

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 393 of 2003

Subrata Chakraborty

-Vs-

The State of West Bengal

With

C.R.A. 328 of 2003

Amicus Curiae : Ms. Pallavi Priyadarshee

For the State : Mr. Binay Panda
(In CRA 393 of 2003) Ms. Pushpita Saha

For the State : Mr. Avishek Sinha
(In CRA 328 of 2003)

Heard on : 25.07.2023, 26.07.2023

Judgment on : 11.12.2023

Ananya Bandyopadhyay, J.:-

1. These two criminal appeals are directed against the judgment and order dated 25th June, 2003 and 26th June, 2003 passed by the Learned Additional Sessions Judge, Fast Track Court No. 2, Barasat, District- 24-Paraganas (North) in Sessions Trial No. 3(2) of 2003 convicting the appellant for committing an offence punishable under Sections 498A/306 of the Indian Penal Code and sentencing the appellant to undergo rigorous imprisonment for seven (7) years and to pay a fine of Rs. 3,000/- in default further simple

imprisonment for three months for offence punishable under Section 306 of the Indian penal Code and to undergo three years rigorous imprisonment and to pay a fine of Rs. 2,000/- in default to undergo further simple imprisonment for two months for offence punishable under Section 498A of the Indian Penal Code.

2. The factual matrix of the prosecution case in a nut-shell is to the effect that victim and the appellant fell in love with each other and it was converted into marriage which was held on 10.01.1994. The appellant used to put torture upon her physically and mentally. He demanded the house of the victim's father and put tremendous pressure upon her for getting the same. Family peace was evaporated. The de-facto complainant (PW-1) and the other relatives tried to convince the accused but it was a wild goose chase. For the sake their daughter's future, they did not take shelter under any law. After a few days the appellant took the victim to Katwa in a tenanted house of one Annapurna Kar. The degree of torture increased there. The victim was not ordinarily allowed to meet her parents. However, when she was permitted, she visited her parents and on all occasions she ventilated her grievances of torture to her mother. The wife of PW-1, off and on, went to Katwa to pacify the appellant and to convince him and his mother. But from the victim's letters they came to know that their efforts went in vain. Nearly for one month since the fateful day, the victim had been residing in her parents' house. On 21.12.1996 (just before the fateful day) the accused came to his in-laws' house and created disturbance. There was a quarrel between the accused and the victim. The accused became furious and went away. On

22.12.1996 at or around 1.00 p.m. the victim put an end to her life by setting fire upon herself. Getting the information, her mother entered into the bathroom. In the meantime, she was completely burnt and breathed her last.

3. Based on the aforesaid complaint Barasat Police Station Case No. 710 dated 22.12.1996 was instituted
4. On completion of investigation the Investigating Officer, S.I. Sova Das (PW-14) submitted charge-sheet under Sections 498A/306 of the Indian Penal Code in the Court of the Learned Sub-Divisional Judicial Magistrate, Barasat against the appellant.
5. Charge was framed against the appellant to which he pleaded not guilty and claimed to be tried.
6. The prosecution in order to prove the aforesaid charge against the appellant examined fourteen (14) witnesses, and exhibited certain documents while the defence adduced none.
7. The Learned Amicus Curiae for the appellant submitted that:-
 - i. The judgment of the Court below trying an accused must be founded on the evidence adduced. If a fact in issue, or a relevant fact is not supported by the evidence adduced by the parties, it is not open to the Court to hold that fact to have been proved on its own surmises and fanciful reasons. The instant judgment and order of conviction and sentence is devoid of proper appreciation of the evidence on record, is liable to be set aside.

- ii. The aforesaid judgment and order of conviction and sentence passed by the Learned Judge on the fact of it reveals non-compliance of the procedure established by law which has resulted in the appellant not being afforded with a free and fair trial and it is in the interest of justice and to uphold the dignity of law that the aforesaid impugned judgment and order of conviction and sentence as imposed upon the appellant is set aside forthwith.
- iii. The impugned judgment and order of conviction and sentence is the result of total non-application of the judicial mind by the Learned Judge, is apparent on the face of it inasmuch as the points taken up for consideration by the Learned Judge himself were not considered by him and remained unconsidered and/or unanswered.
- iv. It appears from the impugned judgment and order of conviction and sentence that the Learned Judge is not aware of the basic principles of a criminal trial, in a criminal trial whereas the prosecution has to prove its case beyond all reasonable doubt, the defence has to put forward a case which may be probable; weakness in the defence case can be of no avail to the prosecution and it cannot obtain any mileage from such weakness; the prosecution has to prove its case on its own; unwarranted remarks by the Learned Judge about the weakness of the defence case while failing to appreciate the material pieces of evidence coming out through the effective cross-examination of the prosecution

witnesses has resulted in a flagrant violation of the principles of justice and it is in the interest of justice and to uphold the dignity of law that the impugned judgment and order of conviction and sentence, as has been imposed upon the appellant by the Learned Judge be set aside forthwith.

- v. The Learned Judge by convicting the appellant of the charge framed against him caused serious miscarriage of justice inasmuch as the charge framed against the appellant suffers from the absence of material particulars which has resulted in the appellant not being able to make out an effective defence.
- vi. The overall assessment of the evidence by the Learned Judge is unworthy of any credit and acceptance by a man of reasonable prudence. Each part of the prosecution case is tainted with meagerness of evidence or absence of satisfactory evidence, but the Learned Judge in a very slipshod manner discussed the evidence, wherein he left the material facts aside from his consideration and thus acted with serious illegality.
- vii. It appears from the impugned judgment and order of conviction and sentence as recorded against the appellant is based on evidence illegally admitted and/or non-consideration of material pieces of evidence brought out through effective cross-examination. The Learned Judge acted in defiance of his sense of justice and the provisions of law by filling up the gap in the prosecution case by introducing imaginary facts and conjectural circumstances.

- viii. It appears from the impugned judgment and order of conviction and sentence as recorded against the appellant is unsustainable in law inasmuch as it has not been proved beyond reasonable doubt on clinching and categorical evidence that the incident had occurred on the date, time, at the place and under the circumstances as has been alleged by the prosecution.
- ix. It appears from the impugned judgment and order of conviction and sentence recorded against the appellant as also the sentence imposed on him are bad in law and liable to be set aside on the grounds of patent violation of the mandatory procedure of law and denial of a free and fair trial to the appellant.
- x. The examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973 has totally negated the very principles of the object of offering an opportunity to an accused to explain away the circumstances appearing from the evidence against him. Regard being had to the nature of the law contained in Section 313 of the Code of Criminal Procedure, 1973 and the salutary object that it seeks to achieve from the point of view of an accused each question should be brief and precise so as to give a common man or men who has or have no knowledge of law to understand not merely the factual implications of such question but also the legal consequences that might arise from the answer given to such question. Unduly long and compounded questions in which several facts are jumbled up not only confuses the mind of a law man but

it leaves on scope for him to appreciate the meaning of the question and then takes him into a position where it becomes impossible for such a person of formulate an answer effectively and appropriately from his point of view. The long question with several facts jumbled up into it together with the situation prevailing in a court room totally confuses the mind of a person who exchanges a dialogue with a Court without assistance of a lawyer. Examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973 in the instant case has been a total frustration for the right of an accused envisaged under the provisions of law.

xi. Upon a proper appreciation of the evidence on record and correct assessment of the provisions of law, the Learned Judge ought ot have held that the prosecution has failed to bring home the allegations leveled against the appellant and the prosecution case is a mixture of lies and improbability.

xii. In view of reception of inadmissible evidence and reliance being placed thereof by the Learned Judge, the impugned judgment and order of conviction and sentence cannot be sustained both in facts and law.

xiii. The sentence passed by the Learned Judge is too severe.

8. The Learned Advocate for the State submitted the evidence on record exemplified the inhuman torture inflicted on the victim compelling her to commit suicide as the ultimatum step without any other alternative and the prosecution has ably proved its case. The Learned Advocate for the State

further submitted that the appellant was denied release on bail by this Court after his conviction and he had served out the sentence.

9. 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.

¹ 2022 SCC Online SC 1387

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This 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 Police*⁷ 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.”**

10. 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:*

² (2020) 14 SCC 264

“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) 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.”

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.”

11. The prosecution witnesses in unison stated the appalling circumstances wherein the victim lady continued with her married life bearing the inexplicable and dreadful torture described by her through the letters to her mother marked as exhibits before the Court. The inquest report, the medical report and the oral evidence of the prosecution witnesses leaves no iota of doubt that on refusal to transfer property to the appellant by the father of the victim he was infuriated and continued to torture the victim both physically and mentally and the day prior to the incident of committing suicide the victim was instigated to such an extent that she opted to commit suicide as her last resort.
12. The prosecution had been successful in proving its case. The Learned Trial Court has rightly convicted the appellant on the basis of the oral and

documentary evidence constituting the ingredients under Section 498A and 306 of the Indian Penal Code.

13. In view of the above discussions, the criminal appeals being CRA 393 of 2003 and CRA 328 of 2003 are dismissed.
14. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned Advocate, as *amicus curiae* in disposing of the appeal.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)