

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 72 of 2010

Biswajit Samanta

-Vs-

The State of West Bengal

For the Appellant : Mr. Abhra Jana
Mr. Ayan Mondal

For the State : Mr. Bidyut Kumar Roy
Ms. Rita Dutta

Heard on : 27.09.2023, 19.01.2024, 09.02.2024,
25.04.2024.

Judgment on : 22.05.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 28.01.2010 and 29.01.2010 passed by the Learned Additional Sessions Judge, Katwa in Sessions Trial No. 41 of 2009 arising out of the Sessions Case No. 52 of 2008 convicting the appellant under Sections 498A/306 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 3 months more for the offence punishable under Section 498A of the Indian Penal Code and also to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.2000/- in default to suffer simple imprisonment

for 6 months for the offence punishable under Section 306 of the Indian Penal Code with a direction about both the sentences to run concurrently.

2. The prosecution case emanated on the basis of a complaint which inter alia stating that on 24.01.2006 the informant (PW-1) gave her daughter Shrabani in marriage to accused Biswajit Samanta and the said marriage was solemnized according to the Hindu Rites and Customs. Soon after marriage Shrabani was subjected to both physical and mental torture. Shrabani used to keep her father informed about the said incidents of torture. On 17.06.2007 at about 10:30 a.m. the informant (PW-1) received a phone call from an unknown person who informed him that an accident had taken place in the matrimonial house of Shrabani. Having received the said information he along with others rushed to there and found the covered dead body of Shrabani lying on the floor. On interrogation he came to know from the mother-in-law of Shrabani that Shrabani who was then carrying for six months, had committed suicide by hanging. However, PW-1 believed that the husband and other in laws of her daughter were responsible for her death.
3. On the basis of the said written complaint of PW-1, Katwa Police Station started investigation and on completion of the investigation thereof the investigating officer filed a charge-sheet under Sections 498A/302/120B of the Indian Penal Code against the appellant and four other persons.
4. During trial the charges under Section 498A/302 of the Indian Penal Code were framed against the appellant and others who pleaded not guilty and claimed to be tried.

5. In order to prove its case the prosecution had examined 12 witnesses and exhibited certain documents.

6. The Learned Advocate for the appellant submitted as follows:-

- i. The allegations of the de-facto complainant herein and/or PW-1, being the father of the deceased herein, was false on the face of it and on perusal of the deposition of PW-1 along with comparative analysis of the written complaint, it would be evident that the instant written complaint was nothing but a mere anger upon the appellant arising out of mental agony of losing his daughter and an instant repercussion of the same on the appellant and his family members.
- ii. Further, the prosecution story could not establish the mens rea and/or motive of any crime, alleged to have been committed by the appellant.
- iii. The Surathal and/or Inquest Report by one S.I. Manik Chandra Dutta did not show injury or wound on the body of the deceased, which clearly proved the allegations of torture made by the de.-facto complainant herein and/or PW-1 were false.
- iv. Out of the 17 listed witnesses of charge sheet, five witnesses, including the investigating officer of the case, autopsy surgeon and executive magistrate could not be examined by the prosecution during trial of the instant case, the same amounted to lacuna and faulty trial.
- v. The father/de-facto complainant was not aware of the reason of suicide at the time of filing of the written complaint before the concerned police station on 17th June 2007, later, as per the

deposition of the PW1 and/or de-facto complainant here it could be seen that the PW1 being the father of the deceased herein out of the blue stated that he was informed by his daughter that she was six months' pregnant and wanted to deliver her first child in Srirampur (the workplace rented residence of the appellant herein) whereas that the appellant brought her to the matrimonial house in Dona Village/ Katwa, and allegedly for such reason and/or circumstances the deceased herein was upset and had committed suicide.

- vi. PW-1 never complained about the appellant physically or mentally torturing the deceased herein since after marriage and the same was never informed and/or intimated to him by the deceased victim over telephone. The PW-1 herein had denied the fact that he has ever complained that the accused person, including the appellant was responsible for the death of her daughter, being the deceased herein. The same could also be established by perusing the deposition of PW1 wherein he stated that "*after marriage accuse persons behaved well with my daughter Shrabani in her matrimonial home*", He had also stated that they did not see any mark of assault over the dead body, negating the allegation of physical torture on the victim.
- vii. PW-1 had deposed that his daughter since deceased disclosed before him during her lifetime that she intended the birth of her first child at Srirampur, Hooghly where the appellant used to work in a private organisation, but the appellant brought her to her matrimonial home

and for that reason she was shocked and she intended to commit suicide.

- viii. The allegation against the appellant of bringing back his wife to the matrimonial house had purportedly made her upset for which she had committed suicide, could not be a valid conduct of instigation or the same could not be termed as instigation, which was liable to be punished as a crime for abatement to suicide. The same could again be established from the deposition of PW1 itself, wherein he had stated that the appellant used to take his wife, the deceased herein with him to his place of service, and that she lived with her husband at Haldia and Srirampur also. The appellant brought back his wife to her matrimonial house at village Donna in order to keep her among the care of all relatives and family members in his matrimonial house and the surrounding neighbours, since the appellant was an engineer in private sector, working in factories with abrupt uncertain time schedule which in the opinion of the appellant was not suitable for the condition of his pregnant wife, thus, for the betterment of the deceased and proper vigilance over her health, the appellant out of concern and care brought her to his village being the matrimonial house of the deceased for better care and living condition. Such act of the appellant did not tantamount to instigation and/or abetment to suicide, the prosecution on the other hand could not even prove or corroborate any evidence to establish the mens rea of the appellant to commit such alleged crime. On the anvil of such circumstance and pursuance, it

could be easily stated that the order of conviction convicting the appellant under section 306 of IPC was absolutely bad in law.

- ix. None of the prosecution witnesses had deposed about any illegal act of the appellant or his family members relating to cruelty caused upon the deceased herein, rather on perusal of the deposition of PW-4, namely Mira Bag, it could be seen that she deposed about the parents of the appellant were banging on the close door and crying while the door (later, broken by the PW4 herself) was locked from inside where the deceased had hung herself, thus, the concern and care of the family members of the appellant for the deceased can be clearly seen, for which the appellant had kept her in the matrimonial house while she was six months pregnant.

7. The Learned Advocate for the appellant relied on the following judgments:-

- i. Mariano Anto Bruno & Anr. Vs. Inspector of Police, 2022 SCC Online SC 1387, wherein the Supreme Court had stated that continuing course of instigation needs to be established in order to convict a person under section 306 and 498A of the Indian penal code, whereas, the instant case only portrayed one alleged circumstance which led to an unfortunate event of suicide for reasons best known to the deceased.
- ii. Rajesh Yadav v. State of U.P., (2022) 12 SCC 200, Hon'ble Supreme Court, while relying upon while relying upon

Bhagwan Singh's case, Khujji's case and C. Muniappan's case, reiterated the position of law while stating as under: "22. The expression "hostile witness" does not find a place in the Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief-examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief- examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief-examination could be termed as evidence. Such evidence would become complete after the cross-examination. Once evidence is completed, the said testimony as a whole is meant for the Court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief-examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the

Court. It is well within the powers of the Court to make an assessment, being a matter before it and come to the correct conclusion." Further, the same was relied in an unreported judgment of Hon'ble High Court at Punjab and Haryana in Shokeen Vs. State of Haryana on 15.12.2023, also upholding the judgement of Hon'ble Supreme Court, in C. Muniappan v. State of T.N., (2010) 9 SCC 567, after referring to a plethora of judgments held as under: "83. Thus, the law can be summarized to the effect that the evidence of a he tile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence." In such a scenario the Deposition of the PW-1 can be secluded since it does not support the gospel story of the Prosecution, thus, the order of conviction against the appellant is absolutely bad in law and bias on the part of the Learned Sessions Judge and liable to be set aside with immediate effect.

- iii. Rajesh vs State of Haryana (2020) 15 SCC 359, the Hon'ble Court had vividly discussed about section 306 and 107 of Indian Penal Code along with its relation as to what constitutes the definition of "instigation". It can be safely opined that in the instant case, the above mentioned judgment is of immense reliance in the instant case as the prosecution herein could not corroborate instigation and/or

provocation by the appellant for the commitment of suicide of the deceased herein. Therefore it is also established that there is no close proximity between the date of incident and the day she was brought back to the matrimonial house, being the alleged illegal act of the appellant, thus the same does not warrant conviction of the appellant under section 306 of Indian Penal Code.

- iv. The same can also be supported by the latest judgment of Mohit Singhal and another Vs. State of Uttarakhand and others (2023) SCC Online SC 1598. Ingredients of instigation or abetment to commit suicide were satisfied, accused could not be convicted under section 306 of the IPC and most importantly to prove abetment, it was mandatory to show that instigation should be concrete and also need to be established that conduct of an accused had led the deceased to commit suicide, but in the instant case the evidence was based on hearsay and the prosecution could never prove the mens rea and/or motive of the petitioner for committing such an act of abetment. To support the same, the Learned Advocate for the appellant relied on the following decisions:-
 “M Arjunanvs State (2019) 3 SCC 315: Sanju Vs. State of MP (2002) 5 SCC 371: State of West Benagl Vs. Indrajit Kundu and others (2019) 10 SCC 188: Amalendu Pal vs State of West Bengal (2010) 1 SCC 707and Chitresh Kumar Chopra

vs State (government of NCT of Delhi) (2009) 16 SCC 605. Hon'ble Supreme Court, in C. Muniappan v. State of T.N., (2010) 9 SCC 567, after referring to a plethora of judgments held as under: "83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

- v. The instant case herein being the prosecution story shows that there was alleged non fulfillment or demand by the appellant and omission and/or negligence on the part of the appellant, by not keeping his wife with him in the rented property of his service place during her time of pregnancy which was the alleged reason for committing suicide and/or instigation of the same. On the contrary the Apex Court in Praveen Pradhan vs. State of Uttaranchal and another (2012) 9 SCC 734 observed that words uttered in fit of anger or omission without any intention cannot be termed as "instigation" for committing suicide.
- vi. Furthermore there are plethoras of judgments pertaining to allegation of section 306 and 498A of IPC which are paramateria to the instant case, the Apex Court was pleased to set aside the order of conviction against an appellant and/or uphold an order of acquittal in favour of the

appellant. The instant case lacks proof of abetment and the prosecution could not prove any evidence of cruelty upon the deceased wife, for which the instant order of conviction dated 28.01.2010 acquitted the other accused being the in-laws of the deceased wife. The appellant relies upon the judgement of Supreme Court of India in Jagdishraj Khatta vs State of Himachal Pradesh 2019 (9)SCC 248. That one trivial instance is not sufficient for establishing "cruelty" against an appellant and the same was observed in the latest judgment being Maa Lakshmi and others vs State of Karnataka and other (2023) SCC Online SC 1622: and The Supreme Court reiterated that "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" in Mariano Anto Bruno v. State, (2022) SCC OnLine SC 1387.

8. The Learned Advocate for the State submitted that there is evidence on record that the victim lady was subjected to torture and she had committed suicide in her matrimonial house while she was pregnant. A pregnant lady will never commit suicide if she has not been subjected to torture.

9. Section 498A of the Indian Penal Code states as follows:

“Section 498A: 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. Section 306 of the Indian Penal Code states as follows:

“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.”

11. The Hon'ble Supreme Court in ***Achin Gupta vs. State of Haryana and Ors.***¹ held the following:-

“32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation

¹ MANU/SC/0377/2024

between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the Indian Penal Code cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the Indian Penal Code. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels

between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in *Kaslefsky v. Kaslefsky*, (1950) 2 All ER 398 observed as under:

When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved.

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces

itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in *American Jurisprudence* 2nd edition Vol. 24 page 206. It reads thus:

The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances.

(Emphasis supplied)"

12. The Hon'ble High Court held the following in **Gurcharan Singh v. State of Punjab**²:-

"13. Section 107 IPC defines "abetment" and in this case, the following part of the section will bear consideration:

"107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing."

14. The definition quoted above makes it clear 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.

² (2020) 10 SCC 200

15. *As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.*

16. *The necessary ingredients for the offence under Section 306 IPC were considered in S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote 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 this 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.”

17. *While dealing with a case of abetment of suicide in Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)*

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence 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 the 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 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.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

18. *In Mangat Ram v. State of Haryana [Mangat Ram v. State of Haryana, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127] , which again was a case of wife's unnatural death, speaking for the Division*

Bench, K.S.P. Radhakrishnan, J. rightly observed as under : (SCC p. 606, para 24)

“24. We find it difficult to comprehend the reasoning of the High Court [Mangat Ram v. State of Haryana, Criminal Appeal No. 592-SB of 1997, decided on 27-5-2008 (P&H)] that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”

13. The Hon’ble Supreme Court held the following in **Kashibai v. State of Karnataka**³:-

“6. At this juncture, it would be beneficial to reproduce the relevant provision contained in Section 306 IPC pertaining to Abetment of suicide.

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

7. What is “Abetment of a thing” has been described in Section 107 which reads as under:—

“107. 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

³ 2023 SCC OnLine SC 575

Thirdly. —Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. —A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

8. *From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established.*

9. *In M. Mohan v. State Represented by the Deputy Superintendent of Police¹, this Court has elaborately dealt with the provisions contained in Section 306 read with Section 107 IPC, and after discussing various earlier decisions has observed as under:—*

“41. *This Court in SCC para 20 of Ramesh Kumar, [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of “instigation”. Para 20 reads as under : (SCC p. 629)*

“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.”

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn.

42. *In State of W.B. v. Orilal Jaiswal, [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) 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 appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.*

43. *This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.*

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

10. In view of the above, it is quite clear that in order to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, 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.

14. Though it is true that as per Section 113A of the Evidence Act, when the question arises as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and when 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 can presume, having regard to the other circumstances, that such suicide has been abetted by her husband or such relative of her husband. However, mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC.

15. In *Mangat Ram v. State of Haryana*², this Court considering the provisions of Section 498A and 306 of IPC in the light of the

presumption under Section 113A of the Evidence Act, observed as under:—

“30. *We are of the view that the mere fact that if a married woman commits 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 has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.*

31. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana, [(2004) 12 SCC 257 : 2004 SCC (Cri) 217], wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned

committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can 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.”

16. *So far as the evidence adduced by the prosecution in the instant case is concerned, in our opinion the prosecution had failed to adduce any clinching evidence to enable the Court to conclude that the appellants-accused had abetted the deceased to commit suicide. In absence of any satisfactory evidence having been brought on record, in our opinion both the Courts below had committed grave error in holding the appellants guilty of the offence under Section 306 of IPC.”*

12. Out of 12 prosecutions witnesses PW-1, one Nikhil Kumar Mondal who happened to be the de-facto complainant and also the father of deceased Shrabani. In his examination-in-chief, PW-1 admitted that “*after marriage the accused person behaved well with Shrabani in her matrimonial home*”. In cross-examination PW-1 further stated that the date of occurrence in the date of Srodh ceremony of the mother of accused Archana. He also went on saying that “*it is true that Biswajit and Abhijit were in their place of service and Shukla remained in her matrimonial home.*” PW-2 is Asim Kr. Dutta who was the husband of the sister of the deceased. He stated nothing against the appellant and others, on the contrary he in his cross-examination admitted that he did not see accused Biswajit and Abhijit when he went to their house

getting information of the death of his sister-in-law. PW-3 spoke nothing against the accused person. PW-4 broke the wooden latch of the door and brought down the dead body from hanging condition. He saw the parents-in-law knocking the door of the room and crying. PW-5 only said that she saw Shrabani for the last time at 6 a.m., and had conversation with her. PW-6 stated nothing against the accused persons. PW-7 was the sister of deceased. She did not make any complaint against anybody. PW-8 was the brother of PW-1 and said nothing against the appellant and others. PW-9 and PW-10 spoke nothing against any person. PW-11 was an A.S.I. of Police and his evidence was on formal character. PW-12 was a police Constable who identified the dead body of Shrabani to the post-mortem doctor.

13. The evidence of PW-1 to the effect that his daughter intended to give birth of her first child at Sirampur, Hooghly where her husband used to work in a private organization but her husband brought her to her matrimonial home and for that reason she was shocked and she intended to commit suicide. Such an act did not constitute abetment.
14. The deceased used to live alone with her husband (appellant), an employee of a private company in his place of employment. There was no other male and female member in their family to look after the deceased wife. It was very probable and natural that the husband thought that it would be safe for the deceased to give birth of her child in her matrimonial home where his parents and other relative resided. Therefore the said evidence of PW-1 did not prove cruelty and ill-treatment. The said evidence PW-1 was vague, unspecific and hard in nature. He did not say when, where and on which day

his daughter expressed her intention to give birth on her child at Serampur. Even if the said evidence was accepted it could at last he said that the said desire of the deceased was not fulfilled by the husband obviously for one or other reason. The said non-fulfillment of the desire of wife on the part of the husband did not constitute either cruelty or abetment. There was no element of instigating in the said act on the part of the husband. In every abetment there must be element of instigation and *mens rea*. There was no nexus between the said fact and the commission of suicide. There was no iota of evidence that the deceased wife was even harassed and tortured by the accused person in connection with any demand for dowry. Either the F.I.R. or the evidence of PW-1 did not relate any physical and mental torture upon the deceased wife by her husband and in laws at any point of time. The inquest report did not reflect any injury or wound on the body of the deceased victim. There was no allegation of any demand for dowry either in the F.I.R. or in evidence.

15. The prosecution failed to prove that the victim lady was subjected to torture for demand of dowry or continuous cruelty. The prosecution further failed to prove that the victim lady was instigated or incited to commit suicide for any proximate provocation leaving her with no other alternative but to commit suicide by hanging herself.
16. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
17. Accordingly, the instant criminal appeal being CRA 72 of 2010 is disposed of.

18. There is no order as to costs.
19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. 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.)