

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 730 OF 1997

1. Ramdas Dhondu Kalatkar	
2. Bharti Ramdas Kalatkar (deceased)	 Appellants
v/s.	
The State of Maharashtra	 Respondent

Mr. Pawan Mali for the Appellants.
Mr. N.B. Patil, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd DECEMBER, 2021.

ORAL JUDGMENT :-

. This is an Appeal under section 374 of Cr.P.C. directed against the judgment and order dated 20/10/1997 in Sessions Case No.453/1995, Pune.

2. By the impugned judgment, the learned Assistant Sessions Judge, Pune, has held the Appellants (hereinafter referred to as 'the accused') guilty of offences under sections 498-A and 306 of the Indian Penal Code. The accused no.1 is sentenced to undergo rigorous imprisonment for three years with fine of Rs.2,000/- in default simple imprisonment for two months for offence under section 306 of IPC whereas, the accused no.2 was sentenced for the said offence simple

imprisonment for six months with fine of Rs.1,000/- in default to undergo simple imprisonment for one month. No separate sentence has been awarded in respect of offence under section 498-A of IPC.

3. The case of the prosecution in brief is as under :-

The deceased – Janabai was married to the accused no.1 – Ramdas Dhondur Kalatkar. They had two daughters from the said wedlock. The first daughter died an accidental death. It is the case of the prosecution that after the delivery of the second child, the parents of Janabai brought her home. When she returned to her matrimonial home, she found that the accused no.1 was living with the accused no.3 – Bharti. Janabai complained of ill-treatment at the hands of her husband (accused no.1), mother-in-law (accused no.2) and Bharti (accused no.3). The parents and the brother of the deceased – Janabai intervened and tried to convince accused no.1- Ramdas as well as accused no.3 – Bharti not to ill-treat Janabai. It is also alleged that the accused no.1 and Bharti continued ill-treating and harassing Janabai. On 09/10/1992, said Janabai committed suicide by jumping in a well alongwith her daughter. Accidental death No.73/1992 came to be registered. Body of the deceased was sent for post mortem. The post

mortem confirmed that the death of Janabai was due to asphyxia due to drowning.

4. PW1 – Bhanudas Darekar, the brother of Janabai lodged the FIR (Exhibit – 13) against the accused-Ramdas, his mother-Nakhubai and Bharti for ill-treating Janabai and for abetting her suicide. Pursuant to the said FIR, PW5 – Hajarat Pasha, PSI attached to Nigdi Police Station registered Crime No.297/1992. He recorded statements of witnesses and upon completion of the investigation, submitted the charge sheet against the accused no.1 – Ramdas, accused no.2 – Nakhubai and accused no.3 – Bharti for offences under Sections 498A and 306 r/w. 34 of IPC.

5. The accused pleaded not guilty to the charge and claimed to be tried. The mother of the accused – Nakhubai (A2) died during the pendency of the case. The prosecution in support of its case, examined 06 witnesses. The statements of the accused nos.1 and 3 were recorded under section 313 of Cr.P.C. The defence of the accused was of total denial. After considering the evidence adduced by the prosecution, the learned Judge held both the accused guilty and convicted and sentenced both the accused i.e., the accused no.1 –

Ramdas and accused no.3 - Bharti as stated above. Being aggrieved by the conviction and sentence, these accused preferred this Appeal under Section 374 of Criminal Procedure Code. The Appellant No.2/ accused no.3 – Bharti died during the pendency of this Appeal and the Appeal stood abated as against the Appellant No.2.

6. Assailing the judgment, Mr. Pawan Mail, learned counsel for the accused submits that the death of Janabai was more than seven years from the date of the marriage and hence, presumption under section 113A of the Indian Evidence Act is not available. He submits that the evidence adduced by the prosecution is not consistent and does not prove either cruelty as defined under section 498A or abetment within the meaning of section 107 of IPC. He submits that the learned Judge has relied upon the complaint lodged by Janabai (Exhibit - 26) without giving an opportunity to the accused to explain this incriminating circumstance in the statement under section 313 of Cr.P.C. He further submits that the witnesses have made an obvious improvement in their deposition before the Court. He contends that conviction cannot be based on the evidence of these witnesses who are not reliable and trustworthy. He further submits that there is no proximity to her death by suicide and the alleged cruelty.

7. Mr. N.B. Patil, learned APP submits that the evidence of PW1 and PW2 amply proves that the accused had subjected the deceased to cruelty. The complaint at Exhibit – 25 corroborates the evidence of PW1 and PW2. He further submits that the evidence of PW1 and PW2 is corroborated by two other independent witnesses. He submits that the accused was given opportunity to explain all the incriminating circumstances appearing against him. The evidence adduced by the prosecution proves that the accused had subjected the deceased to cruelty to such an extent that she was driven to commit suicide along with her daughter.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. It is not in dispute that Janabai was married to the accused – Ramdas Kalatkar in the year 1979. They had two daughters from the said wedlock. The first daughter died an accidental death. It is on record that on 09/10/1992, Janabai committed suicide by jumping in a well along with her second daughter. The post mortem report at Exhibit – 19 confirms that the cause of her death was asphyxia due to drowning. The evidence on record thus proves that the death of

Janabai was caused otherwise than in normal circumstances.

10. The core question for consideration is whether Janabai was subjected to cruelty within the meaning of section 498-A of IPC and whether the accused had abetted her suicide.

11. Before advertng to the facts of the case it would be advantageous to consider the relevant provisions under Section 498A and 306 of the IPC. Section 498A reads as under :-

“ 498A.: Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section, ‘cruelty’ means –

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman ; or
b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. ”

12. In order to bring home the guilt of the accused, the burden is on the prosecution to prove that a woman who is married was subjected to 'cruelty' as explained in clauses (a) and (b) of Explanation to section 498A of IPC. Cruelty as defined in Clause (a) means a wilful conduct which is of such a nature as is likely to drive the woman to commit the suicide or cause injury or grave hurt to her life. Whereas, clause (b) refers to cruelty meted out to woman with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or on account of failure to meet such demand.

13. Section 306 of the Indian Penal Code which relates to the offence of abetment of suicide reads thus :-

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

14. The essential ingredients of the offence punishable under Section 306 is 'abetment' as defined under Section 107 of the Indian Penal Code, which reads thus :-

“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 there by facilitate the commission thereof, is said to aid the doing of that act.”

15. In the case of suicide, a person is liable for abetment if the person has inter alia instigated the deceased for committing suicide or has engaged in any conspiracy for committing suicide or intentionally aided the commission of suicide. It will be advantageous to refer to the

judgment of the Hon'ble Supreme Court in ***Rameshkumar vs. State of Chhattisgarh (2001) 9 SCC 618*** wherein three Judge Bench of the Supreme Court has observed thus :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In State of W.B. v. Orilal Jaiswal this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim

committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

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

16. In ***Ude Singh and ors vs. State of Haryana (2019) 17 SCC 301***, the Apex Court after considering the previous judgments has held that abetment involves a mental process of instigating a person in

doing something. A person abets the doing of a thing when : (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids by acts or illegal omission the doing of that thing. It is held that these are essential to complete the abetment as a crime. The word 'instigate' literally means to provoke, incite, urge on bring about by persuasion to do anything. The Apex Court has held that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. It is held that mere allegation of harassment of the deceased by another person, would not suffice unless there be such action on the part of the Accused which compels the person to commit suicide, and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in commission of suicide by another or not, can only be gathered from the facts and circumstances of each case.

17. In the instant case, the death of Janabai was not within seven years of the marriage, hence, presumption under section 113A of the Evidence Act is not attracted. It is also not the case of the prosecution that Janabai was harassed or ill-treated with a view to

coerce her to fulfill the demand of dowry or for not fulfilling such demand. It is the case of the prosecution that the accused had by his wilful conduct subjected Janabai to cruelty to the extent that she was driven to commit suicide. In this regard, the evidence of PW1 – Bhanudas Darekar, the brother of the deceased Janabai indicates that Janabai was brought to her parental home for delivery of her second child. After the birth of the child, Janabai returned to her matrimonial home only to find her husband living with Bharti (deceased accused no.3). She complaint to her mother that the accused, his mother and said Bharti were harassing and ill-treating her. PW1 has deposed that he went to the matrimonial home of Janabai and tried to persuade the accused no.1, his mother and Bharti not to ill-treat Janabai. The accused no.1 told him that he can marry as many times and that it was none of his business. PW1 has deposed that the accused no.2 gave birth to a male child. Thereafter, the accused no.1 and his mother started assaulting and abusing Janabai mainly because she had given birth to two daughters.

18. PW1 has deposed that in the year 1992, about 1 and ½ month prior to “Narli Pornima”, Janabai came home and complained that her husband and accused No.2 were abusing and assaulting her.

She requested her mother and brother to talk to the accused and persuade them not to ill-treat her. PW1 and the other family members once again went to the house of accused no.1 and tried to convince them not to ill-treat Janabai but their counseling was in vain.

19. The evidence of PW1 further indicates that Janabai had visited his brother PW2 – Raghunath and had complained that the accused and accused no.3 – Bharti had assaulted her. She had sustained bleeding injuries. Raghunath took her to the hospital and thereafter lodged a complaint against the accused.

20. PW1 has also deposed that Janabai had also informed one of the villagers, PW4 - Mahadu Ghojage to convey to her family members that she was being ill-treated and harassed and to request her family members to visit her. On being informed by Mahadu, PW1 and his father again went to the house of the accused no.1 and tried to convince them not to harass Janabai, but there was no change in his behaviour.

21. PW1 has deposed that on 08/10/1992, the accused came to his house and informed him that Janabai had left the house the previous day. They inquired with the relatives but they could not find

her. They learnt that the dead bodies of Janabai and her daughter were found in a well. In his cross-examination, he has stated that Janabai did not complain about ill-treatment till the time the second daughter was born. He was unable to state whether Bharti was staying in the house when Janabai had returned after the second child.

22. PW2 – Raghunath Darekar, the brother of the deceased Janabai, has deposed that Janabai had come home at the time of her second delivery. After her delivery, his mother dropped Janabai and the child to her matrimonial home. He has deposed that his mother had told him that Bharti (A3) was living with accused no.1 and that Janabai was being ill-treated. He has further stated that the accused used to abuse and assault her and would not provide food to Janabai. His brother and father tried to convince the accused no.1 not to ill-treat Janabai but they continued ill-treating Janabai.

23. PW2 has deposed that on 19/08/1991, about a year prior to the incident, Janabai had visited him at Chinchwad, Pune and complained that she was assaulted by the accused. He has stated that she had sustained injuries on her eye and forehead. Her bangles were broken. He took her to the Chinchwad outpost to lodge a complaint.

The police referred her for medical examination. He has stated that after medical examination, Janabai lodged a complaint against accused nos.1 and 3. He has stated that after lodging the complaint, he took Janabai to her matrimonial home and once again requested the accused, his mother and Bharti (A3) not to ill-treat Janabai. He has stated that the behaviour of the accused did not change.

24. PW3 has also deposed that Janabai had come home during the Rakhi Pourima of 1992 and once again complained that she was being assaulted, abused and was being starved. She has further stated that the accused used to tell her to pour kerosene upon herself and commit suicide. He has deposed that Janabai stayed with them for about 4 to 5 days. Later, his parents sent her back to her matrimonial home. His brother (PW1) and father again tried to convince the accused not to ill-treat Janabai but the accused told them that "he can marry as many times and it was none of their business".

25. PW2 has deposed that Mahadu (PW4) used to visit the village of Janabai to supply milk. He has stated that Janabai had told him to convey to her family members that she was being ill-treated and that life had become unbearable. He has stated that thereafter his

parents went to the house of the accused and again requested them to treat Janabai properly. He has stated that Mahadu had conveyed this message about a month prior to the death of his sister – Janabai. He has stated in his cross-examination that on several occasions he has told accused not to ill-treat his sister – Janabai.

26. PW3 – Shahaji Kosge has deposed that he has a hotel near Talegaon Bus Stop. He has deposed that Janabai used to visit him. She used to complain that the accused no.1, his mother and Bharti (A3) used to assault her. He has stated that he had informed the cousin of Janabai about the ill-treatment meted out to her. They went to the house of the accused and requested them not to assault and ill-treat Janabai. He has stated that about 4 to 5 days prior to her death, Janabai had come to his hotel and once again complained that she was being assaulted and was being starved. She had stated that the accused no.1 was trying to throw her out of the house. In his cross-examination he has stated that he has visited the matrimonial home of Janabai on two to three occasions. He has stated that he once accompanied PW2 to the house of Janabai since she had complaint of ill-treatment. It is brought on record that he had not stated in his statement under section 161 of Cr.P.C. that Janabai had last visited him in his hotel about 04 to

05 days prior to her death and complained that she was being ill-treated, assaulted and starved and that the accused were trying to drive her out of the house.

27. PW4 – Mahadu Ghojage has deposed that he used to supply milk at Pimpri. He knew Janabai. He used to visit her whenever she visited her parents. He has also deposed that the accused no.2 was living with the accused no.1. He has stated that the accused no.1 was assaulting Janabai for having given birth to a girl child. He has stated that Janabai used to complaint to him about the ill-treatment meted out by the accused. He has stated that about a month prior to her death, Janabai met him at Pimpri Railway Station and requested him to inform her family members that the accused no.1, his mother and Bharti (A3) were ill-treating her. He has deposed that he had conveyed this message to the family members of Janabai.

28. PW6 – Yadav Raghoba Jadhav is a Police Head Constable. He has deposed that on 19/06/1991, at about 04:00 p.m., while he was on duty at Chinchwad Outpost, Janabai had come to the Outpost and complained that she was assaulted by her husband Ramdas. He recorded the complaint in the station diary no.879/1991 (Exhibit – 25)

and recorded the statement of Janabai (Exhibit – 26) and sent her for medical treatment.

29. The evidence of PW1 and PW2, the brothers of the deceased clearly indicates that while the deceased had come to her parental home for delivery of her second child, the accused had brought Bharti (A3) to his house and he was living with her. In the statement under Section 313 of Cr.P.C. the accused had denied that he was living with Bharti (A3) and that she had given birth to a male child. However, in the birth certificate at Exhibit – 21, genuineness of which is not disputed by the accused, the names of the accused and Bharti (A3) are shown as the parents of the child born on 25/05/1990 at Om Hospital, Chinchwad. The birth certificate at Exhibit – 21 corroborates the evidence of PW1 and PW2 that the accused was having extra marital relationship with Bharti (A3), she was living with the accused in his house and had given birth to a male child.

30. In ***Laxman Ram Mane v/s. State of Maharashtra, (2010) 13 SCC 125***, the Apex Court has observed that :-

“ 7. We are of the opinion that an illicit relationship of a married man with another woman would clearly amount to

cruelty within the meaning of section 498-A. Even assuming for a moment that this did not amount to cruelty within the meaning of section 498-A, it could still be used as a piece of evidence of harassment and misbehaviour of the appellant towards the deceased. ”

31. The evidence of PW1 and PW2 indicates that the deceased was not only complaining of mental cruelty because of extra marital relationship of the accused with Bharti (A3), but she was constantly complaining of physical cruelty. The family members of Janabai had intervened several times and tried to counsel the accused, but there was no change in his behaviour. The evidence of PW1 and PW2 amply proves that the accused continued assaulting, abusing and ill-treating the deceased -Janabai for giving birth to a girl child. She was abused, assaulted and starved and about a month prior to her death, she had sent a message to her family through PW4-Mahadu that life had become unbearable because of the harassment meted out to her.

32. It is the contention of the learned counsel for the accused that there is a material omission in the evidence of PW1 as regards the injury sustained by Janabai and filing of complaint at Chichwad Outpost. This is not a material omission as Janabai had not reported to

this witness about the said incident of assault. PW1 had not seen the bleeding injury and he had not taken Janabai to the hospital or to the Police Station. The evidence of PW1 clearly indicates that Janabai has reported this incident to PW2 and the evidence of PW2 amply proves that the deceased Janabai had visited him on 19.08.1991 and had complained of assault by the accused. She had sustained injuries and PW2 had taken her to Chinchwad Police Station and she had lodged a complaint against the accused for assaulting her. This is also corroborated by PW6 vis-a-vis the complaint at Exhibit-26.

33. Learned counsel for the accused has raised a grievance that the contents of the said complaint were not put to the accused in his statement under section 313 of Cr.P.C. and he was not given an opportunity to explain this incriminating circumstance. In this regard, a perusal of 313 statement reveals that the attention of the accused was specifically drawn to the following circumstances :- i) on 19/08/1991, Janabai had approached PW2 - Raghunath and that there were bleeding injuries on her forehead and hand and that her bangles were broken, ii) that she had told PW2 that the accused had assaulted her at the instance of Bharti (A3) and iii) that PW2 took her to Chinchwad Police Station to lodge a complaint and that she lodged a complaint.

The accused had denied the said circumstances and had claimed that the same were false. There was thus sufficient compliance with the mandate of the law. Hence, omission to bring to the notice of the accused the contents of the complaint at Exhibit – 26 would not vitiate the trial.

34. In *Nar Singh v/s. State of Haryana, (2015) 1 SCC 496*, the Hon'ble Supreme Court has held that :-

“ 20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non compliance of section 313 of Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under section 313 of Cr.P.C., it cannot be inferred that any prejudice has caused to the accused. Even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and

circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstance being put to the accused. ”

35. In the instant case, as noted above, the attention of the accused was drawn to the circumstances relating to the injuries inflicted by the accused on the deceased and lodging of the complaint. Hence, omission to draw attention of the accused to the contents of the complaint (Exhibit – 26) has not caused any prejudice to the accused. The accused has not demonstrated that such omission has caused prejudice resulting in failure of justice.

36. PW1 and PW2, the brothers of the deceased, are natural witnesses. Their evidence is consistent without any material contradiction and inspires confidence. The evidence of PW1 and PW2 is also corroborated by two other independent witnesses PW3 and PW4. The evidence of PW4 clearly indicates that about a month prior to her death, Janabai had shared her trauma with him and requested him to convey to her parents and her brother that she was being assaulted and abused. There are no infirmities in the evidence of this

witness. He has emerged as a truthful and reliable witness and there is no reason to disbelieve or discard his testimony.

37. The evidence of PW3 also reveals that the deceased had informed him that she was being assaulted by the accused, his mother and Bharti (A3). Learned counsel for the accused has laid much emphasis on the omission brought on record in cross-examination of this witness. Learned counsel for the accused submits that this witness has improved his version as regards the complaint of ill-treatment made by Janabai about four to five days prior to her death. Relying upon the decision of ***Sunil Kumar Sambhudayal Gupta (Dr.) and Ors. vs. State of Maharashtra (2010) 13 SCC 65***, he submits that the material omissions in the evidence of the witness create a serious doubt about the truthfulness of the witness. It is true that there is a material omission in the evidence of PW3 as regards the complaint of ill-treatment made by Janabai about three to four days prior to her death. This material omission does cast a serious doubt about the said statement. However, such embellishment or improvement would by itself not a ground to reject his evidence in entirety.

38. In ***Mahendran v/s. The State of Tamilnadu, (2019) 5 SCC***

67, the Hon'ble Apex Court has reiterated the principles in ***Gangaram Behra Vs. State of Orissa, (2002) 8 SCC 387***, and held that it is well settled that the maxim '*falsus in uno, falsus in omnibus*' has no application in India and that the witnesses cannot be branded as liars. The Apex Court has emphasized that it is the duty of the Court to separate the grain from the chaff. Referring to the judgment of ***Gurcharan Singh vs. State of Punjab, (2017) 1 SCC 433***, it is further reiterated that the doctrine is a dangerous one specially in India for if a full body of the testimony were to be rejected because a witness was evidently speaking an untruth in some aspect, it is to be feared administration of criminal justice would come to a dead stop. The Hon'ble Supreme Court has observed that witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore it has to be appraised in each case as to what extent the evidence is worthy of acceptance and merely because in some respect the court considers insufficient for placing reliance on the testimony of the witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound tool for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or

embellishments.

39. Reverting to the facts of the case, as stated above, the witness has made a material improvement as regards the complaint made to him by Janabai about 3 to 4 days prior to her death. However, this embellishment is by itself no reason to discard the entire testimony of this witness, who is otherwise an independent witness. His testimony is not discredited or impeached and nothing contradictory is elicited in the cross examination as regards the other instances stated by him in examination-in-chief. Hence, the evidence of this witness may not prove that Janabai had complained to him about the ill-treatment 4 to 5 days prior to the incident. Nevertheless, his evidence does indicate that every time he met Janabai at her parental home, she complained about the ill-treatment meted out to her by the accused. His evidence also indicates that he had also told the cousin of Janabai about ill-treatment meted out to her and that he had accompanied her cousin to the house of the accused and tried to prevail upon them not to ill-treat Janabai. This part of the evidence has not discredited in the cross examination. As noted above, PW3 is an independent witness. There is no reason for this witness to falsely implicate the accused. Hence, the solitary omission would not render his evidence brittle and would

nor corrode the credibility of the prosecution case.

40. The contention of the learned counsel for the accused that there is no proximity between the ill-treatment and the suicide is devoid of merits. The evidence on record proves that the accused had subjected the deceased -Janabai to physical as well as mental cruelty. It was not an isolated or sporadic act but a case of continuous abuse, assault and ignominy at the hands of the accused. The evidence of PW2 indicates that about a month prior to her death, she had sent a message to her family that her life has become unbearable due to the ill-treatment meted out to her by the accused. The only support that the deceased Janabai got from her parents and her brothers was to take her back to her matrimonial home and to convince the accused to treat her well, probably in tune with the deep rooted general mind set that a married woman is '*paraya dhan*' indicating that her real place is with her in-laws and she is expected to adjust to every situation, even if she has to face countless hardships. The deceased, with no financial independence and support, had no other option but to live in her matrimonial home, where she was ill-treated and her daughter was considered as a liability. The deceased committed suicide not due to gross psychological problems or in a fit of anger but due to persistent

inhuman treatment meted out to her for giving birth to a daughter. Seeing no escape from such inhuman treatment and no future for her daughter, she took this extreme step not only to end her life but also the life of her minor daughter. The fact that Janabai had taken the decision to end her life along with her minor daughter is itself an indication of the extent of cruelty meted out to her by the accused. It can thus be safely said that the accused by his continued course of conduct created such circumstances that the deceased Janabai was left with no other option but to commit suicide. The prosecution has thus proved 'instigation' to bring home the guilt of the accused for offence under section 306 of IPC.

41. At this stage, reference can be made to the decision in ***Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan v/s. State of Gujarat, LAWS(SC) 2021 98*** wherein the Hon'ble Supreme Court has held that :-

“ 38. ...the prosecution was successful in establishing the charge under section 498A of cruelty against the appellants from which a reasonable inference can be drawn that the deceased committed suicide by consuming pesticides. The deceased was in the custody of the appellant and died within the four walls of her matrimonial home under suspicious circumstances ”.

42. In the instant case, the prosecution has proved the charge of cruelty within the meaning of clause (a) to the Explanation of section 498A of IPC. The prosecution has also led evidence to establish that incessant cruelty and harassment meted out to her had driven her to end her life by jumping in a well and has thus proved abetment within the meaning of section 107 of IPC. Under the circumstances, the prosecution has established the guilt of the accused beyond reasonable doubt. Hence, I find no reason to interfere with the impugned judgment.

43. Learned counsel for the accused prays for scaling down the sentence of imprisonment on the ground that the accused is on bail since the year 1997. The fact that the accused has enjoyed the privilege of being on bail, even though two precious lives were lost due to his acts, certainly cannot be a ground to take a lenient view or to scale down the sentence of imprisonment. Considering the nature of the offence, I am not inclined to interfere with the quantum of sentence.

44. Under the circumstances and in view of discussion supra, the Appeal is dismissed.

**PREETI
H JAYANI**

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Date: 2021.12.22
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(SMT. ANUJA PRABHUDESSAI, J.)