the

presumption under Section 113A of the Evidence Act is not automatically attracted in an offence punishable under Section 306 of IPC. In support of the submissions advanced, learned Counsel has placed reliance on the decision of Apex Court in case of **Raja Babu** (supra).

19. In my view, only for the reason that the deceased found to have committed suicide within a period of seven years of her marriage, presumption under Section 113A of the Evidence Act is not attracted. As discussed, the trial Court held that the prosecution has failed to prove that the deceased was treated with cruelty by the accused. The accused have been acquitted of the offence punishable under Section 498A r/w 34 of IPC. The trial Court has observed that testimonies of P.Ws.1 to 4 - the witnesses examined to prove the case of prosecution, found not worthy to be relied upon to sustain conviction. In absence of any evidence that the deceased was subjected by her husband or in-laws to cruelty, presumption under Section 113A of the Evidence Act cannot be attracted in the case in hand.

20. In case of **Raja Babu** (supra) referred to and relied

upon by learned Counsel for the appellant, the Apex Court has observed in paragraphs 19 and 20, as under:

“19. Under Section 113-A of the Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband or any relative of her husband had subjected her to cruelty. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC.

20. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The law has been succinctly stated in *Ramesh Kumar v. State of Chhattisgarh* reported in (2001) 9 SCC 618 wherein this Court observed:

"12. 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 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.' "

21. In the case of **Mangat Ram v. State of Haryana**<sup>3</sup>, the Apex Court has dealt with the purport of section 113-A of the Evidence Act and in para 16, the 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 113A 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 113A 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, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under

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3 AIR 2014 SC 1782;

Section 113A 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 113A, 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 the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC."

22. As discussed in the foregoing paras, conviction of appellant was purely based upon inference drawn by the trial Court on the basis of conduct of the accused after deceased was found to be missing from home. It is nowhere held by the trial Court that prosecution has proved that deceased was subjected to cruelty by her husband or in-laws immediately prior to commission of suicide by the deceased. So also the trial Court has not recorded that the deceased was subjected to cruelty of a nature to drive the woman of ordinary prudence, sound mental state and intellectual capacity to commit suicide. There is no evidence as such to draw an inference that the appellant - accused, at any time, intended the deceased to commit suicide.

23. Even if, we accept entire case of the prosecution in its entirety and consider the testimonies of P.Ws.1 to 4, still no case is made out to infer that the appellant – accused carried any intention that deceased should commit suicide. In the light of case of prosecution at the most, it can be said that there was matrimonial discord in between the deceased and appellant. The accused used to blame the deceased that she was not able to do the household work. On that count, there used to be some quarrel between the accused and deceased. It is further case of the prosecution that the accused used to make demand of money. It is pertinent to note that it has come on record that the act of suicide was committed on 6.4.1998. In the previous month, the deceased along with appellant – accused No.1 had come to house of P.W.1 Hari Bhika and they stayed there for four days and attended marriage in their relation. It has also come on record that the deceased was seriously ill and accused had intimated her parents about the health condition of their daughter. Therefore, even if, we take the case of prosecution in its entirety to be true and correct, still it cannot be inferred that accused acted with an intention to aid or instigate the deceased to commit suicide.

24. In view of discussion made above, conviction of appellant for the offence punishable under Section 306 of IPC is not sustainable. The reasons and findings recorded by the trial Court are perverse as same are found to be based on surmises and conjectures having no foundation on record. In this view, the appeal deserves to be allowed.

25. Accordingly, appeal is allowed in terms of prayer clause (B). The judgment and order passed by the 1<sup>st</sup> Ad hoc Additional Sessions Judge, Jalgaon in Sessions Case No.29 of 1999 convicting appellant for the offence punishable under Section 306 of IPC is set aside. Appellant – accused is acquitted of the offence punishable under Section 306 of IPC. Fine amount if deposited, the same be refunded to the appellant. Bail bonds of the appellant – accused stands discharged.

**[ V.L. ACHLIYA, J ]**

***Kadam.***