

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.883 of 2019

Arising Out of PS. Case No.-63 Year-2011 Thana- BAISI District- Purnia

Md. Soma Alam Son of Late Sk. Gharu @ Late Md. Dhiru Resident of
Village - Kanharia, P.S.- Baisi, (Dagaruwa), District - Purnea

... .. Appellant

Versus

The State Of Bihar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Kumar Praveen, Advocate
For the Respondent	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 27-11-2024

Heard learned counsel for the appellant and learned
APP for the State.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 15.12.2018 passed by the learned 3rd Additional District and Sessions Judge, Purnea, in Session Trial No. 1500/2012 (C.I.S. No. 3501/2013), arising out of Baisi P.S. Case No. 63/2011 (G.R.No. 724/2011), by which the appellant was convicted and sentenced to undergo rigorous imprisonment for seven years for the offence under section 306 of the Indian Penal Code and rigorous imprisonment for two years for offence under section 498-A of the Indian Penal Code and further a fine of Rs.10,000/- was imposed and in default of payment of fine, the appellant has to undergo simple



imprisonment for 6 months. Both the sentences are directed to run concurrently.

3. The prosecution case is that one Shekh Sahid, the father of the deceased, gave his statement before the police on 28.03.2011 that he received a telephonic call from the *sasural* of his daughter that his daughter died due to consumption of poison. After getting such information, he along with his wife, Bibi Sakunia and other family members went to the *sasural* of his daughter, where he found that the dead body of his daughter was lying in the courtyard of the house. On query, he came to know that his son-in-law (the appellant) used to torture and assault her and on account of the torture, his daughter administered poison and died on 27.03.2011. On the basis of the aforesaid statement, Baisi P.S. Case No.63 of 2011 dated 28.03.2011 was registered under section 306 of the Indian Penal Code against the accused persons.

4. After registration of the F.I.R., the police investigated the case and submitted charge sheet against the sole accused-appellant vide Charge Sheet No. 58 of 2011 dated 25.05.2011 under section 306 and 498-A of the Indian Penal Code and rest two accused persons were not charge-



sheeted. After receipt of the charge sheet, the learned court below took cognizance of the aforesaid offence against the appellant vide order dated 17.01.2013 and thereafter, the case was committed to the Court of Sessions for trial. The charges were framed on 17.01.2013 against the appellant for the aforesaid offence. During the trial, the prosecution has examined altogether 10 witnesses, who are as follows :-

- P.W. 1- Sayeed Akhtar
- P.W. 2- Dr. Sudhanshu Kumar
- P.W. 3- Md. Hodda(hostile)
- P.W. 4-Md. Samshud(hostile)
- P.W. 5- Md. Bholu @ Shekh Bholu
- P.W. 6- Saheed
- P.W. 7- Sakunia
- P.W. 8- Abdul Rahman
- P.W. 9- Anoj Kumar
- P.W. 10- Sandeep Kumar Anand

5. Certain documents were also exhibited on behalf of the prosecution, which are as follows :-

- Ext. 1- Post Mortem Report.
- Ext. 2- Signature of Md. Samshul on inquest report.
- Ext. 2/1- Signature of Abdul Rahman on inquest report.
- Ext. 2/2- Inquest report.
- Ext. 3- Signature of Rizwan Ahmed on formal F.I.R.
- Ext. 4- Writing and signature of Sandeep Kumar



Anand on fardbeyan.

Ext. 4/1- Writing and signature on forwarding of
S.H.O. Arbind Kumar.

6. The trial court vide impugned judgment and sentence convicted the appellant for the offence under sections 306 and 498-A of the Indian Penal Code as stated above.

7. Learned counsel for the appellant submits that prior to the present case, no case of torture or assault of any kind had been lodged by the deceased or her family members. He further submits that during the course of investigation, the Investigating Officer has failed to collect the evidence which could suggest the involvement of the appellant in the occurrence.

8. Learned counsel for the appellant has drawn the attention of this Court to the deposition of the witnesses and has submitted that out of 10 prosecution witnesses, P.W. 3 & P.W. 4 have been declared hostile. P.W. 6, who is the informant of the case, has also denied the allegation of demand of dowry and torture. The trial Court has failed to examine and establish the alleged acts that were done by the appellant which led to the deceased consuming poison.

9. Learned counsel for the appellant has relied



upon a judgment of the Hon'ble Supreme Court in the case of *Naresh Kumar v. State of Haryana* reported in (2024) 3 SCC 573 and has submitted that the ingredients of the offence under Section 306 of the IPC are not made out against the appellant. He has further submitted that in the FIR, the informant (PW-6) has not mentioned any demand of dowry and has stated that the neighbours informed him about the torture meted out to the deceased by the appellant.

10. It has been submitted by the learned counsel for the appellant that the ingredients of Section 498-A is also not made out in the present case as none of the witnesses have said that the appellant or his family members use to demand dowry from the deceased or she was tortured for dowry. The learned counsel has also submitted that during the trial the informant and other witnesses have introduced the demand of Rs. 50,000/- by the appellant and his family members.

11. It has been argued by the learned counsel for the appellant that there is contradiction in the statement of the informant and other witnesses and therefore the statement of the informant cannot be believed.

12. Learned counsel for the appellant has placed reliance on the following decisions of the Hon'ble



Supreme Court :-

(i) *Naresh Kumar v. State of Haryana* reported in
(2024) 3 SCC 573

(ii) *Sanju @ Sanjay Singh Sengar vs. State of M.P.*
reported as *(2002) 5 SCC 371*

(iii) *Gangula Mohan Reddy vs. State of A.P.* reported
as *(2010) 1 SCC 750*

(iv) *Gurcharan Singh vs. State of Punjab* reported as
(2017) 1 SCC 433.

13. Mr. Jharkhandi Upadhyay, learned APP for the State has submitted that the conviction has to be upheld in view of the evidences available on record. He submits that the witnesses have supported the prosecution case and the deceased had committed suicide because of demand of dowry and torture at the hands of the appellant.

14. I have considered the submissions of the parties. PW-6, the informant in his *fardbeyan* given on 28.03.2011, has said that his daughter was being tortured by the appellant and because of the torture meted-out to her, she consumed poison on 27.03.2011 and died. The informant has said that he came to know about the death of his daughter from her neighbours and he also came to know that his



daughter (the deceased) was regularly assaulted and tortured by the appellant due to which she committed suicide.

15. The Hon'ble Supreme Court in the case of ***Naresh Kumar v. State of Haryana*** reported in ***(2024) 3 SCC 573*** has considered the various aspects of conviction under Sections 306 and 498A of the IPC, the law for convicting the accused for abetment to commit suicide. The following paragraphs of the aforesaid judgment are relevant for the present case:

“13. We have looked into the evidence of PW 4 i.e. the brother of the deceased and also the evidence of PW 5 i.e. the father of the deceased. Both these witnesses have only stated that after the marriage, there was a demand of some money by the convict, as he wanted to start a ration shop. It appears from the evidence of both these witnesses that on account of such demand, the deceased used to remain tense.

14. What ultimately led the deceased to take such a drastic step of committing suicide is not clear. To put it in other words, the plain reading of the oral evidence of both these witnesses does not disclose any form of incessant cruelty or harassment on the part of the husband which would in ordinary circumstances drag the wife to commit suicide as if she was left with no other alternative. Mere demand of money from the wife or her parents for running a business without anything more would not constitute cruelty or



harassment.

15. Section 306 IPC 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.”

16. Thus, the basic ingredients to constitute an offence under Section 306 IPC are suicidal death and abetment thereof. Abetment of a thing is defined under Section 107 IPC 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.



Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

17. This Court in Geo Varghese v. State of Rajasthan [Geo Varghese v. State of Rajasthan, (2021) 19 SCC 144] , considering the provisions of Section 306IPC along with the definition of abetment under Section 107IPC observed as under : (SCC pp. 149-50, paras 14-16)

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

15. The ordinary dictionary meaning of the word “instigate” is to bring about or initiate, incite someone to do something. This Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , has defined the word “instigate” as under : (SCC p. 629, para 20)

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

16. The scope and ambit of Section 107IPC and its co-relation with Section 306IPC has been discussed repeatedly by this Court. In S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 :



(2011) 2 SCC (Cri) 465] , it was observed as under : (SCC p. 197, para 25)

‘25. 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 306IPC 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.’

18. *This Court in M. Arjunan v. State [M. Arjunan v. State, (2019) 3 SCC 315 : (2019) 2 SCC (Cri) 219] , while explaining the necessary ingredients of Section 306IPC in detail, observed as under : (SCC p. 317, para 7)*

“7. The essential ingredients of the offence under Section 306IPC 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, the accused cannot be convicted under Section 306 IPC.”

19. *This Court in Ude Singh v. State of Haryana [Ude Singh v. State of Haryana, (2019) 17 SCC 301 : (2020) 3 SCC (Cri) 306] , held that in order to convict an accused under Section 306IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under : (SCC pp. 321-22, para 16)*

“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 behaviour 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.”

20. *This Court in Mariano Anto Bruno v. State [Mariano Anto Bruno v. State, (2023) 15 SCC 560 : 2022 SCC OnLine SC 1387] , after referring to the aboveresferred decisions rendered in context of culpability under Section 306IPC observed as under : (SCC para 45)*

“45. ... 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 there 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.”

21. This Court in *Gurcharan Singh v. State of Punjab* [*Gurcharan Singh v. State of Punjab*, (2020) 10 SCC 200 : (2021) 1 SCC (Cri) 417] , observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.
22. This Court in *Kashibai v. State of Karnataka* [*Kashibai v. State of Karnataka*, (2023) 15 SCC 751 : 2023 SCC OnLine SC 575] , observed that to bring the case within the purview of “abetment” under Section 107IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.
23. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he : (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of



culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

24. *For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:*

"A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."

Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

25. *It is now well settled that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.*



26. We take notice of the fact that the High Court has laid much emphasis on Section 113-A of the Evidence Act.

27. Section 113-A of the Evidence Act reads thus:

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).”

28. This Section was introduced by Criminal Law (Second Amendment) Act 46 of 1983. The Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act were amended keeping in view the dowry death problems in India.

29. Section 113-A of the Evidence Act requires proof :
(1) that her husband or relatives subjected her to cruelty, and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

30. Although, it is not necessary for us to refer to Section 113-B of the Evidence Act which raises presumption as to dowry death yet with a view to



indicate the fine distinction between the two presumptions we are referring to Section 113-B. In Section 113-A the legislature has used the word “may”, whereas in Section 113-B the word used is “shall”.

- 31. In this appeal, we are concerned with Section 113-A of the Evidence Act. The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under Section 113-A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*
- 32. What is important to note is that the term “the court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband” would indicate that the presumption is discretionary, unlike the presumption under Section 113-B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113-A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.*
- 33. The court should be extremely careful in assessing evidence under Section 113-A for finding out if cruelty was meted out. If it transpires 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 would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

34. *Section 113-A has been interpreted by this Court in Lakhjit Singh v. State of Punjab [Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173 : 1994 SCC (Cri) 235] , Pawan Kumar v. State of Haryana [Pawan Kumar v. State of Haryana, (1998) 3 SCC 309 : 1998 SCC (Cri) 740] and Shanti v. State of Haryana [Shanti v. State of Haryana, (1991) 1 SCC 371 : 1991 SCC (Cri) 191] .*

35. *This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words “may presume”. It must take into account all the circumstances of the case which is an additional safeguard.*

36. *In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306IPC by raising presumption under Section 113-A.*

37. *Before we part with this matter, we may only observe that the criminal justice system of ours*



can itself be a punishment. It is exactly what has happened in this case. It did not take more than 10 minutes for this Court to reach to an inevitable conclusion that the conviction of the appellant convict for the offence punishable under Section 306IPC is not sustainable in law. The ordeal for the appellant started sometime in 1993 and is coming to the end in 2024 i.e. almost after a period of 30 years of suffering. At the same time, we are also mindful of the fact that a young woman died leaving behind her 6-month-old infant. No crime should go unpunished. But at the same time, the guilt of the accused has to be determined in accordance with law. To put it in other words, the guilt of the accused has to be determined on the basis of legal evidence on record.

38. *The question is : On what and where did the two courts falter? In our opinion, the two courts faltered as they failed to apply the correct principles of law to the evidence on record on the subject of abetment of suicide. The two courts got enamoured by just three things : (i) the deceased committed suicide within seven years of marriage, (ii) the accused was demanding money from the parents of the deceased for starting some business, and (iii) the deceased used to remain tense. We do not say that these are irrelevant considerations. All the three aspects are relevant. But there are settled principles of law to be made applicable to the matters of the present type.*

39. *In the case of accusation for abetment of suicide,*



the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence. Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable under Section 306IPC, it is more arduous. The court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record. Otherwise it may give an impression that the conviction is not legal but rather moral.

40. For all the foregoing reasons, we have reached to the conclusion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.”

16. Whether the offence under Section 498A and 306 of the IPC are made out against the appellant or not has to be considered after examining the evidence of the witnesses examined by the prosecution. PW-1, PW-3 and PW-4 have been declared hostile. PW-5 is *Mama (maternal uncle)* of the deceased. He has deposed that on the date of occurrence, he was at his village and after hearing about the death of her neice, he came to the village of the deceased. He did not know how the deceased died. There was a black mark on the face of the deceased. He has said that the husband and



wife i.e. the appellant and the deceased used to fight and on some occasions, he had mediated between them. He has visited the house of the deceased two or three months before the date of occurrence.

17. PW-6 is the father of the deceased. He has deposed that the marriage was solemnized one year before the date of occurrence. The informant had given sufficient dowry as per his financial status. She came back to her parental home after *Vidai* and she stayed there for six months. After that, she was taken to her *sasural* where her in-laws used to fight with the deceased. The deceased used to inform her brother, Abdul Karim, who was working in Punjab and who in turn used to inform the informant to inquire about his daughter from the *sasural* of the deceased. The informant further stated that Rs. 50,000/- was demanded by the appellant but the informant was unable to fulfill the said demand. The informant states that when he reached the house of his deceased daughter, he found her dead. The family members had fled away and the dead body was lying in the *Verandah* of the house. When he reached the house, the police had already reached the place of occurrence. After post-mortem, the informant took the dead body of his daughter and the last rites were done.



18. PW-7 is the step-mother of the deceased. She has said that the appellant used to demand Rs. 50,000/- and because of non-payment, the appellant has done this act.

19. PW-8 is the witness on the inquest report. PW-9 and PW-10 are the Investigation Officer.

20. From the FIR and the deposition of PW-5 and PW-6, it appears that the deceased was married with the appellant around one year before the date of occurrence and there were disputes between them. There is no independent witness who has supported the allegation of torture or mistreatment. While reading the FIR as well as, from the evidence of PW-4, PW-5 and PW-6, it appears that the husband and wife used to quarrel. The prosecution has not been able to prove the demand of dowry. It appears that the allegation of demand of dowry has subsequently been introduced during the trial.

21. To convict the appellant under Section 306 of the IPC, it has to be proved that the appellant has aided or instigated the commission of suicide by the deceased. The dispute between husband and wife prior to the deceased having committed suicide will not result into offence of abetment by the appellant. The prosecution must prove the



willful conduct of the appellant forcing the deceased to commit suicide or causing grave injury or danger to life or health.

22. The witnesses have made a general statement of torture and cruelty which will fall short of abetment i.e. any act committed by the accused which aids or instigates the commission of suicide by the deceased. Mere commission of suicide by the deceased without any such acts of the accused would not result in the conviction of the accused. The prosecution has failed to establish that the actions of the appellant was in the nature of instigation or that the appellant actively engaged in a conspiracy or that he intentionally aided in the commission of suicide.

23. PW-2 has given the reason of death as consumption of poison by the deceased. The consumption of poison has also been supported by the FSL report.

24. So far as the offence under Section 498A of the IPC is concerned, in my opinion, the ingredients of that offence are also lacking in the present case. The witnesses have not given specific statement with regard to cruelty meted out to the deceased for making out a case under Section 498A unless and until the prosecution is able to prove the offence of



cruelty, the presumption under Section 113 B of the Evidence Act cannot be drawn and therefore, the appellant cannot be asked to prove his innocence.

25. In the facts of the case and in view of the discussions made above, I am of the view that no offence under Section 306 and 498A is made out against the appellant. Therefore the impugned judgment of conviction and order of sentence dated 15.12.2018 passed by the learned 3rd Additional District and Sessions Judge, Purnea, in Session Trial No. 1500 of 2012 is hereby set aside.

26. The present appeal is allowed.

(Sandeep Kumar, J)

kiran/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	21.12.2024.
Transmission Date	21.12.2024.

