

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 100 of 2007

Provas Ghorui

-Vs-

State of West Bengal

For the Appellant : Mr. Jayanta Narayan Chatterjee
Ms. Sreeparna Ghosh

For the State : Ms. Sreeparna Das

Heard on : 14.09.2023, 22.09.2023

Judgment on : 15.12.2023.

AnanyaBandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 19.01.2007 passed by the Learned Additional Sessions Judge, 2nd Court, Paschim Midnapore in connection with Sessions Trial Case No. XXXVIII of June, 2002 (G.R. 146/99, arising out of Ghatal Police Station Case No. 44/99 dated 01.01.1999) under Section 498A of the Indian Penal Code, convicting and sentencing the appellant to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 600/- in default of payment to suffer simple imprisonment for a period of 60 days.

2. The prosecution case precisely stated on 27th Falgun, 1405 B.S. marriage between Mousumi Ghorai/victim/deceased and the appellant Provas Ghorai was held according to Hindu Law. At the time of marriage five bhories of Gold Ornaments, Rs. 20,000/- in Cash, Cot, Beddings, Utensils were given as dowry as per demand made on behalf of the accused persons. After marriage, these accused persons started torturing the deceased physically and mentally on the plea that the articles given at the time of marriage as dowry were of inferior quality. Subsequently in the month of Chaitra the victim came to the house of her parents and told that Rs. 10,000/- was required for the business of her husband and asked her father to pay the same and the father, the de-facto complainant assured that he would try to pay the same. On 01.05.1999, a person came from the house of the husband of the deceased and reported that the deceased suffered from loose motion along with vomiting. Thereafter the de-facto complainant rushed to the marital house of her daughter and found the Dead Body of the deceased and the inmates of the marital house of the deceased were not found in the house. So the de-facto complainant thought that death was caused due to the torture or she was compelled to consume poison.
3. Based on the complaint received the father of the deceased, Ghatal Police Station Case No. 44/99 dated 01.01.1999 under Sections 498A/304B/34 of the Indian Penal Code was registered against the present appellant along with other five accused persons who were the family members of the appellant.

4. After completion of investigation, Charge-Sheet was submitted by the Investigating Agency against all six persons including the present appellant under Section 498A/304B/34 of the Indian Penal Code.
5. Charges were framed under Sections 498A/304B/34 of the Indian Penal Code against the accused persons and they pleaded not guilty and claimed to be tried.
6. In order to bring home the alleged charges, the prosecution examined altogether 10 witnesses and several documents were marked exhibits 1 to exhibits 5. The defence of the appellants was one of innocence and false implication. The defence did not examine any witness of their own but through a process of effective cross-examination sought to probablize their own case and improbablize the case and the prosecution.
7. In conclusion of trial the Learned Trial Judge by judgment and order dated 19.01.2007 convicted the appellant for commission of offence punishable under Section 498A of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 600/- in default of payment to suffer simple imprisonment for a period of sixty days but the Learned Trial Judge held that allegations under Section 304B of the Indian Penal Code has not been proved against any of the accused persons and the Charge under Section 34 of the Indian Penal Code has not been proved against the other accused persons and accordingly they were acquitted.
8. The Learned Advocate for the appellant submitted that:-
 - a. The prosecution failed to establish the ingredients of the offence punishable under Section 498A of the Indian Penal Code.

- b. The Learned Court below failed to consider from the evidences of PW-1/father of the deceased that there was no allegations of torture upon the victim for non-payment of Rs. 10,000/-.
- c. The Learned Court below failed to consider that there are discrepancies and contradictions among the statements of PW-1 and PW-2 and the statement of the PW-10/Investigating Officer of this case.
- d. The Learned Court below failed to consider that the sister of the deceased i.e. PW-8 also stated nothing about the torture meted out upon the deceased during the stay at the house of the appellant.
- e. The Learned Trial Judge failed to appreciate that there was good relation between the deceased and the accused/appellant as per the depositions of PW-3, PW-4 and PW-5, who are the local witnesses.
- f. The Learned Court below failed to appreciate that according to the depositions of PW-3 to PW-5, the deceased died due to illness.
- g. The Learned Court below erred in considering the fact that there is no evidence adduced by the prosecution to prove that soon before the death, deceased was subjected to torture or harassment.
- h. The Learned Court below failed to consider that both in the Inquest Report and in the Post-Mortem Report (exhibit 2 and exhibit 3), there is no such indication of torture or unnatural death of the deceased.
- i. The Learned Trial Judge arrived at his decision on the surmises and conjectures.

- j. The Learned Trial Court without applying his judicial mind illegally accepted in to the allegations of the F.I.R., which was based on false allegations.
 - k. The Learned Trial Judge failed to appreciate that the allegations leveled against the appellant are clearly false, frivolous and afterthought.
 - l. The Learned Trial Judge failed to consider that there is hardly any evidence against the present appellant that he has committed the offence torture upon his wife for the demand of dowry soon before her death.
 - m. The Learned Trial Judge failed to appreciate that there are discrepancies in the testimonies in the prosecution witnesses and illegally came to a finding of conviction.
 - n. The evidence of prosecution witnesses suffer from gross contradiction and/or embellishment and the same is rendered highly unreliable in nature and ought not to have formed the basis of conviction in the instant case.
 - o. The Learned Trial Judge failed to appreciate that the allegations leveled against the appellants are clearly false, frivolous and afterthought and therefore the appeal shall be allowed.
9. The Learned Advocate for the State submitted that the prosecution based on the oral as well as documentary evidence was successful in establishing its case and the appeal shall be dismissed.
10. A circumspection of the prosecution witnesses revealed as follows:

- (i) PW-1 stated to have provided dowry of 5 bhoris gold ornaments, bedding and cash of Rs. 20,000/-. He mentioned that subsequent to the solemnization of her matrimonial alliance, his daughter, the victim cohabited with the accused, Tapan Poria, in a conjugal setting. Allegations have been raised pertaining to the maltreatment and physical aggression inflicted upon the victim by her spouse, her mother-in-law, and the co-accused, Provas. It has been documented that the victim sought refuge at her paternal residence on three separate occasions, during which she disclosed the aforementioned grievances against the accused parties. Prior to her demise, the victim returned to her paternal domicile and communicated to the complainant, her father, that her husband had articulated a financial requirement for his business. PW-1, in response, assured the provision of the requested funds at a later juncture. Subsequent to this interaction, the death of the victim occurred within the residential confines of the accused. The notification of the victim's demise was conveyed to PW-1 by the brother of the accused Provas. Upon receipt of this information, PW-1 promptly proceeded to the residence of the accused, where he discovered his daughter's dead body in the veranda, unattended by any of the accused. This incident precipitated the filing of a written complaint by PW-1 at the Ghatal Police Station, which was duly recorded as Ext. 1. PW-1 averred that the death of his daughter transpired within a temporal frame of two months following her marriage. He further articulated that he had been apprised by local

residents of an assault perpetrated upon his daughter by the four accused, culminating in her death. However, the specifics regarding the identity of the individuals who reportedly witnessed the assault were not furnished.

- (ii) During the process of cross-examination, PW-1 acknowledged the initial amicable relations with the accused Tapan, which subsequently deteriorated post-marriage. PW-1 refuted claims regarding the ill health of his daughter during her ultimate visit prior to her death. He confirmed a conversation with his son-in-law during which a monetary sum of Rs. 10,000/- was requested. PW-1 conceded to not having reported the alleged torment of his daughter to the local panchayat. His visits to the matrimonial home of his daughter were limited to discussions regarding the marriage and subsequent to receiving news of her demise. PW-1 admitted the absence of a formal marriage agreement ('lagnapatra') and lacked documentary evidence of financial or material contributions made to the accused Tapan at the time of the marriage. The written complaint by PW-1 did not encompass the aforementioned demand of Rs. 10,000 by the accused Tapan, nor did it reference PW-1's assurance in meeting this demand. Additionally, the complaint did not detail the accounts of local villagers regarding the assault on his daughter, and PW-1 was unable to specify the identity of the informants from the village.
- (iii) PW-2, the mother of the deceased victim, enumerated the items that were given to the victim's matrimonial home at the time of her

marriage. She further attested to the inappropriate conduct and maltreatment experienced by the victim at the hands of the accused individuals. Specifically, PW-2 recounted that the victim's husband had demanded a sum of Rs. 10,000 from her husband, PW-1, a demand which remained unfulfilled. The victim reportedly visited her maternal home on several occasions, during which she expressed grievances about the physical aggression she was subjected to by her husband, attributed to the non-fulfillment of the monetary demand.

- (iv) According to PW-2, the victim had returned to her maternal residence three times post-marriage. On the occasion immediately preceding her death, the victim disclosed to PW-2 that she had been subjected to assault by the accused due to the ongoing issue regarding the demanded money. During this visit, the victim and her husband stayed at PW-2's residence for duration of two days. Subsequent to their departure, PW-2 received notification of her daughter's death. The bearer of this news was the son of PW-2's son-in-law's brother, who also suggested that the victim's death was due to illness. PW-2, accompanied by her husband PW-1, proceeded to the residence of the accused, where she observed a visible injury on her daughter's right cheek. The villagers purportedly commented that the victim's death was a consequence of the physical abuse inflicted by her husband.
- (v) During cross-examination, inconsistencies emerged in PW-2's account. She amended her initial statement regarding the duration of the victim's last visit to her maternal home, indicating that it lasted for

three days, during which the victim and her husband exhibited amicable and peaceful behavior. PW-2 acknowledged that the accused Tapan was actively involved with the Banipathak Club in Shibpur village and routinely spent time at the club house until 10pm. She confirmed maintaining cordial relations with Tapan until her daughter's death. Furthermore, PW-2 conceded that she had not reported to the police any instances of her daughter being assaulted by her son-in-law in connection with the unmet demand for Rs. 10,000, nor had she mentioned her daughter's complaints about being assaulted by the accused.

- (vi) PW-3 was declared hostile
- (vii) PW-4 did not support the prosecution story. He stated that the victim died of her ailment. The husband and his family members behaved well with her. Prosecution did declare her to be hostile.
- (viii) During cross-examination, PW-4 stated that the father and brother of the victim did not complain of any torture inflicted on the victim.
- (ix) PW-5 identified his signature on the inquest report marked as Ext. 2/1. PW-5 did not support the testimony provided by PW-1 and PW-2. He was not declared hostile. He was an independent witness.
- (x) During cross-examination, PW-5 did not make any complaint before the police at the time of holding inquest.
- (xi) PW-6 reiterated the evidence of PW-5.

(xii)PW-7, the doctor stated that the inquest report did not mention any apparent injury mark. The post mortem report was marked as Ext. 3. Upon examination, he stated:

“No injury was found on the dead body of the victim. Stomach was found containing 100 ml straw coloured fluid with smell of poison. Wall of stomach was hemorrhaging. I sent viscera to F.S.L. Calcutta for chemical examination. Cause of death was due to ingestion of chemical agent which should be confirmed after chemical analysis.”

(xiii) PW-8 stated that the victim was her elder sister. She recounted that at the time of the victim's marriage to Provas Ghorai, a dowry comprising Rs. 20,000, five bhoori of gold ornaments, a cot, and various utensils were given to the matrimonial home. Following the marriage, the victim relocated to her husband's residence. PW-8 alleged that subsequently, the victim was subjected to physical abuse by her husband, as well as by her mother-in-law and sister-in-law. These relatives reportedly used derogatory language towards the victim, expressing dissatisfaction over the dowry provided. PW-8 further stated that as a result of this alleged abuse, the victim, accompanied by her husband stayed at the victim's paternal house for a period of two days. During this stay, the victim's husband demanded Rs. 10,000/- from PW-1, the victim's father, who assured compliance with this request, albeit requesting some time to arrange the funds.

(xiv) PW-8 detailed that she was subsequently informed by an unidentified individual that her sister was critically ill and that they needed to visit the victim's matrimonial residence immediately. Upon PW-1's arrival at the location, he discovered the victim's lifeless body. PW-8 was made aware

that her sister had died as a result of ingesting poison. She asserted that the victim resorted to this action due to the unbearable extent of the torture she was allegedly subjected to. PW-8 noted that the victim's death occurred within three months of her marriage.

(xv) During cross-examination, PW-9 stated that none of the individuals had made any complain regarding the torture which was being inflicted upon the victim by the accused persons at the time of inquest.

(xvi) PW-10 reported that the accused, Provas Ghorai, had subjected his wife to verbal abuse, disparaging the quality of the items presented at their marriage and habitually taunting her. This mental anguish, as communicated to PW-10, was such that the deceased wife ultimately succumbed to despair, leading to her death by self-ingestion of poison.

(xvii) During the process of cross-examination, PW-10 detailed specific actions undertaken as part of the investigation. He confirmed the receipt of a written complaint on 1.5.1999 at approximately 20:35 hours. This complaint initiated his involvement in the investigation of Ghatal P.S. Case No. 89/99, which included the post-mortem examination of the deceased victim. On 2.5.1999, PW-10 conducted an examination of Harekrishna Chakraborty, a resident of Shibpur village. Significantly, PW-10 asserted that during the course of his investigation, PW-2, who is the mother of the deceased victim, did not report observing any visible mark of assault on the right cheek of the deceased. Additionally, PW-2 did not disclose to PW-10 any information regarding a demand for dowry, the subsequent non-payment of such dowry, or allegations that the victim had been murdered by the accused individuals.

11. In the case of **Mariano Anto Bruno and Anr. vs. Inspector of Police**¹ the Hon'ble Supreme Court observed as follows :-

“28. While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in Geo Varghese v. State of Rajasthan⁵ has observed as under:—

“13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under:—

“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. Though, **the IPC does not define the word ‘Suicide’ but the ordinary dictionary meaning of suicide is ‘self-killing’. The word is derived from a modern latin word ‘suicidium’, ‘sui’ means ‘oneself’ and ‘cidium’ means ‘killing’.** Thus, the word suicide implies an act of ‘self-killing’. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.*

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This

¹(2022) SCC Online SC 1387

Court in the case of *Ramesh Kumar v. State of Chhattisgarh*¹ has defined the word 'instigate' as under:—

“Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”

17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of *S.S. Cheena v. Vijay Kumar Mahajan*⁶, it was observed as under:—

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

29. The ingredients of Section 306 IPC have been extensively laid out in *M. Arjunan v. State*, represented by its Inspector of Police⁷ which are as under:—

“The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the

ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

30. *In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh v. State of Haryana⁸ observed as under:—*

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, 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 the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim,

which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

42. *To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.*

43. *Now, so far as conviction under Section 498A IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of Appellant No. 1 and the deceased is not disputed. The deceased committed suicide on 05.11.2014 and the complaint against the appellants were filed on 24.11.2014 i.e., 3 weeks after the death of the deceased.*

44. *This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to*

her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

48. It is well settled that the Courts ought to 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. Reference may be made to the judgment of a three-Judge Bench of this Court in *Ramesh Kumar v. State of Chhattisgarh*, wherein this Court set-aside the conviction of the accused for the offence under Section 306 IPC as ingredients of Section 306 IPC were not satisfactorily proved. It was observed as under:—

“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 West Bengal 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.”

12. In the case of **Gurjit Singh Vs. State of Punjab**² the Hon’ble Supreme Court observed as follows :-

8. *The question that we are called upon to answer is as to whether the conviction as confirmed by the High Court under Section 498-A IPC and as recorded by it for the first time under Section 306 IPC would be sustainable or not.*

9. *The relevant provisions of the IPC that fall for consideration are 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 wilful misrepresentation, or by wilful 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.

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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 facilitates the commission thereof, is said to aid the doing of that act.

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.*

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—*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 purposes of this section, “cruelty” means—

(a) anywilful 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.”

10. *The relevant provision of the Evidence Act, 1872 that also requires consideration is as follows:*

“113-A. Presumption as to abetment of suicide by a married woman.—*When the question is whether the commission of suicide by a woman had been abetted by her*

husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).”

14. *Now the question that would fall for consideration is as to whether when the prosecution establishes cruelty under Explanation (b) of Section 498-A IPC and also establishes that the deceased committed suicide within seven years of the marriage, could the accused be also held guilty for the offence punishable under Section 306 IPC with the aid of Section 113-A of the Evidence Act.*

15. *The said question fell for consideration before the Bench of three learned Judges of this Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] . This Court, after reproducing the provisions of Section 306 IPC and Section 113-A of the Evidence Act, 1872 observed thus : (SCC pp. 626-27, paras 12-13)*

“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.'

13. The present case is not one which may fall under clauses secondly and thirdly of Section 107 of the Penal Code, 1860. The case has to be decided by reference to the first clause i.e. whether the appellant-accused abetted the suicide by instigating her to do so."

16. *It could thus be seen, that this Court has observed that to attract the applicability of Section 113-A of the Evidence Act, the following conditions are required to be satisfied:*

(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.

17. *This Court further observed that on the existence and availability of the aforesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. It has been held that the presumption is not mandatory; but only permissive as the words "may presume" suggest. It has further been held that the existence and availability of the aforesaid three circumstances shall not, like a formula, enable the presumption being drawn. It has been held that before a presumption being drawn, the court shall have regard to all other circumstances of the case. It has been held, that the 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. It thus observed that the expression "the other circumstances of the case" used in Section 113-A of the Evidence Act suggests the need to reach a cause-and-effect*

relationship between the cruelty and the suicide for the purpose of raising a presumption.

18. *It has been further held that when the case does not fall under clauses Secondly and Thirdly of Section 107 IPC, the case is to be decided with reference to the first clause [of Section 107] i.e. whether the appellant-accused abetted the suicide by instigating her to do so. It will be further relevant to refer to the following observations in Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] : (SCC pp. 629-30, paras 20-22)*

“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 [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] , 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 her 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.”

22...*In Hans Raj v. State of Haryana [Hans Raj v. State of Haryana, (2004) 12 SCC 257 : 2004 SCC (Cri) Supp 217] . It will be relevant to refer to the following paragraphs : (SCC pp. 263-64, paras 12-13)*

“12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113-A of the Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant

either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The Explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498-A of the Penal Code....

13. Unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Evidence Act. 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 (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. 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. 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, does not automatically give rise to the presumption that the suicide had been abetted by 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.”

23. *The Court found that in the case there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. It has been held that when 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. It has been held that one of the circumstances which has to be taken into consideration by the Court is whether the alleged cruelty was of such a 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.*

24. *This Court in Hans Raj [Hans Raj v. State of Haryana, (2004) 12 SCC 257 : 2004 SCC (Cri) Supp 217] has also referred to the judgment of this Court in State of W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] , wherein it is observed that the requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of the Evidence Act.*

25. *It will be relevant to refer to the following observations of this Court in Pinakin Mahipatray Rawal v. State of Gujarat [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] : (SCC p. 58, paras 26-27)*

“26. Section 113-A only deals with a presumption which the court may draw in a particular fact situation which

may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extramarital affair was of such a degree which was likely to drive the wife to commit suicide.

27. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution

has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extramarital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

26. *It has thus been observed that though presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused is on the prosecution. The prosecution has to establish beyond reasonable doubt that the accused had instigated, conspired or intentionally aided so as to drive the wife to commit suicide.*

27. *In Mangat Ram v. State of Haryana [Mangat Ram v. State of Haryana, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127] this Court observed thus : (SCC pp. 607-608, para 28)*

“28. We have already indicated that the trial court has found that no offence under Section 304-B IPC has been made out against the accused, but it convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. ...

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or

intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment of suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

13. The evidence of PW-1 (Rampada Gurey) and PW-2 (Minati Gurey) being the father and mother of the deceased supported the prosecution case, whereas the deposition of witnesses being PW-3 (Goutam Ghorai), PW-4 (Nabakumar Ghorai) & PW-5 (Panchanan Ghorai) contradicted the version of the PW-1 and PW-2.

14. PW-1 (Father Of the Victim) and PW-2 (mother of the victim) did not confer any allegation of torture inflicted by the Present Appellant/Husband :

(a) PW-1 (Father of the Victim) had stated in his Examination in Chief, that he came to know from the villagers that her daughter was assaulted, he failed to state the names of those villagers.

(b) PW-1/ Father of the Victim in his Cross Examination stated since the date of marriage, the victim came to his residence, thrice, and on the last occasion, just before the death of the Victim, she came with her Husband, i.e. with Appellant and stayed there for two nights with the Appellant, but there was no allegation of Torture.

(c) PW-2/ Mother of the Victim also did not accord any allegation of torture and inferred the relationship to be normal.

(d) PW-2/ Mother of the Victim during her Cross Examination, had stated the incidents of torture before the Police, whereas, the Investigating Officer/ PW-10, in his Cross Examination, stated that PW-2 did not state anything regarding the torture/assault inflicted upon the Victim.

15. PW-6, Deputy Collector and Deputy Magistrate, during cross examination stated the absence of the witnesses except Panchanan Ghorai/Brother of the accused at the time of Inquest, but he did not accord any allegation regarding torture, which evince the allegation to be an afterthought.
16. PW-3 (Goutam Ghorai) had stated in his Examination-in-Chief that Mousumi (deceased) died seven years ago on account of illness.

PW-4 (Nabakumar Ghorai), being the co-villager had stated in his Examination-in-Chief that Mousumi died of her ailment.

PW-5 (Panchanan Ghorai), being the Co-villager and the brother of the Appellant had also stated in his Examination-in-Chief that she died due to her illness.

PW-3, PW-4 & PW-5 did not support the Prosecution case.
17. PW-5 (Panchanan Ghorai), being the co-villager had deposed in his Examination-in-Chief that Mousumi was well treated by the accused persons during her lifetime and this was corroborated by the other Co-Villager being PW-4 (Nabakumar Ghorai) in his Examination-in-Chief that she was well treated by her husband and family members of her husband.
18. Further PW-6 (Sakti Kumar Kayal) being Deputy Magistrate and Deputy Collector in whose presence the inquest was done over the dead body had

deposed in his cross examination that nobody accused the appellant or others at the time of inquest that Mousumi Ghorui was tortured by her husband or relatives of her husband. The deposition of PW-6 improbabilized the prosecution case being an independent witness.

19. It has been stated by PW-2, (Minati Gurey) in her cross examination that her daughter and son-in-law were seen off up to bus stop on the last time when there was no trouble in between her daughter and her son-in-law, when her daughter and son-in-law passed three days at her house happily and peacefully. They behaved normally. It can be presumed that the relationship between her daughter and son-in-law was cordial.
20. PW-2 being the mother of the deceased had stated in her cross examination that she stated to police that she saw mark of assault on the right cheek of the deceased. She stated to police that her daughter was killed by the accused persons. She told the police the accused persons used to assault her daughter for non-payment of dowry.
21. However PW-10 being the 1st Investigation Officer of the case had deposed in his cross examination that Minati Gurey (PW-2) did not state that she saw mark of assault on the right cheek of the deceased. *"It is a fact that Minati did not state to me that accused persons used to assault deceased for non-payment of dowry"*. She also did not state to him that the accused persons killed the deceased.
22. No specific allegation of torture has been made in the First Information Report, or in the depositions of the witnesses. The allegations of torture had been stated in the complaint was general and omnibus in nature and no

specific incident of torture had been exemplified by any of the witnesses, on the contrary statements had been made by several witnesses (PW-4 & PW-5) that the deceased was well treated by the accused persons and his family members. There was no mention of any specific overt act in the First Information Report. P.W 1, being the father of the deceased and the de-facto complainant had not deposed any specific allegation of torture upon his daughter.

23. The evidence of PW-1 (Rampada Gurey) being the father of the deceased and de-facto complainant was based on hearsay and he had stated in his examination-in-chief that he came to know from the villagers of the accused persons that four accused persons assaulted his daughter and as such she died. But the names of the villagers were not stated. PW-1 had no personal knowledge regarding the torture and the incident.
24. PW-1 had stated in his cross examination that demand of Rs. 10,000/- for the last time by his son in law was not mentioned in his written complaint. He had admitted in the cross examination himself.
25. P.W 1 did not lodge any complaint alleging the torture upon his daughter neither before police or Panchayat.
26. It was admitted by PW-1/Father of the Victim that his Son-in-law had demanded Rs. 10,000/- rupees from PW-1 for the purpose meeting some domestic expenses and for meeting some deficiency in his business beyond the definition of a 'dowry' to have been claimed.
27. The Learned Advocate for the State submitted that :-

- (i) In Appasaheb & Another versus State of Maharashtra (2007) 9 SCC 721 the Hon'ble Apex Court has held that (Relavant Para 11): In view of the aforesaid definition of the word "Dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage an in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of any property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statutes that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore show that any demand for "Dowry" as defined in section 2 of The Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure.

28. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
29. Accordingly, the judgment and order of conviction dated 19.01.2007 passed by the Learned Additional Sessions Judge, 2nd Court, Paschim Midnapore in connection with Sessions Trial Case No. XXXVIII of June, 2002 (G.R. 146/99, arising out of Ghatal Police Station Case No. 44/99 dated 01.01.1999) under Section 498A of the Indian Penal Code, convicting and sentencing the appellant to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 600/- in default of payment to suffer simple imprisonment for a period of 60 days is set aside.
30. The instant criminal appeal being CRA 100 of 2007 stands disposed of. Connected application, if there be any, also stands disposed of.
31. There is no order as to cost.
32. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
33. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(AnanyaBandyopadhyay, J.)