

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 423 of 2009

**Shyamapada Saha and Ors.
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Himanshu De, Sr. Adv. Mr. Navanil De Mr. Rajeshwar Chakraborty Ms. Srinjan Ghosh Mr. Subhrajit Dey
For the State	: Mr. Narayan Prasad Agarwal Mr. Pratick Bose
Heard on	: 31.08.2023, 13.10.2023, 30.11.2023, 05.12.2023, 06.12.2023, 14.12.2023.
Judgment on	: 12.03.2024

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is filed against the judgment and order dated 28.04.09 passed by the Learned Additional Sessions Judge, Fast Track, 1st Court, Malda in Sessions Case No. 18/2006 being Sessions Trial NO. 1(1)/2008, convicting the appellants under Section 498A/304B/34 of the Indian Penal Code and sentencing the appellants to suffer simple imprisonment for 7 years each for the offence 304B of the Indian Penal Code and to suffer simple imprisonment for 2 years and to pay a fine of Rs. 500/-

each in default to suffer further simple imprisonment for 2 months each for the offence under Section 498A of the Indian Penal Code.

2. The prosecution case precisely stated that on 19.09.02 at 19:35 hrs one Mukul Rani Das lodged a complaint at Harishchandrapur Police Station on an allegation that her daughter namely Smriti Das aged about 23 years was married to Shyamapada Saha providing sufficient dowry. After one and half years of peaceful marriage accuseds Radhyeshyam Saha, Subhas Saha started to torture upon her both physically and mentally.
3. It was further alleged that accused Shyamapada Saha at the instigation of accused Radhyashyam Saha, Subhash Saha and Sikha Saha used to assault Smriti Saha, the daughter of the de-facto complainant as reported to her over telephone by her deceased daughter.
4. Accused No.1 used to send her daughter on demand of money, which could not be fulfilled due to financial incapacity and would console the victim to return to her matrimonial home.
5. 25/26 days before the incident accused Shyamapada Saha being instigated by his mother assaulted the victim and sent her to her parental house. The victim Smriti Saha, declined to go back to the matrimonial house because of intolerable torture perpetrated upon her.
6. It was further alleged that on 02-09-2002 de-facto complainant persuaded the victim to return to her matrimonial home. On 19-2-2002 at noon time at about 11-30 A.M. Netai Saha, the elder brother of Shyamapada Saha, rang Radharani Das, the youngest daughter of the de-facto complainant intimating her that the victim suffered diarrhoea and on receipt of such

information the de-facto complainant hurriedly reached the matrimonial house of her daughter and found her dead.

7. It was further asserted in the F.I.R. that it was the firm conviction that her daughter had been murdered.
8. On the basis of such F.I.R. Harishchandrapur P.S. Case No. 115/ 2002, dated 19-9-2002, U/S. 498(A)/304B/34 of 1.P.C. was started and investigation was set in motion and after completion of investigation Charge Sheet U/S. 498(A)/3048/34 of 1.P.C. was submitted against all the convicts and the Charge-Sheet was submitted on 30/6/2003.
9. The trial court framed Charge against all the accused, persons U/S. 498(A)/3048/34 of 1.P.C. on 17-01-2008 to which they pleaded not guilty and claimed to be tried.
10. In course of trial the prosecution examined as many as 16 witnesses and exhibited certain documents.
11. Out of the witnesses examined two sisters of the deceased, namely Rina @ Bina Mondal and Radharani Das were examined as PW-1 and PW-11 respectively. The mother of the deceased Mukul Rani Das was examined as PW-5 and the brother of the deceased Biswajit Das was examined as PW-12. PW-2 Dhirendra Nath Das who is the 'Meshomosai' of the deceased has been declared hostile and PW-10 Laxmi Das who is the cousin sister of the deceased has also been declared hostile. The other hostile witnesses were PW-9. Alpana Saha and PW-13 Indra Mohan Saha. Accordingly PW-2, PW-9, PW-10, PW-13 are hostile witnesses. PW-3 is Dr. M.L. Das who held autopsy over the dead body of Smriti Saha. PW-6 is Dr. Swapan Kr. Roy to whose

chamber deceased was taken and who declared her dead. PW-7 is Dr. Mujibar Rahman who is a practicing doctor in the village of the defacto complainant and who once treated the deceased, who narrated her plight of torture to him.

PW-4 Rabin Chandra Roy escorted the dead body to District Hospital for post-mortem. PW-8 S.I. Ashim Gope was a Police Officer who registered the F.I.R. and initiated Harishchandrapur P.S. Case. PW-14 Const. Gopal Mukherjee was a witness to the S.L. in respect of the wearing apparel of the deceased and PW-16 S.I. Ashutosh Roy was the investigating officer.

PW-15 Arati Ghosh was the wife of the scribe who died during pendency of the trial and to prove the hand writing of the scribe she had been examined by the prosecution.

12. Besides the oral testimony of the witnesses the prosecution has also relied on documentary evidences and those documents have been marked as exhibits. Out of several exhibits the important exhibits are Ext.1 which was the Post-mortem Report, Ext.-4/2 was the written complaint, Ext.-5 was the formal F.I.R., Ext.-6/2 was the Inquest Report. Ext. 7/1 i.e. the Magisterial Inquest Report. Ext.-9 was the Sketch Map and other exhibits related to the signature of different witnesses either in the Seizure List or in Inquest Report or on dead body challan.
13. The Learned Advocate for the appellants submitted that –
 - i. The Learned Trial Judge came to the finding that the death of the victim took place within 7 years of marriage and the evidence of the PW's 1, 5, 7, 11 and 12 established the demand of dowry and ill-

treatment and such ill-treatment and harassment was inflicted few days before the date of death of the victim/deceased. So, there was no scope to throw away all the above materials simply on technical ground that no specific amount or articles of dowry had been mentioned or that no agreement of dowry had been proved.

The Learned Trial Judge observed that PW's 1, 5, 7, 11 and 12 asserted such torture for dowry in cross-examination also.

It was advanced by the defence that at the time of inquest held by S.I. Ashutosh Pal, PW-16, the brother of the deceased PW-12 was very much present there but he did not make any complaint of any torture upon the deceased and on the other hand, it had been mentioned in the inquest report that the victim had a quarrel with the accused Shikha Saha in connection with their children on that fateful day and as such the victim committed suicide by hanging. Even the Executive Magistrate who was not examined was present when the inquest was held and PW-12, Biswajit Das, the brother of the deceased was also present at the time of inquest but he also did not make any complaint before the Executive Magistrate. Therefore, for the defect of the prosecution, the complainant should not suffer.

More so, there was no specific complaint or any specific evidence regarding the demand of dowry with minute details, but the Learned Trial Judge came to the conclusion that for demand of dowry, there was physical torture and harassment resulting the death of the victim

and therefore the offence under Section 304B of the Indian Penal Code was proved.

The Learned Trial Judge came to the finding that there was allegation against all the accused persons and Shyamapada (husband) took the leading part on being instigated by the other accused persons and therefore all the six accused persons should be convicted. There may be certain defects on the part of the prosecution specially of the Investigating Officer (PW-16) and the Executive Magistrate and for any such latches on the part of the prosecution, the complainant should not suffer and therefore the charge under Section 498A/304B of the Indian Penal Code had been proved against all the 6 accused persons.

- ii. It was further submitted that the Learned Trial Judge came to the finding on a wrong appreciation of evidence as also based on conjectures and surmises without taking into vital contradictions and omissions and therefore, the evidence of PW's 1, 5, 7, 11 and 12 as also the evidence of the P.M. Doctor (PW-3), Private Doctor (PW-6) and the evidence of the Investigating Officer (PW-16) should be analyzed:

- a. There were vague allegations of physical assault and demand of dowry against the principal accused, the husband namely Shyamapada Saha who had already served out the sentence. The father-in-law, the appellant no. 5, Buddhulal Saha had already died.
- b. It was alleged in the complaint, as also in evidence that the appellant no. 1, Shyamapada Saha (husband) very often used to

assault the victim being instigated by the other appellants. However, it was apparent on the face of record, from the Post Mortem report as also from the evidence of the Post Mortem Doctor that there was no external marks of injury even after careful examination and this had not been considered by the Learned Trial Judge.

- c. It appeared from the inquest report (exhibit 6) that the inquest officer observed that at about 10 AM on September 19, 2002 there was a conflict between the victim and the sister-in-law, Smt. Shikha Saha regarding their children. At about 11:15 AM, the husband came and saw that the victim was hanging from the ceiling fan. It appeared from the evidence of PW-6, Dr. Swapan Kr. Ray that on September 19, 2002 at about 11:30 AM, all the accused persons brought one female patient at his chamber. Moreover, the Learned Executive Magistrate was also present at the time of inquest over the dead body of the victim when Biswajit Das, PW-12 was present there, but he also did not make any complaint against anybody before the Inquest Officer and Magistrate. It will appear from the evidence of the Investigating Officer, (PW-16) that at the time of holding inquest, Biswajit Das (brother of the deceased) did not make any complaint before him. The Investigating Officer (PW-16) also stated that there was a quarrel between the victim and her "Jaa" i.e. sister-in-law over the issue of their children and he also did

not mention in his report about the demand of dowry or any torture related to dowry. PW-16 also stated that he did not mention that it was a case of dowry death.

- d. The evidence of the Inquest Officer and Investigating Officer and the Post Mortem doctor, PW-3 had not been taken into consideration by the Learned Trial Judge.
- iii. There was no evidence that soon before her death, she was subjected to physical torture of harassment due to demand of dowry. There was not an iota of any instigation against the other members of the family so as to attract Section 304B of the Indian Penal Code against the other members of the family as the husband had already served out the sentence.
- iv. So far 498A of the Indian Penal code was concerned, there was no whisper throughout the length and breadth of the F.I.R. as to what the various tortures were and the nature thereof. There were no specific allegations against any of the accused persons except the husband and the allegations were all general and omnibus in nature.

There was nothing to show the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence.

- v. The husband had already served out the sentence and the evidence against the other accused persons were general and omnibus in character. The specific role, mode, fashion and manner of torture have not been specified by any of the evidences on record.

- vi. PW-5, Mukul Rani Das, the mother of the victim lodged the complaint that the accused no.1 (husband) would very often assault her daughter with the provocation of the other members of the family and informed her 25/26 days before the suicide. These two words 25/26 days before the alleged incident had not been stated in her evidence. This was a vital omission affecting the credibility of the version of the witness.
- vii. Section 304B of the Indian Penal Code had not been attracted in the present facts and circumstances of the case as "soon before her death she was not tortured for dowry as there was no evidence and P.W.3, the Post-Mortem Doctor nullified that he did not find any marks of injury even after careful examination.
- viii. Even P.W.7, Dr. M.M. Rahaman asserted in his evidence stated that he treated the victim on December 06, 2001 (death of Smriti was on 19/09/2002) and the patient stated to him that she was assaulted by her husband, Shyamapada Saha who had already served out the sentence.
- ix. Therefore, in view of Hiralal's case reported in (2003) 8 SCC 80 Paragraphs 9 and 10, the expression "soon before the death" and Section 113B of the Evidence Act have been explained. Here, in the reported case, settlement was arrived at 30/11/1998 and death of the deceased was on 14/04/1999 (after 5 months) and the Hon'ble Supreme Court came to the conclusion "Therefore, the basic

requirement of cruelty or harassment soon before the death to bring application of Section 304B of the Indian Penal Code is absent.”

- x. In the present case, the victim lady was treated on 06/12/2001 by PW-7 and she committed suicide on 19/09/2002 which is after 9 months and in between there is no evidence of torture and cruelty.
- xi. In Sanju's case reported in (2002) 5 SCC 371 - Paragraphs 8 to 12, the definition of abetment has been given and Paragraphs 11 and 12 of the said judgment it has been stated that petulance, discord and differences are not expected to induce a similarly circumstanced individual in a given society to commit suicide and in that case abusive languages were uttered on July 25, 1998 and suicide by the deceased on July 27, 1998 (within 2 days) is not proximate and does not create a live link between the cruelty and the death concerned.
- xii. The Learned Trial Judge has relied upon PW-1, PW-5, PW-7, PW-11 and PW-12 to base the conviction of all the accused persons. The husband Shyamapada Saha has already served out the sentence.

14. The Learned Advocate for appellants relied on the following decisions:-

- i. The Hon'ble Supreme Court in **Tarun v. State of W.B.**¹ held the following:-

“4. To appreciate this contention, we have ourselves scrutinised the evidence of PWs 2, 4 and 5. The maidservant (PW 4), who deposed in her evidence-in-chief about the fact that the accused used to assault the deceased almost daily on the instigation of his sister, but, in the cross-examination, it has been elicited that she has not stated so in her statement to the police recorded under Section 161 CrPC. Such material

¹ (2001) 10 SCC 754

omission would discredit her version in court. If her evidence is taken out from the purview of consideration, then the evidence of PWs 2 and 5 cannot be held to be of such nature which would establish the cruelty on the part of the husband to bring home the offence under Section 498-A IPC. In our view, therefore, the High Court was in error in upholding the conviction under Section 498-A IPC.”

- ii. In ***Hira Lal v. State (Govt. of NCT), Delhi***² the following was held by the Hon’ble Supreme Court:-

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114

² (2003) 8 SCC 80

Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

10. *The evidence of PWs 1, 5, 10 and 11 shows that at the time of marriage there was no demand for dowry. But subsequently, the demands were made, and ill-treatments were meted out. The crucial question is whether they were soon before the death. PWs 10 and 11 stated that grievances were made before the Crime Against Women Cell and the authorities brought about reconciliation. It, however, was candidly admitted that there was no mention about any dowry aspect while the differences were ironed out. The settlement arrived at on 30-11-1998 was essentially for separate residence. Therefore, there is no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14-4-1999, about ill-treatment by the accused persons to attach culpability under Section 304-B IPC. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304-B is absent.”*

iii. In **Sanju v. State of M.P.**³ the Hon'ble Supreme Court held the following:-

“8. In *Swamy Prahaladdas v. State of M.P.* [1995 Supp (3) SCC 438 : 1995 SCC (Cri) 943] the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “to go and die”. This Court was of the view that mere words uttered by the accused to the deceased “to go and die” were not even *prima facie* enough to instigate the deceased to commit suicide.

9. In *Mahendra Singh v. State of M.P.* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under: (SCC p. 731, para 1)

“My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

10. This Court, considering the definition of “abetment” under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her

³ (2002) 5 SCC 371

husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty.”

12. *Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7-1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased “to go and die”. For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 CrPC is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him “to go and die”. Even if we accept the prosecution story that the appellant did tell the deceased “to go and die”, that itself does not constitute the ingredient of “instigation”. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the*

moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

iv. The Hon’ble Supreme Court in **Neelu Chopra v. Bharti**⁴ held the following:-

“9. *In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.*

10. *When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the*

⁴ (2009) 10 SCC 184

aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”

- v. In **Geeta Mehrotra v. State of U.P⁵** the following was held by the Hon’ble Apex Court:-

“**20.** Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

...

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too

⁵ (2012) 10 SCC 741

numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

vi. This High Court in **Shyama Devi v. State of West Bengal**⁶ held the following:-

“22. So far as the evidence of Usha Devi is concerned it comprises partly of what she allegedly saw with her own eyes and partly of what she allegedly heard from Rina. Must we accept her evidence in toto as the learned Sessions Judge has done? It is true there is apparently no reason why she should make false statements. But since the fate of another person hangs and depends to a great extent upon her evidence we are of the view that her statement should not be accepted on its face value and that only that portion of her statement should be accepted which stands a close scrutiny. But how are we to test her evidence since there is no other independent evidence in this case. How to find out if she was giving a truthful account of what she had actually seen with her own eyes or had actually heard from her daughter (?) We are of the view that in such circumstances the statement of a witness should be tested against his/her previous statement made before the police whether treated as a F.I.R., or a statement under Section 162, Cr. P.C. Considering from this angle we find that almost all the statements on the point of torture as made by Usha Devi in her evidence before the

⁶ 1987 SCC OnLine Cal 38

learned Sessions Judge were absent in her statement before the police which was treated as the F.I.R., in this case (Ext. 6). S.I. Sanjeeb Ghosh (P.W. 12) the I.O., who recorded the F.I.R., says that Usha Devi (P.W. 3) did not tell him that due to inability on her part to supply the money and the tape-recorder (wrongly recorded as washing machine in the evidence), the accused persons released the servants and asked Rina to do all sorts of work, or that unless she supplied the machine there was no chance for survival of Rina or that Rina was compelled to work till 5 p.m., and she was not supplied with sufficient food or that she was given rotten food and asked to work till mid-night or that she was told to end her life by hanging or jumping from roof or that she saw Rina not being supplied with food till 4 p.m., while other members has finished their meals or that she saw Rina washing utensils without taking food.

23. *Thus it appears that details of torture given by Usha Devi in her evidence before the learned Sessions Judge were not given by her when she made her statement before the police immediately after the occurrence. All that she said in her F.I.R. (Ext. 6) was that Rina had told her on a few occasions that the present appellant and Bijay had been inflicting various tortures on her for not having received the said tape-recorder and the money. There is not even a whisper throughout the length and breadth of the F.I.R. (Ext. 6) as to what the various tortures were or the nature thereof. Of course, Usha Devi says that at that time. She was not in a proper state of mind. That very well may have been the case, but because of that her uncorroborated statements cannot be accepted and acted upon for reasons stated above.*

...

34. *Another point pressed before us by the learned Advocate for the appellant also strikes us as rather significant. The learned Advocate argues that whatever the treatment meted out by the appellant to Rina, that certainly could not have led her to commit suicide, for in spite of such treatment, Rina was very much alive in the evening of 15/7/81.*

Did anything happen so very shattering to her during the few hours in between the departure of her mother and aunt in the evening of 15/7/81 and the early afternoon of 16/7/81 which precipitated matters, frustrated her completely and led her to kill herself having concluded that was the only way out of the impossible situation as urged by the learned Public Prosecutor? There is no evidence, not even a whisper to show that. In that view of the matter the conclusion becomes inescapable that whatever might have led Rina to commit suicide it was not the treatment which she had received from the appellant.

...

37. *We feel that the mother should receive the same treatment as the son and that she should also be acquitted. While coming to our conclusion we have also considered the provisions of S. 113-A, Evidence Act. The presumption as to abetment of suicide arises under that section where the woman committing suicide has been subjected to cruelty by her husband and his relations. In the case at hand it has not been established that Rina had been subjected to cruelty by the present appellant. The section, therefore, has no application to the facts of this case."*

vii. The Hon'ble Supreme Court held the following in **Sanju v. State of M.P.**⁷:-

"11. *In Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go*

⁷ (2002) 5 SCC 371

and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty.”

15. The Learned Advocate for the appellants further submitted that:-

- i. It appeared from the evidence of PW-1 that there was no relation between the two families after the birth of the 1st child of Shyamapada Saha. The 1st child was born on February 12, 1998 and the 2nd child was born on September 26, 2000 and therefore, no relation was there between the two families for more than 4 years. PW-11 as per the evidence of I.O. that PW-1 was deposing for the first time before the Court which had got no legal value. PW-12 Biswajit Das did not make any complaint before the police officer at the time of inquest being held.
- ii. It was further submitted that the evidence of PW-9 was never considered by the Learned Trial Judge that there was conflict between the two sister-in-laws over the issue of children which fit in with the Supreme Court Judgment of Sanju's case reported in (2002) 5 SCC 371 where the Apex Court observed in Paragraph 11 that the victim was hyper sensitive to ordinary petulance, discord and differences in domestic life quite

common to the society and all these factors induced her to commit suicide and therefore, the accused persons should not be charged for abetting the suicide.

iii. As such, the evidence clearly show that there was no demand of dowry as also the P.M. Doctor could not find any injury after careful examination and there were general and omnibus allegations against the brother-in-law, sister-in-law and the mother-in-law. There was nothing to show the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence.

16. The Learned Advocate for the State submitted that the important witnesses upon whose testimony the prosecution stands are P.W.-1, P.W.-5, P.W.-11 and P.W.-12 and those witnesses were sisters, brother and mother of the deceased who in their testimony succinctly had stated that the accuseds subjected the deceased to torture both physically and mentally in connection with demand of dowry and the prosecution had been able to prove its case beyond reasonable doubt.

17. PW-5 while lodging the complaint with Harishchandrapur P.S. being Ext.-4 did not aver that her daughter Smriti Saha was subjected to torture in connection with demand of dowry. She only stated that sometimes accused Shyamapada Saha used to send her daughter to her parental house to bring money. There was no averment in the complaint that owing because of non-payment of money thus deceased was ever subjected to cruelty or harassment.

18. The evidence of PW-5 the mother of the deceased narrated to the effect that Radhyeshyam and Shyamapada were two brothers and on the same day both the brothers got married whereby Radhyeshyam received huge dowry while Shyamapada did not get any dowry because of poor financial condition of PW-5.
19. PW-1 Rina Mondal the sister of the deceased had stated in her evidence that her sister deceased Smriti Saha was the second wife of accused Shyamapada Saha who married for the second time due to death of first wife as the pecuniary condition of her father was not good the marriage of Smriti Saha was given with Shyamapada Saha and it was also stated in her evidence that her father was retired police constable at the time of marriage.
20. The evidence of PW-1 Radharani Das and PW-12 Biswajit Das who were sister and brother of the deceased respectively revealed that the marital tie between the deceased and accused Shyamapada was good and the matrimonial life deteriorated after 1½ year of marriage which indicated that as there was no torture relating to dowry or anything else, the initial conjugal life was good.
21. The material evidence enunciated by PW-1 the sister, PW- 5 the mother, PW- 11 the another sister and PW-12 the brother depicted that the main reason of the marriage of the victim with Shyamapada Saha whose first wife was dead was poverty and as such the marriage did not involve any expenditure.
22. The complaint and the deposition of PW-1, PW-5, PW-11 and PW-12 did not mention any demand of money at the time of marriage and up to its continuation for 1 and ½ years.

23. PW-12, the brother of the deceased was the attesting witness to the inquest report being Ext.-6 and Ext.-7. In the instant case there was one Inquest Report under Section 174 of Cr.P.C. conducted by police and another by Magisterial Inquest Report under Section 176 of Cr.P.C. Inquest Report done by the police was prepared prior to initiation of specific case and magisterial Inquest Report was said to be prepared after registration of F.I.R. From the evidence of PW-10 Laxmi Das it appeared that at the time of holding of the Inquest Report PW-1, PW-5 and PW-12 were present though PW-12 was only the signatory to the Inquest. The Inquest Report did not mention that deceased Smriti Saha was ever subjected to torture in connection of demand of dowry but it denoted that owing to dispute concerning the son of the deceased and the son of her 'Jaa' i.e. sister-in-law, there was a brawl over the trifling issue and Smriti Saha committed suicide at a time when accused Shyamapada Saha was not at his house.
24. The entire prosecution case did not cite any instance that soon before the death of Smriti Saha, she was ever subjected to torture in connection with demand of dowry.
25. Out of the sixteen prosecution witnesses PW-2, 3, 9, 10 and 13 were declared hostile by the prosecution. PW-1, 5, 11 and 12 were the related witnesses being the mother, two sisters and the brother of the deceased victim. The evidence of the related witnesses were material for the consideration of the instant appeal.
26. The victim was married to the appellant no. 1 as his second wife after the death of his first wife. The victim gave birth to two sons during her married

life with the appellant no. 1. Both the sons of the victim were residing with the family of the husband of the victim. The related witnesses as aforesaid in unison stated that the victim used to be subjected to physical and mental torture for demand of dowry which due to financial constraint could not be provided by the paternal family of the victim. The victim would narrate her hapless situation to the related witnesses time and again but in vain as she was repeatedly persuaded to continue with her matrimonial life. The victim was also taken to a doctor being the prosecution witness no. 7 Md. Mozibur Rahaman on 06.12.01, i.e. about 9 months prior to her death for medical examination when the victim stated to have been assaulted by her husband.

27. The Learned Advocate for the State relied on the deposition of the PW-7 though he did not produce any medical register at his charitable dispensary where the records of patients were maintained.
28. PW-1, one of the sisters of the victim in addition to her statement of torture being inflicted upon the victim, further stated that two of the elder brothers of the accused Shyamapada resided in separate mess and the other brothers resided in a joint family. PW-1 had visited the house of the accused during “Annyaprasan” ceremony of their first son and did not visit the said house thereafter owing to an insult occasioned by the accused persons. PW-1 further stated that they were not invited during the “Annyaprasan” ceremony of the second son of accused Shyamapada. The accused persons did not keep any link or relation with them after the birth of the first son of the accused Shyamapada. After the birth of the first son of Shyamapada, the

deceased victim at times would go to her father's house. However, Shyamapada used to take her back being annoyed with the victim.

29. PW-5, the mother of the deceased victim, stated that *"I can remember only one date regarding intimation of torture by my daughter to me but I cannot remember the other days of such information of torture. My daughter was medically treated by doctor M.M. Rahaman. I have filed the prescription of my said daughter received by said doctor M.M. Rahaman. I have not taken my daughter to doctor on any settled occasion always she was accompanied by her father. I did not instruct my daughter to lodge complaint against the accused persons at Rotuia P.S. The two sons of my said daughter are in the custody of accused Shyamapada Saha. I visited two three times to the house of the accused persons after the death of my said daughter to see the sons of my daughter but the accused persons did not allow me to see them. The said two grandsons are present today but I did not talk to them. I did not attend the "Annyaprasan" ceremony of the eldest son of my said daughter."*
30. PW-5 during her examination-in-chief deposed that on reaching the house of accused persons she found her daughter lying dead on the verandah of their bedroom and the accused persons were not available at their house. However, during cross-examination, PW-5 stated that it was a fact that Shyamapada and Subhash were arrested by the police at their own house on that date which was corroborated by the evidence of PW-16 the Investigating Officer.
31. Evidence of PW-11 other sister of the deceased victim corroborated the evidence of PW-1 and PW-5 in essence. It was further stated by PW-11 that

“prior to her death Shyamapada left my said sister at our house about 25/26 days ago since the occurrence and Shyamapada told us that without making payment of dowry Smriti should not be taken back. At that time I was present at our house. My elder sister, Smriti was sick due to assault. Thereafter, she was medically treated at the initiative of my parents. My said sister expressed her unwillingness to go back to her matrimonial home on that occasion. My said sister stated at that time that unless the dowry is paid then in that case the accused person would not leave me alive and they are inflicting such torture they may kill herself. She stayed at our house for 7/8 days. Thereafter, my parents made her understand the situation and thereafter to send her matrimonial home just 15/16 days ago from her death. Accused Radheshyam got huge dowry at the time of his marriage which could not be given to our elder sister and for that reason my elder sister used to do much work in the family. As my father could not make the demand by paying the entire ‘Borpon’ amount to Shyamapada and the other members of his family used to inflict torture upon her and as such she committed suicide. My father was a police constable and he was retired police personnel at the time of her marriage.”

32. PW-12 the brother of the victim corroborated the fact of his sister to have been assaulted for about 25 to 26 days prior to the date of her death. PW-12 was present at the spot when the inquest was being conducted however did not narrate any occasion of ill-treatment and torture upon the victim. PW-12 further denied during his cross-examination to have stated before the police that on 19.09.2002 in the morning at about 10:00 a.m. his deceased sister had a quarrel with Sikha Saha, i.e. the sister-in-law, with a dispute

concerning the children at about 11:15 a.m. the husband of the deceased returned home and found his wife hanging from the ceiling of their bedroom.

33. PW-16 the Investigating Officer, during his cross-examination, stated that
- “At the time of my inquest the brother of the deceased named Biswajit Das was very much present. The witnesses perused the report of inquest and thereafter signed the inquest report. At the time of holding inquest Biswajit Das brother of the deceased did not make complaint. Then says: Biswajit make complaint before me. Then says: at the time of inquest Biswajit did not make any complaint before me. It has been noted in the inquest report that during preliminary inquiry, I came to know that there was quarrel in between the deceased and her ‘Jaa’ over the issue of their children and at that time Shyamapada was not present at the house and he found that Smriti was hanging and thinking that she was still alive Shubhash brother of Shyamapada brought her down and took her to doctor. It is not mentioned in my report about demand of dowry or any torture related to dowry. I did not mention in my C.D. about any quantum of dowry or any accounts regarding of dowry etc. No such statement has come before me during my investigation specifying any fixation of any agreement of dowry or payment of any fixed amount of dowry or promise for future payment of any rest of dowry. No specific investigation was made by me to get the answer on those points. It is fact that Radharani did not specifically stated in verbatim that her used to take back her elder sister to her matrimonial home. PW-11 did not state before me that Shyamapada and his parents used create disturbance in their house on the ground that unless and until the dowry is paid she would not be*

accepted by them in their house. PW-11 did not state before me that about 24/25 days ago from the date of her marriage Shyamapada took back her elder sister to their house and told that she would not be taken back until and unless the dowry is paid entirely. PW-11 did not state before me that as her father did not meet the demand of dowry entirely so the accused persons used to inflict torture upon her elder sister and as a result she committed suicide. It is fact that PW-11 did not state before me that about 18/19 days ago from the death of Smriti she came to their house and asked their mother in her presence to meet up all the demand of dowry in respect of cash and articles otherwise the accused persons would kill her.”

34. The following principle has been laid down by the Hon’ble Supreme Court in **Subhash v. State of Haryana** reported in (2011) 2 SCC 715:-

16. *We may also refer to the Explanation to Section 162 CrPC. The same is reproduced hereinbelow:*

“Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

A bare reading of this Explanation would reveal that if a significant omission is made in the statement of a witness recorded under Section 161 CrPC, the same may amount to a contradiction and that whether it so amounts is a question of fact in each case.

17. *It is clear to us that the ocular evidence with regard to the events preceding the actual incident rested exclusively on the statements of PWs 2 and 10. The glaring omissions made by them are writ large in the cross-examination. We are, therefore, of the opinion*

that the present case is one of no evidence and the possibility that the deceased had been burnt in an accident cannot be ruled out. We, accordingly, allow the appeal, set aside the conviction of the appellant and order his acquittal.

35. The evidence of the investigation officer PW-16 denoted several statements of PW-11 which led to contradictions during the deposition in cross-examination.

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

8. The question that we are called upon to answer is as to whether the conviction as confirmed by the High Court under Section 498-A IPC and as recorded by it for the first time under Section 306 IPC would be sustainable or not.

9. The relevant provisions of the IPC that fall for consideration are as under:

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

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

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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

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

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

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

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

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

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

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

10. The relevant provision of the Evidence Act, 1872 that also requires consideration is as follows:

“113-A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of

the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).”

14. *Now the question that would fall for consideration is as to whether when the prosecution establishes cruelty under Explanation (b) of Section 498-A IPC and also establishes that the deceased committed suicide within seven years of the marriage, could the accused be also held guilty for the offence punishable under Section 306 IPC with the aid of Section 113-A of the Evidence Act.*

15. *The said question fell for consideration before the Bench of three learned Judges of this Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] . This Court, after reproducing the provisions of Section 306 IPC and Section 113-A of the Evidence Act, 1872 observed thus : (SCC pp. 626-27, paras 12-13)*

“12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid

circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says — ‘Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.’

13. The present case is not one which may fall under clauses secondly and thirdly of Section 107 of the Penal Code, 1860. The case has to be decided by reference to the first clause i.e. whether the appellant-accused abetted the suicide by instigating her to do so.”

(emphasis in original and supplied)

16. It could thus be seen, that this Court has observed that to attract the applicability of Section 113-A of the Evidence Act, the following conditions are required to be satisfied:

(i) The woman has committed suicide,

(ii) Such suicide has been committed within a period of seven years from the date of her marriage,

(iii) The husband or his relatives, who are charged had subjected her to cruelty.

17. This Court further observed that on the existence and availability of the aforesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. It has been held that the presumption is not mandatory; but only permissive as the words “may presume” suggest. It has further been held that the existence and availability of the aforesaid three circumstances shall not, like a formula, enable the presumption being drawn. It has been held that before a presumption being drawn, the court shall have regard to all other circumstances of the case. It has been held, that the consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. It thus observed that the expression “the other circumstances of the case” used in Section 113-A of the Evidence Act suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption.

18. It has been further held that when the case does not fall under clauses Secondly and Thirdly of Section 107 IPC, the case is to be decided with reference to the first clause [of Section 107] i.e. whether the appellant-accused abetted the suicide by instigating her to do so. It will be further relevant to refer to the following observations in Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] : (SCC pp. 629-30, paras 20-22)

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the

consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. *In State of W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] , this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.*

22. *Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.”*

(emphasis supplied)

22. *The Bench of two Judges of this Court had an occasion to consider a similar issue in Hans Raj v. State of Haryana [Hans Raj v. State of Haryana, (2004) 12 SCC 257 : 2004 SCC (Cri) Supp 217] . It will be relevant to refer to the following paragraphs : (SCC pp. 263-64, paras 12-13)*

“12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113-A of the Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The Explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498-A of the Penal Code....

13. Unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Evidence Act. Under Section 113-A of the Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the

court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.”

23. *The Court found that in the case there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. It has been held that when the allegation is of cruelty, it must consider the nature of cruelty to which the woman was subjected having regard to the meaning of the word “cruelty” in Section 498-A IPC. It has been held that one of the circumstances which has to be taken into consideration by the Court is whether the alleged cruelty was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.*

24. *This Court in Hans Raj [Hans Raj v. State of Haryana, (2004) 12 SCC 257 : 2004 SCC (Cri) Supp 217] has also referred to the judgment of this Court in State of W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] , wherein it is observed that the requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of the Evidence Act.*

25. *It will be relevant to refer to the following observations of this Court in Pinakin Mahipatray Rawal v. State of Gujarat [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] : (SCC p. 58, paras 26-27)*

“26. Section 113-A only deals with a presumption which the court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extramarital affair was of such a degree which was likely to drive the wife to commit suicide.

27. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed

suicide and the accused abetted the commission of suicide. But for the alleged extramarital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

26. *It has thus been observed that though presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused is on the prosecution. The prosecution has to establish beyond reasonable doubt that the accused had instigated, conspired or intentionally aided so as to drive the wife to commit suicide.*

27. *In Mangat Ram v. State of Haryana [Mangat Ram v. State of Haryana, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127] this Court observed thus : (SCC pp. 607-608, para 28)*

“28. We have already indicated that the trial court has found that no offence under Section 304-B IPC has been made out against the accused, but it convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. ...

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment of suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has

intentionally aided by an act or illegal omission in the commission of suicide.”

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

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

“37. Another aspect that needs consideration is that the cases wherein this Court has held that the conviction under Section 306IPC was tenable though charge was only under Section 304-BIPC, it was found the charge specifically stated that the deceased was driven to commit suicide on account of cruelty meted out to the deceased. However, in the present case, the charge reads thus:

‘That you all on 28-9-1994 in the area of Village Bohan, the death of Jaswinder Kaur wife of you, Gurjit Singh and daughter-in-law of you, Gurdial Singh and Mohinder Kaur and sister-in-law of Ranjit Kaur, was caused otherwise than under normal circumstances, you all being her

relatives, within a period of seven years of her marriage subjected her to cruelty and harassment for all in connection with demand for dowry and thereby committed an offence of dowry death punishable under Section 304-B of the Penal Code, 1860, and within my cognizance.'

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

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

28. *While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in Geo Varghese v. State of Rajasthan⁵ has observed as under:—*

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under:—

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

*14. Though, **the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium', 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be***

committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

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

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar v. State of Chhattisgarh¹ has defined the word ‘instigate’ as under:—

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

17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S. Cheena v. Vijay Kumar Mahajan⁶, it was observed as under:—

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

29. *The ingredients of Section 306 IPC have been extensively laid out in M. Arjunan v. State, represented by its Inspector of Police⁷ which are as under:—*

“The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however,

insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

30. *In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh v. State of Haryana⁸ observed as under:—*

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been

hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

42. *To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.*

43. *Now, so far as conviction under Section 498A IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3*

recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of Appellant No. 1 and the deceased is not disputed. The deceased committed suicide on 05.11.2014 and the complaint against the appellants were filed on 24.11.2014 i.e., 3 weeks after the death of the deceased

48. It is well settled that the Courts ought to be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. Reference may be made to the judgment of a three-Judge Bench of this Court in *Ramesh Kumar v. State of Chhattisgarh*⁹, wherein this Court set-aside the conviction of the accused for the offence under Section 306 IPC as ingredients of Section 306 IPC were not satisfactorily proved. It was observed as under:—

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. **The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.**

21. In *State of West Bengal v. Orilal Jaiswal*¹⁰, this Court has cautioned that the Court should be extremely careful in assessing the

*facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. **If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.***

(emphasis supplied)

39. In the case of **Paranagouda v. State of Karnataka** reported in **2023 SCC OnLine SC 1369**, the Hon'ble Supreme Court held the following:-

“22. *In Sher Singh Alias Partapa v. State of Haryana, (2015) 3 SCC 724 : (2015) 1 SCR 29 it has been held:*

“16. *As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word “deemed” in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word “shown” is used as synonymous to “prove” and the word “presume” as freely interchangeable with the word “deemed”. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word “deem” to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333] and *State of T.N. v. Arooran Sugars Ltd.* [(1997) 1 SCC 326], requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word “deemed” so as to give full effect to the legislation and*

carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word “shown” in Section 304-B IPC as to, in fact, connote “prove”. In other words, it is for the prosecution to prove that a “dowry death” has occurred, namely,

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) within seven years of her marriage,

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry, and

(v.) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word “soon” finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word “deemed” was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution to merely

present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.”

24. *In the aforesaid analysis of law, when we turn our attention to the facts on hand it would emerge from the records that appellants-accused persons have been convicted for the offences punishable under Sections 498A, 304B of IPC and Section 3 and 4 of Dowry Prohibition Act. Section 498A of IPC prescribes imprisonment which may extend to 3 years and the Explanation thereunder has two parts. The first part would relate to subjecting a married woman to cruelty for any willful conduct which is of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical). Second Part i.e. Clause (b) of Section 498A would indicate that cruelty would encompass harassment of a married woman where such harassment is with a view to pressurize her or any person related to her to meet any unlawful demand for any property or valuable security on account of failure by her or any person related to her to meet such demand.*

25. *In Dinesh Seth v. State of NCT of Delhi, (2008) 14 SCC 94, this Court has examined the width and scope of two Sections i.e., 304B & 498A and was held to be different. Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage. Whereas Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet any unlawful demand of property or valuable security. We have already discussed hereinabove as to there being no nexus for the deceased to self-immolate herself on account of such demand having preceded immediately before her death. As such we have opined that convicting the accused/appellants under Section 304B was improper or the prosecution had failed to establish that the death had occurred and soon before her death she was subjected to cruelty or harassment by the appellants.*

26. *It has been held in Dinesh Seth's (Supra) Case*

“24. *Section 498-A was added to IPC by amending Act 46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to*

commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation appended to this section defines the term “cruelty” to mean 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 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.

25. After three years, Section 304-B was inserted by amending Act 43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304-B IPC lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. By virtue of Explanation appearing below sub-section (1), the word “dowry” used therein carries the same meaning as is contained in Section 2 of the Dowry Prohibition Act, 1961.

26. The ingredient of cruelty is common to Sections 304-B and 498-A IPC, but the width and scope of the two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security.”

27. *Section 498A having a wider scope, it will have to be examined as to whether the accused is to be convicted for the offence punishable under Section 498A or in other words, the order of conviction passed by Sessions Court and affirmed by High Court deserves to be affirmed, notwithstanding the conviction under Section 304B having been set*

aside. Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife is subjected to cruelty by husband or relatives of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical). In the light of dying declaration (Ex.P-45) having been accepted to have been made by the deceased and the contents of the same disclosing that she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.

40. The following was held by the Hon'ble Supreme Court in **Sandeep Kumar v.**

State of Uttarakhand reported in (2022) 14 SCC 544:-

“52. We have set out the findings of the trial court. The charge is one under Section 304-B. The ingredients of the offence are well-settled. A marriage performed within seven years before the death of the wife. The death must be unnatural. Soon before the death, the deceased wife must have been at the receiving end of cruelty or harassment, on account of demand for dowry. It is described as dowry death. The relatives concerned, including husband, become liable. Section 113-B of the Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death if, it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry.”

41. The Hon'ble Supreme Court held the following in **Durga Prasad v. State of M.P.** reported in (2010) 9 SCC 73:-

“17. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for

dowry. Only then would such death be called “dowry death” and such husband or relative shall be deemed to have caused the death of the woman concerned.

18. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.

19. The decision cited by Mr R.P. Gupta, learned Senior Advocate, in *Biswajit Halder case* [(2008) 1 SCC 202 : (2008) 1 SCC (Cri) 172] was rendered in almost similar circumstances. In order to bring home a conviction under Section 304-B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed to fully satisfy the requirements of both Section 113-B of the Evidence Act, 1872 and Section 304-B of the Penal Code.”

42. The following principle was enunciated by the Hon’ble Supreme Court in ***Devender Singh v. State of Uttarakhand*** reported in (2022) 13 SCC 82:-

“11. The presumption drawn relating to dowry death has been contemplated in Section 113-B of the Evidence Act, 1872, which states as follows:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

12. Section 304-BIPC read along with Section 113-B of the Evidence Act, 1872 makes it clear that once the prosecution has succeeded in demonstrating that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry soon before her death, a presumption shall be drawn against the said persons that they have caused dowry death as contemplated under Section 304-BIPC. The said presumption comes with a rider inasmuch as this presumption can be rebutted by the accused on demonstrating during the trial that all the ingredients of Section 304-BIPC have not been satisfied. [Ref. : *Bansi Lal v. State of Haryana* [*Bansi Lal v. State of Haryana*, (2011) 11 SCC 359 : (2011) 3 SCC (Cri) 188] , *Maya Devi v. State of Haryana* [*Maya Devi v. State of Haryana*, (2015) 17 SCC 405 : (2018) 1 SCC (Cri) 768] , *G.V. Siddaramesh v. State of Karnataka* [*G.V. Siddaramesh v. State of Karnataka*, (2010) 3 SCC 152 : (2010) 2 SCC (Cri) 19] and *Ashok Kumar v. State of Haryana* [*Ashok Kumar v. State of Haryana*, (2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] .]

13. Having taken note of the relevant provision and the ingredients thereof, the facts of the instant case would disclose that the deceased and Appellant 1 had got married on 20-10-2007. Sushila, wife of Appellant 1 had gone missing from the matrimonial home from 24-4-2008 and her dead body was fished out on the 10th day from River Alakhnanda near Naragasu. From the basic facts noted above, the basic ingredients of Section 304-BIPC such as the death not being normal and such a death having occurred within 7 years from the date of her marriage would stand fully established.”

43. The following was held in **Satbir Singh v. State of Haryana** reported in (2021) 6 SCC 1 : (2021) 2 by the Hon’ble Supreme Court:-

“15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite

varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase “soon before” entails.

16. *The aforesaid position was emphasised by this Court in Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] , wherein the three-Judge Bench held that : (SCC pp. 222-23, para 15)*

“15. ... “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. ... In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

(emphasis supplied)

A similar view was taken by this Court in Rajinder Singh v. State of Punjab [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] .

17. *Therefore, courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim.*

18. *When the prosecution shows that “soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry”, a presumption of*

causation arises against the accused under Section 113-B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113-B of the Evidence Act reads as under:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

19. This Court in *Bansi Lal v. State of Haryana* [*Bansi Lal v. State of Haryana*, (2011) 11 SCC 359 : (2011) 3 SCC (Cri) 188] , emphasised the mandatory application of the presumption under Section 113-B of the Evidence Act once the ingredients of Section 304-B IPC stood proved : (SCC pp. 366-67, paras 19-20)

“19. It may be mentioned herein that the legislature in its wisdom has used the word “shall” thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. ... Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused.
...

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death.”

20. Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113-B of the Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

22. It is a matter of grave concern that, often, trial courts record the statement of an accused under Section 313 CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defence. It ought to be noted that the examination of an accused under Section 313 CrPC cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural justice — “audi alteram partem”, as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the court to question the accused fairly, with care and caution. The court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defence, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304-B IPC read with Section 113-B of the Evidence Act.

25. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman's husband or his relative “shall be deemed to have caused her death” unless proved otherwise. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death [refer *Maya Devi v. State of Haryana* [*Maya Devi v. State of Haryana*, (2015) 17 SCC 405 : (2018) 1 SCC (Cri]

768] , *Shanti v. State of Haryana* [*Shanti v. State of Haryana*, (1991) 1 SCC 371 : 1991 SCC (Cri) 191] .]

38. *At the cost of repetition, the law under Section 304-B IPC read with Section 113-B of the Evidence Act can be summarised below:*

38.1. *Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.*

38.2. *The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.*

38.3. *The phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.*

38.4. *Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.*

38.5. *Due to the precarious nature of Section 304-B IPC read with Section 113-B of the Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.*

38.6. *It is a matter of grave concern that, often, trial courts record the statement under Section 313 CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defence. It ought to be noted that the examination of an accused under Section 313 CrPC cannot be treated as a mere procedural*

formality, as it is based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

38.7. *The court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defence since the inception of the trial with due caution, keeping in consideration the peculiarities of Section 304-B IPC read with Section 113-B of the Evidence Act.”*

44. Apart from general and omnibus allegations of demand of dowry that too at a later stage of the matrimonial life of the deceased victim and not at the inception of marriage repudiates the claim of dowry by the appellants. None of the related witnesses as aforesaid could narrate a specific incident apart from vague accusations that there was a demand of dowry after a lapse of one and a half years of marriage. The deceased being the sixth daughter was married to the appellant husband as a second wife being impoverished as the father of the deceased victim at the time of her marriage was a retired person. There were disputations between the family members over stray incidents of insult experienced by them during a customary ritual to the annoyance of PW-1 and others. Evidently all the appellants did not reside in the same house. None of the adjacent neighbours of the matrimonial home of the deceased victim were examined.

45. The appellant husband was absent at the time of commission of suicide by the deceased victim who was thereafter taken to the doctor for treatment and

was present in the house wherefrom they had been arrested contrary to the deposition of PW-5 in her examination-in-chief. The relationship between the families had not been congenial and at the death of the victim her mother, sisters and brother did not endeavour to rescue her sons from the society of her assailants but left them at their mercy and company to have raised by them.

46. Stray incidents of disagreements and disputes between a married couple is normal and cannot be amplified to the extent of causing physical and mental injury for demand of dowry.
47. To attract the provisions of Section 498A of the Indian Penal Code and Section 304B of the Indian Penal Code, the prosecution has to prove that the victim has been tortured to such an extent continuously which compels her to commit suicide without any other alternative.
48. The injury perpetrated must be so grave, severe and intolerable that the victim lacks her power to control her emotions and such intolerable devastating circumstances lead her to take an ultimate step to take her own life.
49. A normal lady with two children will definitely not commit suicide without adequate reason beyond her control. However, it is difficult to predict human psyche as to how a person will react in a given situation compared to and contrary to other persons. A person can be impulsive, reckless, inconsiderate and intolerant with regard to trivial issues compared to others who are sufficiently composed, considerate, matured and tolerant.

50. In a rural backdrop, trivial and minor issues can insist or incite a certain person to commit an act which otherwise will not be committed by a person of prudence and decisiveness.
51. The prosecution in the instant case has failed to prove the highest degree of cruelty to have been inflicted upon the victim to propel her to commit suicide. None of the appellants could be held responsible under such circumstances where apart from domestic indifferences the prosecution failed to prove the tragic incident to have occasioned by incitement and pernicious act of any of the appellants either in individual capacity or in conspiracy with each other in order to exercise their common intent.
52. Moreover, the post-mortem report did not mention any external marks of injury even after careful examination as observed and opined by PW-3 the Medical Officer.
53. In view of the above discussions, it is opined that the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
54. Accordingly, the criminal appeal being CRA 423 of 2009 stands disposed of.
55. There is no order as to costs.
56. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
57. 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.)