

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 8 of 2001

Sk. Mahiuddin

Vs.

State of West Bengal

For the Appellant	:Mr. Amal Krishna Samanta Mr. Fazle Rahi
For the State	:Mr. Avishek Sinha
Heard on	:07.08.2023, 17.10.2023, 31.01.2024
Judgment on	:28.03.2024

Ananya Bandyopadhyay, J.:-

1. The present appeal is preferred against the judgment and order dated 15.12.2000 respectively passed by the Learned Assistant Sessions Judge, Bolpur, District- Birbhum in Sessions Trial no. 1 of August, 2000 corresponding to Sessions Case No. 73 of 2000 which arose out of G.R. Case No. 182 of 1999 corresponding to Illambazar Police Station Case No. 33 of 1999 of dated 18.05.1999 under Sections 498/306 of the Indian Penal Code, convicting the appellant for committing an offence punishable under Sections 498A/306 of the Indian Penal Code and sentencing the same to undergo rigorous imprisonment for 6 years and to pay a fine of Rs.1,000/-, in default, further rigorous imprisonment for 2 months for offence punishable under Section 306 of the Indian Penal Code

and further sentenced the appellant to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.500/-, in default, further rigorous imprisonment for 1 month for offence punishable under Section 498A of the Indian Penal Code with both sentences to run concurrently.

2. Precisely the prosecution case stated that Manira Khatun @ Narjama Bibi was married to the appellant as per Muslim rites and customs. At the time of marriage, dowry was provided according to the capability of members of Manira Khatun @ Narjama Bibi's family. A few days after the marriage, accused persons tortured the victim both mentally and physically on the demand of further dowry and money. The appellant and others confined Monira and starved her. The appellant and others expressed to kill Monira if she failed to bring further dowry. In order to save Monira, the demand of the appellant and others was met on several occasions. It was the further case of the prosecution that in the month of Ashar 1405 B.S., Manira was driven out due to torture and she was asked Monira to bring a further amount of Rs.5,000/- from her father. The father of Monira on that occasion paid Rs.1000/- and requested the appellant and others not to inflict further torture upon Monira. Subsequently one cow and goat were also given to the appellant and others. However the, torture upon Manira continued. The appellant and others seriously assaulted Manira and drove her away from her matrimonial home on demand of a table fan, who in turn, came to her father's place and narrated

everything to her father. The appellant thereafter was called on 27thBaisakh in the house of the de facto complainant (PW-6) and assured him to give a table fan. In the night of 29thBaisakh, an information was received by the de facto complainant (PW-6) that Monira had committed suicide by hanging.

3. With regard to the aforesaid incident, Illambazar Police Station Case No. 182 of 1999 dated 18.05.1999 was registered for investigation on the basis of a written complaint lodged by one Nur Islam Khoder (PW-6) with the Officer-in-Charge of the said police station, inter alia, alleging commission of offence punishable under Sections 498A/306 of the Indian Penal Code, committed by the appellant along with Sk. Alauddin, Anarkoli Bibi and Sk. Yeasin @ Pancha.
4. After completion of investigation, which was taken up on the basis of the aforesaid complaint, the Investigating Officer submitted charge-sheet report in final form in G.R. Case No. 182 of 1999 which arose out of Illambazar Police Station Case No. 33 of 1999 dated 18.05.1999 under Sections 498A/306 of the Indian Penal Code being charge-sheet No. 72 of 1999 dated 21.10.1999.
5. Charge was framed against the appellant along with Sk. Alauddin, Anarkali Bibi and Sk. Yeasin @ Pancha for committing offence punishable under Sections 498A/306 of the Indian Penal Code and as the appellant and others pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove the aforesaid charge against the appellant and 3 others examined as many as 12 witnesses and exhibited certain documents.
7. Learned Advocate for the appellant submitted as follows:
 - i. Out of 12 witnesses, 7 witnesses (P.W.-1, P.W.-2, P.W.-4, P.W.-5, P.W.-6, P.W.-7, P.W.-8) were the neighbours and relative of the de-facto complainant (P.W.6) and P.W.-3 was the Doctor, P.W.-9 the Constable, P.W.-11 the S.I., P.W.-12 the Investigating Officer.
 - ii. Only P.W.-10 the neighbour of the appellant turned hostile.
 - iii. Out of 7 witnesses (who are the neighbours/villages of the de facto complainant), P.W.-2 brother of the de-facto complainant, (witness of the inquest report also) did not utter a single word regarding torture, cruelty, dowry demand or abetment to commit suicide.
 - iv. In the inquest report reflected the term 'family dispute'.
 - v. All the family disputes were not within the purview of Section 498A of the Indian Penal Code.
 - vi. In the Examination under Section 313 of the Code of Criminal Procedure, the Learned Trial Judge did not ask a single question regarding abetment and/or instigation.
 - vii. There was no material evidence regarding demand of dowry and/or cruelty in respect of explanation 2 under Section 498A of the Indian Penal Code.

- viii. Neighbouring witnesses of the appellant was very much essential to find out the day today family affairs of appellant to find out the truth.
- ix. The Investigating Officer examined one Saidur Rahaman who stated there was quarrelling/hot altercation among the 'Ja's (sister-in-laws) of the deceased on the date occurrence regarding marriage ceremony of relative.
- x. There was a lapse of five days (13.05.1999 to 18.05.1999) to lodge the complaint, without any explanation of such delay.
- xi. P.W.4 (sister-in-law of the de facto complainant) and P.W.6 (defacto complainant) deposed falsely before the Learned Trial Court, where they stated that they found external injury on the dead body.
- xii. However, Post-mortem report and inquest report did not speak the same.
- xiii. In cross examination of P.W.6 (de-facto complainant) confessed his untruthfulness.
- xiv. In cross-examination, the related/neighbour of the de-facto complainant did not depose satisfactorily.
- xv. Not a single complaint and/or evidence regarding dowry demand/cruelty/torture upon the deceased before death was reported and hence story of dowry demand and torture was not at all maintainable.

8. The Ld. Advocate for the State referred to the written complaint and submitted that repeated demands of dowry on the part of the appellants compelled the family members of the victim to provide a cow and a goat which however did not lessen the degree of torture and on 23rd *Boishak* the appellants physically assaulted the victim concerning the demand for a table fan and forced her to go out of the matrimonial house. It was further submitted that on 27th *Boishak* she returned to her matrimonial house and on 29th *Boishak* she committed suicide through hanging which was the proximate cause to have incited her to commit suicide under Section 306 of the IPC. It was further submitted the inquest report corroborated the fact of family dispute and discord on the relevant day at about 8-8:30 in the night. The victim committed suicide.
9. The Ld. Advocate for the State further submitted that the evidence of P.W-2, P.W-4, P.W-5, P.W-6, P.W-7 corroborated each other in terms of demand of dowry and also the fact aggravated torture upon the victim for further demand for a table fan. The Ld. Advocate for the state submitted that the prosecution was able to prove its case under Section 498-A/306 of the IPC and the appeal should be dismissed.
10. A circumspection of the evidence reveals that P.W-1 to have scribed the written compliant marked at exhibit no. 1 without any personal knowledge to its content. P.W-2 the defacto complainant was the elder brother of the deceased victim who identified his signature on the inquest report marked as exhibit no. 2/1. He further disposed

that one Saidur Rahman of Jalanagar informed the death of his younger sister however the same Saidur Rahman was not examined. He further stated the police did not interrogate him. P.W-3, the doctor stated the cause of death to be asphyxia due to hanging being ante-mortem and suicidal in nature. He identified his signature on the PM report marked at exhibit no. 3. P.W-4 was the sister-in-law of the deceased victim who stated the victim to have been subjected to torture by the appellant and his family on the demand of dowry, learning the same from the deceased victim. P.W-4 related to the incident of denial of table fan to the appellants. During her cross examination she stated to have found marks of assault on the body of the victim however the same was not examined by any doctor or reported to any authority. The evidence of P.W-5 was based on hearsay. P.W-6 reiterated the evidence of the defacto complainant in terms of continuous demand of dowry and an immediate demand of table fan. The evidence of P.W-7 and P.W-8 was based on hearsay. P.W-9 had transmitted the body of the deceased through a challan marked at exhibit no. 4. P.W-10 was declared hostile by the prosecution. P.W-11, the S.I of the police initiated the UD case no.7/99 dated 13.05.99 marked at exhibit no. 6. He identified his signature on the formal FIR that was marked at exhibit 7. P.W-12 had been the investigating officer who inter alia stated to have prepared the rough sketch map, recorded the statement of the available witnesses, arrested the accused persons and thereafter on completion of the investigation submitted the chargesheet.

11. The Hon'ble Supreme Court held the following in **Gurjit Singh v. State of Punjab**, reported in **(2020) 14 SCC 264**:-

“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.

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.*

(emphasis in original and supplied)

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.”

(emphasis supplied)

22. *The Bench of two Judges of this Court had an occasion to consider a similar issue 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 PinakinMahipatrayRawal v. State of Gujarat [PinakinMahipatrayRawal 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.”

12. The Hon’ble Supreme Court held the following in **Gumansinh v. State of Gujarat**, reported in **(2022) 15 SCC 767:-**

“41. The reliance placed by the learned counsel for the appellants on the judgment of this Court rendered by a two-Judge Bench in Gurjit Singh v. State of Punjab [Gurjit Singh v. State of Punjab, (2020) 14 SCC 264 : (2020) 4 SCC (Cri) 758] is totally misfounded, as the case is distinguishable on facts. In the said case, this Court found that though the prosecution was successful in proving the case under Section 498-AIPC but the prosecution had failed to prove that the cruelty was of such a nature which left no choice to the deceased than to commit suicide. It was found that the prosecution has failed to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide. It may be relevant to extract the following observations made in the judgment : (SCC p. 280, paras 37-38)

“37. Another aspect that needs consideration is that the cases wherein this Court has held that the conviction under Section 306IPC was tenable though charge was only under

Section 304-BIPC, it was found the charge specifically stated that the deceased was driven to commit suicide on account of cruelty meted out to the deceased. However, in the present case, the charge reads thus:

‘That you all on 28-9-1994 in the area of Village Bohan, the death of Jaswinder Kaur wife of you, Gurjit Singh and daughter-in-law of you, Gurdial Singh and Mohinder Kaur and sister-in-law of Ranjit Kaur, was caused otherwise than under normal circumstances, you all being her relatives, within a period of seven years of her marriage subjected her to cruelty and harassment for all in connection with demand for dowry and thereby committed an offence of dowry death punishable under Section 304-B of the Penal Code, 1860, and within my cognizance.’

38. It would thus be seen, that the charge does not state that the deceased was driven to commit suicide on account of the harassment meted out to the deceased. It also does not mention that the accused had abetted in commission of suicide by the deceased. In that view of the matter, we are of the considered view that the cases wherein conversion is held to be permissible are clearly distinguishable.”

13. The following was held in **Mariano Anto Bruno v. State** reported in **2022 SCC OnLine SC 1387** by the Hon’ble Supreme Court:-

“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 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 correlation 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

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 Chhattisgarh⁹, 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*¹⁰, 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.”**

(emphasis supplied)

14. From the trend of the evidence of the prosecution witnesses, it transpired that majority of them were the relatives of the deceased victim. Apart from the general and omnibus nature of the allegations, mostly based on hearsay, none of the related witnesses specified the overt act of the appellants in inflicting physical and mental injury to the victim compelling her to take an ultimate drastic step. None of the related witnesses were present at the place of occurrence to have expressed accurate and concrete opinion of an immediate and proximate incident grave enough to have instigated the victim to commit suicide. None of the related prosecution witnesses described the manner in which the appellant

abetted the commission of suicide of the victim in order to constitute an offence under Section 306 of the IPC. Vague allegations or assertions without specific description of role by the appellant to have contributed to the commission of the offence under Section 306 of the IPC attribute the same to be nugatory. The defence story of a commotion between two sister-in-laws to have impulsively compelled the victim to put an end to her life could not be established through proper evidence. However, in absence of circumstances, leading to trustworthy corroborative evidence to constitute under Section 498-A/306 of the IPC, the appellant shall not be convicted on the basis of speculation and suspicion.

15. Under the facts and circumstances of the case any absence of proof of commission of the offence by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
16. Accordingly, CRA 8 of 2001 is disposed of.
17. There is no order as to costs.
18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. 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.)

