

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 136 of 2001

Shambhu Bhowmik

-Vs-

The State of West Bengal

Amicus Curiae : Mr. Amartya Ghosh

For the State : Ms. Faria Hossain

Heard on : 12.09.2023, 13.09.2023, 11.10.2023

Judgment on : 17.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 08.03.2001 & 12.03.2001 passed by the Learned Additional Sessions Judge, 6th Court, Alipore, 24 Parganas (South) in Sessions Trial No. 1(5)(99) convicting thereby the appellant under Section 306 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for a period of 6 years and the appellant was further convicted under Section 498A of the Indian Penal Code and had been sentenced to suffer rigorous imprisonment for a period of 1 year and both the sentence have been directed to run concurrently.
2. Appellant along with three others were arraigned by the to answer Charge under Section 498A/306 of the Indian Penal Code as also under Section

304B of the Indian Penal Code by the Learned Additional Sessions Judge, 6th Court, Alipore, 24 Parganas (South).

3. The prosecution has relied upon 18 witnesses to prove the charge. The prosecution witnesses are PW-1 Subhas Saha, PW-2 Sambhunath Sardar, PW-3 Rajat Subhra Saha, PW-4 Bishnu Das, PW-5 Uttam Saha, PW-6 Executive Magistrate, PW-7 Jatindra Mohan Bhowmik, PW-8 Biswanath Saha, PW-9 Ujjala Saha, PW-10 Gautam Saha, PW-11 Kajal Jana, PW-12 Dr. Asit Guha, PW-13 Tarak Das, PW-14 Swapna Bhowmik, PW-15 Dilip Sen, PW-16 Rabindra Kumar Ghosh, PW-17 Dr. Tapas Kumar Bose, PW-18 Aswini Kr. Kundu.
4. Learned Judge of the conclusion of the aforesaid trial recorded an order of acquittal from all the charges in favour of Parul Bhowmik, Bakul Sen and Mukul Ghosh.
5. The Learned Trial Judge, however, was pleased to convict the appellant under Section 306 and also 498A of the Indian Penal Code sentenced him to suffer rigorous imprisonment for a period of 6 years for the offence committed under Section 306 of the Indian Penal Code and further to suffer rigorous imprisonment for 1 year for the offence committed under Section 498A of the Indian Penal Code. The sentences aforesaid have been directed to run concurrently.
6. The appellant was on Bail during the period of trial.
7. Learned Advocate for the appellant submitted that –
 - i. The Learned Judge failed to assess the prosecution witnesses in their correct perspective and thus erroneously arrived at the conclusion

guilt of the appellant in respect of the charge under Section 306 and 498A of the Indian Penal Code.

- ii. PW-14, PW-15 and PW-4 stated in their evidence that the relation between the appellant and the deceased was good. PW-4 in his evidence stated “nothing abnormal relation found”. PW-14 in his examination-in-chief stated “conjugal life was good”. The aforesaid evidence believes the prosecution case so far it relates to cruelty and torture and/or harassment with any demand of dowry. The finding of the Learned Judge in the Court below deserves interference in as much as in arriving at the conclusion of guilt the Learned Judge relegated in to oblivion the aforesaid evidence which belies the prosecution case.
- iii. PW-7 and PW-11 in their evidence stated in no uncertain term that the relation during the continuance of the conjugal life in between the appellant and the deceased was good. Such being the evidence on record the Learned Judge ought not to come to the conclusion of the guilt under Section 498A and 306 of the Indian Penal Code against the appellant.
- iv. The author of the First Information Report was not examined during trial to testify the statement made before the Investigating Officer for initiation of the proceeding against the appellant and as such ought not to have placed any reliance on the said complaint for arriving at the conclusion of guilt.

- v. The evidence on record did not satisfy the requirements of Section 498A of the Indian Penal Code and should have recorded an order of acquittal in favour of the appellant.
- vi. The evidence deposed by PW-12 who examined the deceased at first in Hospital in its correct perspective in as much as the evidence was no other mark of injury found on the person of the deceased. The said evidence was suggestive of the fact that there was no cause for the deceased to commit suicide.
- vii. The Trial Court ought not to have placed much reliance on the evidence of PW-8 and PW-9 to exclusion of PW-4, 14 and 15 in as much as the said witness for the first time in Court in their evidence tried to develop the story of cruelty and torture and Rs. 5000/- allegedly demanded by the appellant. The evidence of the said witness do not give any indication that prior to the statement in court any report was ever made before any law enforcing authority in regard to the alleged cruelty and demand of Rs. 5000/-.
- viii. The evidence of PW-5 in as much as the evidence of the said witness in court stands sharply contradicted with his statements made before Investigating Officer during inquiry not on minor issues but on vital point.
- ix. The evidence of PW-13, a co-resident of the appellant in as much as the evidence of the said witness belies the prosecution case so far it relates to charge under Sections 306/498A of the Indian Penal Code.

- x. The evidence of PW-13, 14 and 15, being the neighbour and independent witness in as much as the sum total of the said evidence totally outwits the evidence of PW-5, 8 and 9. Therefore the inference as to the conclusion of guilt on the basis of said evidence disregarding the evidence of PW-13, 14 and 15 has caused serious miscarriage of justice.

8. The Learned Advocate for the State submitted that it is difficult to establish the ingredients that constitute an offence under Section 306 of the Indian Penal Code. In the instant case the torture for demand of dowry persisted continuously after the marriage. The report of the Autopsy Surgeon who indicated the ligature mark and a scalp injury which fortifies the presumption under Section 113A of the Indian Evidence Act and therefore the appeal shall be dismissed.

9. The evidence of the prosecution witnesses reveal the evidence of PW-1 to be based on hearsay, who deposed for the first time before the Court to have heard about the death of the victim and on reaching the place of occurrence found her lying dead and assisted in the transmitting the body of the victim to N.R.S. Medical College and Hospital. PW-2 deposed to have heard about the death of the victim and her subsequent removal to the hospital. She identified her signature on the seizure list marked Ext. 1/1. Concerning seizure of ornaments by the police as per the seizure list. The seized articles were not shown to the deponent in Court.

10. PW-3 mentioned the death of the victim without further details.

11. PW-4 deposed to have known about the death of the victim who according to him lived with her husband (the appellant) in one tenanted room and he did not notice any abnormal relationship between the couple. He further stated that the tenanted rooms were adjacent to each other and the conversation of the inmates therein would be audible to each other. The sisters of the appellant visited the house on special occasions who resided at their matrimonial home.
12. PW-5 the brother of the victim narrated to have learnt the death of his sister from his mother. He subsequently reached the spot and witnessed her lying dead on the floor. On enquiry he came to learn from the father of the appellant that her sister had died by hanging against the handle of the almirah whereby the father-in-law of the victim removed her ornaments and sold them. There was a demand for money and on refusal the victim was assaulted. It was further submitted that on 17th August, 1995 one Susanta Saha, who was the son of his eldest sister had seen the victim to have been beaten up at her matrimonial house. Incidentally, the victim was withdrawn to her paternal house by Goutam Saha and the second sister. The victim disclosed that on refusal to a demand of Rs.5,000/- she was assaulted. The victim was later restored to her matrimonial house who further complained to have been tortured by her sister-in-law.
13. Pertinetly, the said Susanta Saha was not examined and an isolated incident of torture prior to 2½ months of the death of the victim had been emphasized upon.

14. PW-6, the Executive Magistrate conducted the inquest and prepared the report. He identified the carbon copy of the report marked as Ext. 3. PW-6 found a black injury mark on the right side of the throat below the right ear.
15. PW-7 and PW-11 were declared hostile by the prosecution.
16. PW-8 and PW-10 the brothers of the victim mentioned to have the death of their sister and subsequently found her lying on the floor near almirah.
17. PW-9, the mother of the victim described an incident of theft of ornaments belonging to her apart from being resorted to torture by the members of her matrimonial house. She further reiterated the evidence concerning demand of Rs.5,000/- and their inability to pay the same culminated in the victim's assault by the appellant and his family members.
18. PW-9 during her cross-examination stated that the victim requested to procure money for payment of matrimonial relations otherwise she would be killed. PW-9 being the mother of the victim did not mention about the proximate demand of table fan and subsequent refusal to have aggravated the intensity of torture upon the victim compelling her to commit suicide.
19. PW-10 the elder brother of the victim had been a seizure list witness who identified his signature on Exhibit-4, however, did not depose on the incident of his sister's suicide.
20. PW-12 the doctor examined the victim on 27.10.95. He did not detect any external injury.
21. PW-13, a co-tenant of the accused person, during his cross-examination stated that the appellant and his wife who resided in the same premises was never heard to quarrel between themselves.

22. PW-14, the sister-in-law of the appellant stated that the victim and appellant Shambhu had a good conjugal life pertinently PW-13 and 14 were not declared hostile by the prosecution. She further stated that the victim was liked by her husband, father-in-law, mother-in-law and sister-in-law.

23. PW-15 conceded to the evidence of PW-14.

24. PW-16 had been a seizure list witness without knowledge of the incident.

25. PW-17 the doctor who conducted the post mortem found the following injuries:-

“1. One oblique non continuous ligature mark placed high up in the neck above the thyroid cartilage in front of length 10”, breadth 1/2” with a gap of 2 1/2” in nape of neck. It has started 1/2” below left mastoid tip runs downwards and medially to pass 1” below left angle of mandible crosses midline in between chin and thyroid prominence then it passes through a point 1 1/2” below right angle of mandible and ends in nape of neck 2” behind right mastoid tip. The ligature mark was brownish parchmentised abraded and furrowed at places. On dissection of neck, sub cutaneous tissue was whitish parchmentised with evidence of rupture of few fibres of platysma muscles. The neck was dissected in layers and no extra layers and no extra vasation seen.

2. Extra vasation 3”x2” over right side of parietal and temporal bone in scalp.”

26. PW-17 in his deposition further stated that death in his opinion was due to the effects of hanging ante mortem in nature. From post mortem examination findings it was not possible to opine whether it was suicidal or

homicidal hanging. That was the post mortem examination report prepared and signed by him and concurred by his head of department Prof. R. Basu with the comment that the post mortem examination was held under his supervision and guidance.

27. PW-17 in his cross-examination stated that during hanging prior to death if the head strikes on a hard blunt substance like almirah, injury no. 2 might happened. Before conducting the post mortem examination he had gone through the inquest report.

28. PW-18 was the Investigating Officer who on completion of the investigation had filed the charge-sheet. During his cross-examination on recall stated that witness (P.W.8) Biswanath Saha did not state to him that he rushed to the matrimonial home of his sister Sandhya and found her lying on the floor near an almirah and that he found one rope around her neck and the other end of it was tied to a handle of the almirah. Same witness also did not state to him that her sister often reported that she was not supplied with proper food.

29. Statement of the de-facto complainant as per the written complaint was not corroborated by any of the related prosecution witnesses. The written complaint stated *“For an example, at one night my daughter was hit with a hot frying which was thrown at her and on the same night my daughter came home. Situations would get deadly when father-in-law and son-in-law together used to enter home in drunken state. In one usual conversation my daughter said – Father they (son-in-laws house) might kill me because one day he strangulated my and physically tortured me in an inhuman way. Due to fear*

of society and public disrespect I or my daughter did not disclose about this incident outside.”

30. The Hon’ble Supreme Court in **M. Mohan v. State**¹ held the following:-

“36. *We would like to deal with the concept of “abetment”. Section 306 of the Code deals with “abetment of suicide” 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.”*

37. *The word “suicide” in itself is nowhere defined in the Penal Code, however, its meaning and import is well known and requires no explanation. “Sui” means “self” and “cide” means “killing”, thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.*

38. *In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 309 IPC.*

39. *“Abetment of a thing” has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads 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

¹(2011) 3 SCC 626

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

Explanation 2 which has been inserted along with Section 107 reads as under:

“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.”

40. *The learned counsel also placed reliance on yet another judgment of this Court in Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , in which a three-Judge Bench of this Court had an occasion to deal with the case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered “you are free to do whatever you wish and go wherever you like”. Thereafter, the wife of the appellant Ramesh Kumar committed suicide.*

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.”*

31. In **K.V. Prakash Babu v. State of Karnataka**², the following was observed by the Hon’ble Supreme Court:-

“9. *In view of the aforesaid evidence, the question that emerges for consideration is whether the conviction under Sections 498-A and 306 IPC is legally justiciable in this context. We think it appropriate to refer to Section 498-A IPC. The said provision reads as follows:*

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purposes of this section, “cruelty” means—

(a) *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

(b) *harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

10. *The said provision came up for consideration in Girdhar Shankar Tawade v. State of Maharashtra [Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177 : 2002 SCC (Cri) 971] , where the*

²(2017) 11 SCC 176

Court dwelling upon the scope and purport of Section 498-A IPC has held thus : (SCC p. 180, para 3)

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures : whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide, or (ii) to cause grave injury or, (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

(emphasis supplied)

11. *In Gurnaib Singh v. State of Punjab [Gurnaib Singh v. State of Punjab, (2013) 7 SCC 108 : (2013) 3 SCC (Cri) 49] , while dwelling upon the concept of “cruelty” enshrined under Section 498-A the Court has opined thus : (SCC pp. 118-19, para 18)*

“18. ... Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

12. *The aforesaid analysis of the provision clearly spells how coercive harassment can have the attributes of cruelty that would meet the criterion as conceived of under Section 498-A IPC. Thus, the emphasis is on any wilful conduct which is of such a nature that is*

likely to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of Section 498-A IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned.

13. *In this regard, Mr Singh has drawn our attention to the authority in Pinakin Mahipatray Rawal v. State of Gujarat [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] . In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of Section 498-A IPC and whether that would amount to abetment leading to the act of suicide within the meaning of Section 306 IPC. Dealing with the extra-marital relationship, the Court has opined that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on, but extra-marital relationship as such is not defined in the Penal Code. The Court analysing further in the context of Section 498-A observed that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of*

endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that : (Pinakin Mahipatray case [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] , SCC p. 58, para 27)

“27. Section 306 refers to abetment of suicide [which] 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 extra-marital 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.”

(emphasis added)

15. *The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalise but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There*

is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.”

32. The Hon’ble High Court held the following in **Gurcharan Singh v. State of Punjab**³:-

“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.

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,

³(2020) 10 SCC 200

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.”

33. In ***Pinakin Mahipatray Rawal v. State of Gujarat***⁴, the Hon’ble Supreme Court held the following:-

“20. *We have to examine the correctness or otherwise of the findings recorded by the trial court, affirmed by the High Court, as to whether the alleged relationship between A-1 and A-2 has in any way constituted “cruelty” within the meaning of the Explanation to Section 498-A IPC. The facts in this case have clearly proved that A-1 has not ill-treated the deceased, either physically or mentally, demanding dowry and was living with A-1 in the matrimonial home till the date she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498-A. Section 498-A IPC reads as under:*

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purposes of this section, ‘cruelty’ means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful*

⁴(2013) 10 SCC 48

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.”

21. This Court in *Girdhar Shankar Tawade v. State of Maharashtra* [(2002) 5 SCC 177 : 2002 SCC (Cri) 971] , examined the scope of the Explanation and held as follows: (SCC p. 180, para 3)

“3. The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.”

22. In *Gananath Pattnaik v. State of Orissa* [(2002) 2 SCC 619 : 2002 SCC (Cri) 461] , this Court held that the concept of cruelty under Section 498-A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.

23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of

marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

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.”

34. The Hon’ble Supreme Court held the following in **Kashibai v. State of Karnataka**⁵:-

“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—

⁵2023 SCC OnLine SC 575

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 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.”*

35. The Hon’ble Supreme Court held the following in **Bhagwan Das v. Kartar Singh**⁶:-

“9. *The word “abetment” has been defined in Section 107 IPC as follows:*

“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

⁶(2007) 11 SCC 205

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.”

10. *Learned counsel for the appellant has relied on the decision of this Court in Brij Lal v. Prem Chand [1989 Supp (2) SCC 680 : 1991 SCC (Cri) 394 : AIR 1989 SC 1661]. In that case it was held that:*

“Where there was overwhelming evidence that the accused had made the life of his wife intolerable by constantly demanding money and made it clear to her that if she wanted to die, she may do so on very same day and give him relief forthwith, thereby spurring her and goading her to commit suicide, the case would squarely fall under the first category of abetment under Section 107.”

11. *On the other hand, learned counsel for the respondents relied on the decisions referred to in the impugned judgment. Thus in Netai Dutta v. State of W.B. [(2005) 2 SCC 659 : 2005 SCC (Cri) 543 : JT (2005) 3 SC 46] where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant was alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased to have committed suicide. Hence, it was held that there was no abetment to suicide.*

12. Similarly, in *Mahendra Singh v. State of M.P.* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] it was observed by this Court that it is common knowledge that the words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case the appellant said to the deceased “to go and die”. As a result of such utterance, the deceased went and committed suicide. However, the Supreme Court observed that no offence under Section 306 IPC read with Section 107 IPC was made out because there was no element of mens rea.

13. In *Randhir Singh v. State of Punjab* [(2004) 13 SCC 129 : 2005 SCC (Cri) 56] it was observed that: (SCC p. 134, para 12)

“12. ... More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.”

14. In the same decision it was observed following the decision in *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] that: (Orilal Jaiswal case [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] , SCC p. 90, para 17)

“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 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.”

36. PW-1, 2, 3, 4, 13, 14, 15 and 16 had been the independent witnesses who were not declared hostile by the prosecution. The co-tenants residing adjacent to the rooms of the appellant and victim did not narrate in constrained relationship between the parties. The family members of the victim mentioned about the occurrences that were incoherent and not in alignment with the statement in the written complaint though the written complaint/F.I.R. is not an encyclopedia and cannot be treated as substantive piece of evidence, however, can be considered for the purpose of corroboration. Such incidences of domestic dispute are normal between a married couple and cannot be blown out of proportion to implicate all the family members of the husband. Specific overt acts of the appellants to have abated the commission of suicide has not been described to have been so severe that the victim had no other way but surrendered to the extremities of life. The co-tenants residing in the precincts would have been the best possible witnesses to narrate an immediate incident of torture or abetment propelling the victim to commit suicide. Presumption under Section 113A of the Indian Evidence Act cannot be sacrosanct to be generally applicable in every case of a woman committing suicide within seven years of marriage. The prosecution has to prove the element of continuous torture on the victim coupled with the abetment to commit suicide in order to attract the ingredients of Section 498A and Section 306 of I.P.C. to enforce culpability.
37. In the absence of such evidence based on general and omnibus allegations, the appellant cannot be convicted.

38. 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.
39. Under such facts and circumstances, the judgment and order dated 08.03.2001 & 12.03.2001 passed by the Learned Additional Sessions Judge, 6th Court, Alipore, 24 Parganas (South) in Sessions Trial No. 1(5)(99) convicting thereby the appellant under Sections 306/498A of the Indian Penal Code is set aside.
40. The instant criminal appeal being CRA 136 of 2001 stands disposed of.
41. There is no order as to costs.
42. I record my appreciation for the able assistance rendered by Mr. Amartya Ghosh, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
43. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
44. 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.)