IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.312 of 2013

With

Cr. Appeal (DB) No.1109 of 2012

[Against the judgment of conviction dated 04.10.2012 and order of sentence dated 05.10.2012 passed by the learned Dist. & Addl. Sessions Judge-Ist, Jamtara in Sessions Trial No.99/2010**]**

Cr. Appeal (DB) No.312 of 2013

Maneshawar Soren @ Mansar Soren Son of Srijal Soren, resident of Village-Bohradangal, P.O. + P.S.-Bindapathar, District-Jamtara. **…. …. Appellant**

Versus

The State of Jharkhand **…. …. Respondent**

With

Cr. Appeal (DB) No.1109 of 2012

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1. Nuni @ Anita Murmu wife of Manoranjan Soren daughter of Devilal Murmu, resident of Village-Charkadaha, P.O.+P.S.-Bindapathar, District-Jamtara.

2. Srijal Soren Son of late Lodu Soren.

3. Paklu Baski @ Maiku Baski wife of Srijal Soren, both 2 & 3 resident of Village-Bohradangal, P.O. + P.S.-Bindapathar, District-Jamtara. **…. …. Appellant**

Versus

The State of Jharkhand **…. …. Respondent**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

HON'BLE MR. JUSTICE NAVNEET KUMAR

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For the Appellants : Mr. P.C. Roy, Advocate

Mr. Nityanand Pd. Choudhary, Advocate

(In both the appeals)

For the State : Mr. Pankaj Kumar, P.P.

…..

C.A.V. on 22/11/2024 ***Pronounced on 18/12/2024***

Per Sujit Narayan Prasad, J.

Prayer

1. The instant appeals filed under Section 374 (2) of the Code of Criminal Procedure, are directed against the judgment of

conviction dated 04.10.2012 and order of sentence dated 05.10.2012 passed by the learned Dist. & Addl. Sessions Judge, Jamtara in Sessions Trial No.99/2010, whereby and whereunder, the appellant, namely, Maneshawar Soren @ Mansar Soren has been convicted for the offence punishable under Sections 498(A), 302 and 34 of the Indian Penal Code and sentenced him to undergo R.I. for life along with fine of Rs.10,000/- for the offence under Section 302 of the IPC and further sentenced to undergo R.I. for three years along with fine of Rs.5,000/- for the offence under Section 498(A) of the IPC and in default of payment of fine, he has been sentenced to undergo further period of three months.

2. So far as appellants, namely, Srijal Soren and Paklu Baski in Cr. Appeal (DB) No.1109 of 2012 are concerned, they have been convicted for the offence punishable under Sections 498(A), 302/34 of the IPC and so far as appellant, namely, Nuni @ Anita Murmu, she has been convicted for the offence under Section 302 of the IPC and accordingly, all the appellants as named above, have been sentenced to undergo R.I. for life along with fine of Rs.10,000/- each for the offence under Section 302 of the IPC. The appellant, namely, Srijal Soren and Paklu Baski have further been sentenced to undergo R.I. for three years along with fine of Rs.5,000/- each for the offence under Section 498(A) of the IPC and in default of payment of fine, they have

undergo further period of S.I for three months. All the sentences have been directed to run concurrently.

Prosecution case

3. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of prosecution case, as per the *fardbayan* of Bishnu Murmu, which reads as under:

4. The prosecution case in brief is that one Bishnu Murmu gave his fardbeyan in the house of Srijal Soren of village Bohradangal P.S Bindapather to the effect that his sister Hiramuni Murmu was married about four years ago with Maneshawar Soren S/o Srijal Soren, but since after marriage she did not bear any child, therefore, Muneshawar Soren brought another woman Nuni Murmu of village Charkdah as concubine and used to commit *marpit* and cruelty with his sister Hiramuni Murmu. On 7/4/2010 the mother-in-law of his sister came with her sister to tell him that her brother was sick and after left his sister to his village, the mother-in-law of his sister tried to go away from there, but his sister was not agreeing to stay in his house and she returned back with her mother-in-law on same day at her in-law's house.

5. On next day on 8/4/10 at 4:p.m., the cousin brother of Muneshawar Soren informed that Hiramani Murmu suffering

from diarrhea. On getting this information, the informant went to the in-law's house of his sister at village- Bohradangal and saw that the dead body of his sister was there and he saw the mark of lathi on the neck and on both hands and also blood is found on her nose. The informant apprehended that his brother-in-law Paklu, Muneshawar Soren, Srijal Soren, Baski, Nuni Murmu along with Parmeshawar Baski and Jitan Baski committed murder of his sister due to not having any child.

6. On the basis of fardbeyan, Police registered Bindapather P.S Case No. 32 of 2010 and after investigation the Police submitted charge-sheet.

7. Accordingly, learned C.J.M., took cognizance of the offence against the altogether six accused persons. The case was committed to the Court of Sessions. The learned Sessions Judge registered the case and framed the charge under Sections 498A & 302/34 of the IPC. During course of trial, the case record was transferred for final disposal.

8. In order to prove its case, prosecution examined altogether 15 witnesses, i.e., P.W. 1 Bishnu Murmu, P.W. 2 Mohan Murmu, P.W. 3 Mishir Kisku, P.W. 4 Sakal Soren, P.W. 5 Muneshawar Chaudhary, P.W. 6 Dr. Alfred Murmu, P.W. 7 Raj Kumar Mirdha, P.W. 8 Jiyaram Soren, P.W. 9 Madan Singh, P.W. 10 Chotelal Rai, P.W. 11 Dr. Ajay Kumar Ghosh, P.W. 12 Talam Murmu,

P.W. 13 Rameshawar Mohali, P.W. 14 Mukesh Murmu and P.W. 15 Budhu Murmu.

9. The trial Court, after concluding the evidence of prosecution, recorded the statement of the accused persons under Section 313 of the Criminal Procedure Code, in which, accused persons had denied the prosecution evidence and claimed to be innocent.

10. The learned trial court, after perusal of record found the charge proved against the present accused/appellants. Accordingly, the present accused/appellants have been found guilty, as such, convicted and sentenced vide impugned judgment of conviction dated 04.10.2012 and order of sentence dated 05.10.2012, which is the subject matter of instant appeal.

11. It needs to refer herein that but the learned trial court could not find the charges proved against the other alleged co-accused persons namely Jiten Baski and Paremeshwar Baski who are the maternal uncle of the accused appellant Maneshwar Soren on the ground that since the both the alleged accused persons are resident of district Deoghar, and the alleged occurrence was took place at district Jamtara and further no material evidence was found against the said two persons and accordingly they have been acquitted from all the alleged charges.

Arguments of the learned counsel for the appellants

12. Mr. P.C. Roy, learned counsel for the appellants has taken the following grounds by assailing the impugned judgment of conviction and order of sentence: -

(i) There is vital contradiction in the testimony of the prosecution witnesses and none of them have supported the prosecution version said to be consistent.

(ii) The ocular witnesses are totally in contradiction to the medical evidence.

(iii) The Doctor has given its opinion assigning the reason of death is due to hanging and not strangulation.

(iv) Even, if the entire prosecution version is said to be accepted in entirety, then at best, it will be said to be a case of Section 306 of the IPC and not of Section 302 of the IPC.

(iv) Learned counsel for the appellants has relied upon the following judgments in order to substantiate his arguments:

(a) ***Sawal Das Vrs. State of Bihar, (1974) 4 SCC 193.***

(b) ***Javed Abdul Rajjaq Shaikh Vrs. State of Maharashtra, (2019) 10 SCC 778.***

(c) Guna Mahto Vrs. State of Jharkhand, (2023) 6 SCC 817.

13. Learned counsel for the appellants, on the aforesaid grounds, has submitted that the impugned judgment of

conviction/sentence suffers from patent illegality and hence, it is not sustainable in the eye of law.

Arguments of the respondent-State

14. *Per Contra,* Mr. Pankaj Kumar, learned Public Prosecutor appearing for the respondent-State has taken the following grounds by defending the impugned judgment of conviction: -

(i) It has been contended that all the witnesses have consistently remain same with respect to the issue of commission of crime of murder of the deceased.

(ii) If the testimony of the entire witnesses will be taken into consideration, it does not transpire that there is any contradiction on that, rather, they have consistently deposed that due to solemnization of second marriage on account having not given birth to any child, the same is the reason to commit murder of the deceased so that the husband may solemnize second marriage.

(iii) The evidence of the doctor cannot be allowed to prevail upon the testimony of ocular witnesses.

(iv) The argument, which has been advanced on behalf of the learned counsel for the appellant that at best the case is of Section 306 of the IPC is also not fit to be accepted reason being that the death has occurred in the matrimonial house of the deceased and it is up to the accused to explain the reason of death.

15. Learned counsel for the respondent state, on the aforesaid premises, has submitted that the impugned judgment of conviction/sentence requires no interference by this Hon'ble Court.

Analysis

16. We have heard the learned counsel for the parties, considered the finding recorded by the learned trial court in the impugned judgment, gone across the testimony of the prosecution witnesses along with other exhibits particularly the postmortem report as available in the lower court records.

17. This Court, before examining the propriety of the impugned judgment based upon the submission made on behalf of the learned counsel for the parties, is of the view that the testimony of prosecution witnesses needs to be referred herein.

P.W.1, Bishnu Murmu (the informant) has deposed that the occurrence was of last "Chaitra" month, his sister came to his house along with her mother-in-law and father-in-law, thereafter his sister returned back. The name of his sister is Hiramuni Murmu. Her marriage was solemnized about four years ago and after marriage, she resides at her in-law's house at Bohradangal. He has further deposed that the mother-in-law Paklu Baski, Nuni Murmu and Maneshawar Soren always tortured and used to do *marpit* with his sister and had been beating her as because she was not having any child**.**

At para-2, he has deposed that on the information of villagers that his sister was suffering from diarrhea, he came to the in-law's house of his sister at Bohradangal. He had further deposed that the police were present there and he saw that his sister was not alive and there was blood in her nose and the mark of lathi on her chest.

He had further deposed at para-3 that Maneshawar Soren, his mother and father intentionally committed the murder of his sister. At para-4 of his cross examination, he stated that he has not seen the occurrence of murder. He had further deposed that he had visited his sister's house (matrimonial house) two years ago.

P.W.2, Mohan Murmu, brother of the deceased, has deposed that in the last 'Chaitra' month, he got information that his sister was suffering from fever and diarrhea, thereafter, he along with his brother Bishnu Murmu came to Bohradangal and saw that his sister was murdered and a police vehicle was standing near the house of Srijal Soren(appellant and father-in-law of deceased). He saw the dead body of his sister and found that there were mark of lathi on her chest and also her hand was broken.

At para-2, he has stated that the marriage of his sister was solemnized about four years ago with Muneshawar Soren S/o Srijal Soren. After sometime of marriage, his sister was tortured

by accused persons as his sister became issueless. His sister was tortured by Maneshawar Soren, Paklu Baski and Nuni Murmu and even proper food has not been provided to his sister. But at the same time he had deposed that his sister has never stated to him about the ill treatment which had been given by the aforesaid accused persons.

At para-4 of his cross-examination, he has stated that he had not seen the 2nd marriage of Maneshawar. He had further stated that there were mark on the body of his sister at chest and hand. At para-6, he has stated that he is not the eye witness of the occurrence of *marpit* with his sister.

P.W.3, Mishir Kisku, P.W.4, Sakal Soren and **P.W.8 Jiyaram Soren** have been declared hostile by the prosecution.

P.W.5, Muneshawar Chaudhary (Sub Inspector) has deposed that on 8/4/2010, he was posted at Bindapather P.S. and had recorded the statement of Bishnu Murmu.

At para-2 of his testimony he has stated that on the basis of fardbeyan, the FIR was lodged at Nala P.S. and he identified the signature of the then O.C Nala and marked it as exhibit. He has further deposed that the investigation of this case was conducted by A.S.I Madan Singh.

At para-3, he has deposed that after preparing *fardbeyan*, he prepared the death inquest report of deceased Hiramuni Murmu which bears his signature and also bears thumb

impression of Bishnu Murmu and Mohan Mumru. He sent the dead body for postmortem.

At para-4 of his cross examination, he has deposed that he recorded the *fardbeyan* at Village Bohra dangal. At para-5, he stated that after he got information, he recorded the *fardebeyan*, thereafter, the charge of investigation was given by him to Madan Singh.

P.W.6, Dr. Alfred Murmu, who was the medical officer of Sadar Hospital, Jamtara has deposed that the postmortem report of deceased Hiramuni Murmu bears the pen and signature of Dr. Ajay Kumar Ghosh, who conducted the postmortem of deceased. He has also put his signature on the postmortem report and identified his signature and exhibited it and also identified the pen and signature of Dr. A.K. Ghosh and marked them as exhibits.

P.W.7, Raj Kumar Mirdha has deposed that about 1 and ½ years ago in the month of April, he was on duty at Police Station chaukidar Chotelal informed that a girl was murdered then he along with Barababu and other police personnel went there and saw the dead body of Hiramuni Murmu, thereafter, he brought the dead body at police station and again he took away it at Sadar hospital for postmortem.

P.W.9, Madan Singh (Sub-inspector) has deposed that on 08/04/2010, he was posted at Binda Pather P.S., on that

date, the in-charge O/C Muneshawar Chaudhary got information from Chaukidar Chotelal that the dead body of Hiramuni Murmu was lying in the house of Srijal Soren at Village Bohradangal. The fardbeyan was written by Muneshawar Chaudhary at the instance of Bishnu Murmu and gave him the charge of investigation. He had further stated that the place of occurrence of this case situated at Village Bohradangal in the house of Srijal Soren. He further re-examined the Bishnu Murmu and during course of inquiry, he recorded the statement of Mohan Murmu, Mukesh Mohali, Budhu Murmu, Chotelal Rai, Rajkumar Mirdha, Mishir Kisku, Sakal Soren and others.

At para-6, he has deposed that witness Mishir Kisku, Jiyaram Soren and Sakal Soren told in their statement that on 8/4/2010 at 5:p.m when they returned to their village, they came to know that the wife of Muneshawar died due to diarrhea then they went to saw the dead body and saw that the dead body of wife of Muneshawar Soren was lying on a cot and on seeing the dead body it appears that she was murdered by pressing her neck. He has further stated that after investigation, he submitted charge sheet.

At para-11, he has stated that the death inquest report was prepared on 8/4/2010 at 5:15 p.m. At para-16, he stated that witness Talam Murmu has not stated in his statement about the

mark of any injury and he also not stated about abusing Hiramuni Murmu.

P.W.10, Chotelal Rai has deposed that he was working as Chaukidar at Bindapather P.S. He has further stated that Srijal informed that there was a murder in his house then he informed the matter to the Police and went with Barababu to the P.O and saw him in the house of Srijal Soren, thereafter, he went away from there. However, this witness was declared hostile by the prosecution.

P.W.11, Dr. A.K. Ghosh who conducted the post-mortem of deceased Hiramuni Murmu on 9/4/2010 at Sadar hospital Jamtara, has stated in his deposition that the body de-composed rigor mortis absents in upper limb and partially in lower limb. According to this witness, the external appearance as de-composed body, face and body swollen, hemorrhagic froch and stomach contains like rice seen. Putrefactive blisters especially right side of the body. Mouth partially opened.

Regarding ligature mark, this witness has stated that 1/2" width and 11" long ligature mark was present above the thyroid cartilage between the larynx and chin. Running obliquely upward along with lines of mandible up to the mastoid process it is absent at the back of the neck. Ligature mark was hard leathery and parchment like blackish in colour.

On dissection of the ligature mark, underlining tissues were white and glistening.

No other external injury found by this witness and according to this witness, the cause of death due to asphyxia as a result of hanging.

At para-4 of his cross-examination this witness had stated that the nature of direction of the ligature mark indicate that this is case of suicidal hanging.

P.W.12, Talam Murmu has deposed that about two years ago, the cousin brother of Muneshawar came to his village and told that Hiramuni was suffering from diarrhea. Thereafter, this witness along with Bishnu Murmu, Rameshawar, Budhu, Mukesh came to in-law's house of Hiramuni at Bohradangal and saw that the Police was there and the dead body of Hiramuni was lied on a cot. He saw the mark of rod on the neck and hand of the dead body and also the blood mark on the nose.

At para-2, he has deposed that Hiramuni Murmu was married with Muneshawar about four years ago and since Hiramuni was not having any child, therefore, Muneshawar brought a girl and took her in his house and used to cause cruelty with Hiramuni. At para-7 of his cross examination, he has deposed that Muneshawar tortured Hiramuni at his house.

P.W.13, Rameshawar Mohali has deposed that about two years ago, one man of Boharadangal came to his village and

informed that Hiramuni suffering from diarrhea, then, he along with brother of Hiramuni went to Bohradangal and saw that Police was there and Police told them that Hiramuni had died, then, this witness had gone and saw the dead body and found that there was mark on the neck and hand and also he saw the blood on the nose of the dead body.

At para-2 of the examination-in-chief he had stated that the Muneshawar had kept another girl, therefore murdered Hiramuni.

At para-6 of his cross examination, he has deposed that he told the Police that Muneshawar came with girl and murdered Hiramuni. Further, at para-7, he had deposed that he had no idea about the another girl and he never talked to the said girl.

P.W.14, Mukesh Murmu has deposed in his cross-examination that about two years ago, he got information that his sister Hiramuni was suffering from diarrhea, thereafter, he along with his brothers and other went to in-law's house of his sister at Bohradangal and saw that Police vehicle was there and the dead body of his sister was in the house. He saw the mark in the neck and hand of the dead body and also her tongue was ousted.

At para-2, he has stated that his sister was tortured by her in-laws as because she had no issue. At para-3, this witness has stated that his brother in-law brought other women and his sister was murdered by her husband and in-laws.

At para-4 of his cross examination, he has stated that the informant is his elder brother. He further stated that when his sister was assaulted at that time, he was not present there, neither he saw the *marpit* by Muneshawar.

P.W.15, Budhu Murmu has deposed in the cross-examination that about two years ago, the cousin brother of Muneshawar Soren came and informed that Hiramuni suffering from diarrhea, then, he along with others went to the village of Hiramuni and saw that Police vehicle was there and the dead body of Hiramuni was lying on a cot. He saw that there was blood mark on nose and the tongue was ousted and also there were some marks on the neck and hand of the dead body.

At para-2, he has stated that Muneshawar brought another woman and he used to cause cruelty with Hiramuni and he apprehend that Hiramuni was murdered by Muneshawar and his family members.

At para-7 of the cross-examination, he has stated that he was not the eye witness of the *marpit* of Muneshawar with Hiramuni and Muneshawar has not brought another woman in his presence.

18. The trial Court on the basis of the testimony of witnesses both the ocular and the evidence of the doctor has found the substance in the prosecution version and accordingly, convicted

the appellants of both the appeals, which is the subject matter of the present appeal.

19. The judgment of conviction is under challenge on the grounds raised on behalf of the parties as referred at the outset.

20. This Court also needs to refer herein the judgment in the context of the present case as per the argument advanced on behalf of the parties particularly the submission which has been made on behalf of the learned Public Prosecutor that the death since has occurred within the four corner of the matrimonial house and further the conviction is under Section 302 of the IPC and hence, Section 106 of the Evidence Act will be applicable.

21. We are not in dispute to such ground, reason being that if the death has occurred within the four corners of the matrimonial house of the deceased, then the principle of reverse onus will be there. Further, it needs to refer herein that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act.

22. Section 106 of the Evidence Act does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Sucha Singh* v. *State of Punjab*** **[(2001) 4 SCC 375**] wherein it has been held as under:

> *19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.*

23. The principles enunciated by the Hon'ble Apex Court in regard to the obligation of explanation in terms of Section 106 of the Evidence Act and the consequences of want of explanation have been explained by the Hon'ble Apex Court in the case of ***Satpal* v. *State of Haryana*, *(2018) 6 SCC 610*** which reads as under:-

> *"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the*

occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

24. Thus, it is evident that in such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged, but at the same time it is equally settled that each case will therefore have to be examined on its own facts for invocation of the doctrine.

25. Learned counsel for the respondent-State has also taken the ground that the doctor's evidence will not be allowed to be

prevail upon the ocular witness, the same can also not be disputed but it is to be tested on the basis of the fact that if the prosecution is based upon the testimony of the eye witness and remained consistent all along and in such circumstances, the medical evidence cannot be allowed to be prevail upon the testimony of eye witness.

26. The Hon'ble Apex Court in the case of ***Kamaljit Singh vs. State of Punjab*, *(2003) 12 SCC 155*** has observed that it is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. Relevant paragraph of the said judgment is being quoted as under:-

> ***8.*** *It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out. (See Solanki Chimanbhai Ukabhai v. State of Gujarat [(1983) 2 SCC 174 : 1983 SCC (Cri) 379 : AIR 1983 SC 484] .) The position was illuminatingly and exhaustively reiterated in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] . When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of*

evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference.

27. However, at the same time it is equally settled law that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, when the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Bhajan Singh @ Harbhajan Singh vs. State of Haryana***, reported in ***A.I.R. 2011 S.C. 2552***. The relevant part of the aforesaid judgment is being quoted as under:

"Contradiction between medical and ocular evidence can be crystalized to the effect that though the ocular testimony of a witness has greater evidentiary value vis. a vis. medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, when the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

28. The Hon'ble Apex Court in the case of ***Rakesh vs. State of M.P., (2011) 9 SCC 698*** has observed that the ocular evidence would have primacy unless it is established that oral

evidence is totally irreconcilable with the medical evidence. The relevant paragraph is being quoted as under:

> ***13.*** *It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-à-vis medical evidence; when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved. (Vide State of U.P. v. Hari Chand [(2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] , Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] and Bhajan Singh v. State of Haryana [(2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241] .)*

29. Similarly, the Hon'ble Apex Court in the case of ***Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala*****, (2022) 18 SCC 683 has** reiterated the same view which reads as under:

> ***"17.*** *Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. ----"*

30. The law is also settled that if a case is based upon the circumstantial evidence, then the caution is to be given in judging the culpability of one or the other accused person both by weighing the ocular and the medical evidence, reference in this

regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Madhu v. State of Kerala*, *(2012) 2 SCC 399***. For ready reference, the relevant paragraph is being quoted as under:-

> ***5.*** *The care and caution with which circumstantial evidence has to be evaluated stands recognised by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.*

31. The Hon'ble Apex Court in the case of ***Buddhadeb Saha v. State of W.B., 2023 SCC OnLine SC 145*** has specifically held that while dealing with a case of circumstantial evidence, the Court has to be circumspect. For ready reference the relevant paragraph is being quoted as under:

> ***36.*** *We are conscious of the legal proposition that while dealing with a case of circumstantial evidence, the Court has to be circumspect. A note of caution was sounded by a Constitution Bench of this Court in Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74] quoting (AIR p. 89 para 60) from R. v. Hodge [(1838) 2 Law CC 227].*
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> > *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some*

little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

32. This Court, after having discussed the legal position as has been settled by the Hon'ble Apex Court is now proceeding to examine the factual aspect of the instant case based upon the testimony of the witnesses both the ocular and the medical evidences.

33. From the perusal of the testimonies of the witnesses as referred hereinabove, it is evident that **P.W.1, Bishnu Murmu** is the informant and brother of the deceased and has deposed that marriage of his sister was solemnized about four years ago with the appellant Maneshawar Soren and the mother-in-law Paklu Baski, Nuni Murmu and Maneshawar Soren always tortured and *marpit* with his sister and beaten her as because she was not having any child. At para-2, of the examination-in-chief he has deposed that when he saw the dead body of his sister, there was blood in her nose and the mark of lathi on her chest.

34. He had further deposed at para-3 that Maneshawar Soren, his mother and father intentionally committed the murder of his sister. He had further deposed that he had visited his sister's house (matrimonial house) two years ago.

35. P.W.2, Mohan Murmu, brother of the deceased, has deposed that on the information that his sister was suffering from fever and diarrhea, he along with his brother Bishnu Murmu

came to Bohradangal and saw that his sister was murdered and, on her body, there was mark of lathi on her chest and also her hand was broken.

36. At para-2, he has stated that, his sister was tortured by Maneshawar Soren, Paklu Baski and Nuni Murmu and even proper food has not been provided to his sister. But at the same time, he had deposed that his sister has never stated to him about the ill treatment which had been given by the aforesaid accused persons.

37. In his cross-examination, he has stated that he had not seen the 2nd marriage of Maneshawar(husband of deceased) and he has not the eye witness of the occurrence of *marpit* with his sister.

38. P.W.3, Mishir Kisku, P.W.4, Sakal Soren, P.W.8 Jiyaram Soren and **P.W.10 Chotelal Rai** have been declared hostile by the prosecution.

39. P.W.5, Muneshawar Chaudhary is the sub-Inspector who had recorded the fardbeyan, and as per his testimony the investigation of this case was conducted by A.S.I Madan Singh (P.W.9). He had prepared the death inquest report of deceased Hiramoni Murmu and sent the dead body for postmortem.

40. P.W.6, Dr. Alfred Murmu, who was the medical officer of Sadar Hospital, Jamtara. He had made his signature on the postmortem report and identified his signature and exhibited it

and also identified the pen and signature of **Dr. A.K. Ghosh (P.W.11)** who had performed the post-mortem on the dead body the deceased.

41. **P.W.9, Madan Singh (Sub-inspector)** and investigating officer of the case. He had recorded the statement of Mohan Murmu, Mukesh Mohali, Budhu Murmu, Chotelal Rai, Rajkumar Mirdha, Mishir Kisku, Sakal Soren and others.

42. At para-6, he has deposed that witness Mishir Kisku, Jiyaram Soren and Sakal Soren told in their statement that on 8/4/2010 at 5:p.m when they returned to their village, they came to know that the wife of Muneshawar was died due to diarrhea then they went to see the dead body and on seeing the dead body it appears that she was murdered by pressing her neck.

43. **P.W.11, Dr. A.K. Ghosh** who conducted the post-mortem of deceased Hiramoni Murmu on 9/4/2010 at Sadar hospital Jamtara, and has found that the body de-composed, rigor mortis absents in upper limb and partially in lower limb. According to this witness, the external appearance as de-composed body, face and body swollen, hemorrhagic frock and stomach contains like rice seen. Putrefactive blisters especially right side of the body. Mouth partially opened.

44. Regarding ligature mark, this witness has stated that 1/2" width and 11" long ligature mark was present above the thyroid

cartilage between the larynx and chin. Ligature mark was hard leathery and parchment like blackish in colour.

45. No other external injury found by this witness and according to this witness, the cause of death due to asphyxia as a result of hanging.

46. P.W.12, Talam Murmu is the villager and from his testimony it is evident that this witness along with Bishnu Murmu, Rameshawar, Budhu, Mukesh had gone to in-law's house of Hiramuni at Bohradangal and saw the dead body of Hiramuni and also saw the mark of rod on the neck and hand of the dead body.

47. At para-2, he has deposed that since Hiramuni was not having any child, therefore, Muneshawar brought a girl and took her in his house and used to cruelty with Hiramuni. At para-7 of his cross examination, he has deposed that Muneshawar tortured Hiramuni at his house.

48. P.W.13, Rameshawar Mohali is the villager and had deposed on the same line as deposed by the P.W.12. At para-2 of the examination-in-chief he had stated that the Muneshawar (appellant) had kept another girl, therefore murdered Hiramuni. At para-6 of his cross examination, he has deposed that he told the Police that Muneshawar came with girl and murdered Hiramuni.

49. **P.W.14, Mukesh Murmu** is the brother of the deceased and he had gone to in-law's house of his sister at Bohradangal along with his brothers and he saw the mark in the neck and hand of the dead body and also her tongue was ousted. At, para-2, he has stated that his sister was tortured by her in-laws as because she has no issue. At para-3, this witness has stated that his brother in-law brought other women and his sister was murdered by her husband and in-laws.

50. In his cross examination, he has stated that he had not seen the *marpit* by Muneshawar.

51. **P.W.15, Budhu Murmu** is also the villager and he along with others had gone the village of Hiramoni (deceased) and saw the dead body of Hiramoni was lying on a cot. He saw that there was blood mark on nose and the tongue was ousted and also there were some marks on the neck and hand of the dead body. At para-2 of his testimony he has stated that Muneshawar brought another woman and he used to made cruelty with Hiramoni and he apprehend that Hiramoni was murdered by Muneshawar and his family members.

52. Thus, on the basis of aforesaid discussion of evidences, it is evident that the marriage of the deceased was solemnized with the appellant Maneshawar Soren about four years ago from the alleged date of occurrence. It is also admitted fact that the deceased had died in the matrimonial house within four years of

her marriage and the deceased was having no child even after lapse of the period of four years from the date of solemnization of marriage. Admittedly no direct evidence is available on the record since the alleged occurrence was caused within the four corners of matrimonial house, as therefore it is case of circumstantial evidence.

53. Further, the prosecution version is also there to the effect that the deceased was having no child even after lapse of the period of four years from the date of solemnization of marriage and as such, she was subjected to torture.

54. Further, prosecution version is that the husband has kept another girl, namely, Nuni @ Anita Murmu (appellant herein) and she has been said to live in the matrimonial house along with the deceased under the same roof as would be evident from testimony of P.W.12 who is the villager and independent witness of the instant case. The aforesaid version of the P.W.12 has fully been substantiated by the other prosecution witnesses particularly by P.W.13 and 14 which has been referred herein above.

55. P.W.1, P.W.2, P.W.12, P.W.13, P.W.14 and P.W.15 have supported the prosecution version in their testimonies, wherein P.W.1, the informant has deposed that when he has reached to the house of the deceased, he has found the sign of wound in the chest of the deceased as also the hand was found to be

fractured. The same is also the version of P.W.2.(brother of the deceased).

56. But the doctor has not found any sign of external injury. The doctor has given evidence showing the opinion of death to be hanging and not strangulation, which would be evident from the postmortem report as being referred above having been supported by his testimony at paragraph-2 and 4 of the deposition which has been referred herein above. This witness has categorically opined that 1/2" width and 11" long ligature mark was present above the thyroid cartilage between the larynx and chin on the dead body of the deceased. He had categorically opined that the nature of direction of the ligature mark indicate that this is case of suicidal hanging. From testimony of this witness, it is evident that he has not found any sign of external injury on the dead body of the deceased.

57. Thus, from the testimony of this witness it is evident that the statement of other witnesses regarding the presence of external injury on the chest and hand of the dead body of deceased has not been supported, reason being that as per the opinion of this witness there was no external injury was found on the body of the deceased.

58. It needs to refer herein that admittedly, the death took place within the four corner of the matrimonial house of the deceased but it is not a case of demand of dowry since there is

no charge has been framed under Section 3/4 of the Dowry Prohibition Act, rather, the case has been registered under Sections 498A and 302/34 of the I.P.C. Further from testimonies of the witnesses it is apparent that none of the witnesses have testified about the demand of dowry.

59. We are conscious with the fact that Section 498-A of the IPC not only restrict to the torture due to the demand of dowry but any type of torture either physical or mental, will come under the fold of ingredient of Section 498A of the IPC.

60. As discussed above, we have not found from the testimony of the prosecution witnesses that any prosecution witness has deposed regarding any demand of dowry, rather, the allegation is of physical/mental torture due to having no child.

61. Although, the death has taken place within the four corners of the matrimonial house but after going through the medical evidence, we have found on comparative assessment making difference in between hanging and strangulation that since, the doctor has not found any external injury and at paragraph-4, it has been deposed that there is ligature mark and that is the reason, he has given the opinion that cause of death is hanging.

62. This Court, in order to make a comparison in between the hanging and strangulation has taken aid of the judgment passed by the Hon'ble Apex Court in the case of ***Javed Abdul Rajjaq Shaikh Vrs. State of Maharashtra (supra)*** wherein, the Hon'ble

Apex Court after taking note of the Modi medical jurisprudence which has been considered at paragraph-28 and 29 thereof marking the difference in between the hanging and strangulation. For ready reference, the said paragraphs are being quoted as under:-

> "**28.** The differences between hanging and strangulation have been highlighted by *Modi on Medical Jurisprudence and Toxicology*, 25th Edn., as follows:

	Hanging		Strangulation
1.	Most suicidal	1.	Mostly Homicidal
2.	Face-Usual Pale and petechiae rare	2.	Face-Congested, livid and marked with petechiae.
3.	Saliva-Dribbling out of mouth down on the chin and chest.	3.	Saliva-No such dribbling.
4.	Neck-Stretched and elongated in fresh bodies.	4.	Neck-Not so.
5.	External signs of asphyxia usually not well marked.	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6.	Ligature mark-Oblique, non-continuous placed high in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	6.	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7.	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7.	Abrasions and ecchymosis round about the edges of the ligature mark, common.
8.	Subcutaneous tissues under the mark-White, hard and glistening	8.	Subcutaneous tissues under the mark-Ecchymosed.
9.	Injury to the	9.	Injury to the

	muscles of neck-Rare		muscles of neck-Common.
10.	Carotid arteries, internal coats ruptured in	10.	Carotid arteries, internal coats ordinarily ruptured
11.	Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11.	Fracture of the larynx, trachea and hyoid bone.
12.	Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	12.	Fracture-dislocation of the cervical vertebrae-Rare.
13.	Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.	13.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.
14.	No evidence of sexual assault.	14.	No evidence of sexual assault.
15.	Emphysematous bullae on surface of the lungs-Not present.	15.	Emphysematous bullae on surface of the lungs-May be present.

29. As to what is the distinction between strangulation and throttling is also dealt within the selfsame work:

> *"Definition.—Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.*
>
> *Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.*
>
> *When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).*
>
> *A form of strangulation, known as bansdola, is sometimes practised in northern India. In this form, a strong bamboo or lathi (wooden club) is placed across the throat and another across the back of the neck. These are strongly fastened at one end. A rope is passed round the other end, which is bound together, and the unfortunate victim is squeezed to death. The throat is also pressed by placing a lathi or bamboo across the front of the neck and standing with a foot on each end of lathi or bamboo.*

> *Garrotting is another method that was used by thugs around 1862 in India. … A rope or a loincloth is suddenly thrown over the head and quickly tightened around the neck. Due to sudden loss of consciousness, there is no struggle. The assailant is then able to tie the ligature."*

63. This Court, after considering the difference in between the hanging and strangulation as has been taken note by the Hon'ble Apex Court at paragraph-28 and 29 as quoted and referred above and comparing with the opinion of the doctor, as has been given in the instant case in the postmortem report since doctor has not found the injury for the purpose of coming to the conclusion that it is a case of hanging and not strangulation , hence, we, on the basis of the said report, are of the view that the said report is suggestive of the fact that it is a case of hanging.

64. Further, regarding ligature mark, the doctor (P.W.11) that 1/2" width and 11" long ligature mark was present above the thyroid cartilage between the larynx and chin. Running obliquely upward along with lines of mandible up to the mastoid process it is absent at the back of the neck and on the basis of the nature of said ligature mark he opined that this is case of suicidal hanging and not strangulation.

65. Hence, this Court is of the view based upon the said testimony that it is not a case of Section 302 of the IPC in absence of any direct evidence in this regard and particularly by taking into consideration the testimony of the doctor who has not

found any external injury as also he has found the 1/2" width and 11" long ligature mark was present above the thyroid cartilage between the larynx and chin, as has been referred hereinabove and further, the opinion has been given that the death has caused due to hanging.

66. But the question herein is that when the death has taken place within the four corners of the matrimonial house, then, even though, it is a case of hanging then it is to be explained by the appellants in view of the provision of Section 106 of the Evidence Act.

67. It is evident from the testimony of P.W.1, P.W.2, P.W.12, P.W.13, P.W.14 and P.W.15 that there is no allegation of demand of dowry, rather, there is allegation of physical and mental torture and that is the reason, the case has been instituted also under Section 498A of the IPC.

68. The reason for physical and mental torture as has been referred in the testimony of witnesses that the deceased was having no child even after lapse of four years from the date of solemnization of marriage and for which, she was being blamed and even the same was being spoken in the neighbour.

69. It has further come in the testimony of the witnesses particularly P.W.12,13 and 14 that the appellant husband has solemnized second marriage for the purpose of having the child.

56. At this juncture the question which requires consideration by this Court is that when there is no direct allegation of demand having been deposed by the witnesses but as per their testimony, it is evident that the deceased was being subjected to mental torture, on account of having no child.

70. This Court, therefore, is of the view that reason for torture is also there by the in-laws as also the husband and it is also available in the testimony that the second wife was living under the same roof along with the deceased, the first wife.

71. It needs to refer herein that the witnesses who have deposed regarding the issue of no child and the issue of torture have not been controverted, as would be evident from the cross-examination of the witnesses.

72. In the instant case the death of deceased within the four years of marriage is admitted and the place of occurrence is also admitted, which was in the matrimonial house of the deceased, therefore even though it is case of hanging the explanation is required to be there on behalf of the appellants or the reason of the said occurrence should be satisfactorily explained by the appellants.

73. Learned counsel for the appellants, although, has argued at length that it is a case where the prosecution has miserably failed to prove the charge said to establish beyond all reasonable doubts, but, subsequently, he has argued that at best, if the

testimony of the witnesses will be taken into consideration in entirety, it will be a case of abetment of suicide and hence, conviction ought to have been under Section 306 of the IPC.

74. This Court for the purpose of such consideration needs to refer herein the ingredient which is to attract the offence committed under Section 306 of the IPC. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

> *"**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."*

75. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

76. At this juncture it would be apt to go through the core of the section 107 which dealt with the abetment as stipulated in the IPC. The parameters of "abetment" have been stated in Section 107 IPC, which defines "abetment" of a thing as follows:

> *"107. Abetment of a thing.—A person abets the doing of a thing, who—*
> *First.—Instigates any person to do that thing; or*
> *Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission 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."*

77. As per the section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any willful misrepresentation or willful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifested that under all the three situations, direct involvement of the person or

persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

78. As per clause, firstly in the said section, a person can be said to have abetted in doing of a thing, who “instigates” any person to do that thing. The word “instigate” is not defined in IPC. 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. 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 to be inferred.

79. As observed by the Hon’ble Apex Court in the case of ***Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618***, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred.

80. The Hon’ble Apex Court in the case of ***Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605 while*** taking into consideration the word instigation has observed which reads as under:

> *"19. ------. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:*
> *(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and*
> *(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."*

81. At this point of discussion, the reference of Section 113-A of the Evidence Act, 1872 needs to refer herein. Section 113-A permits a presumption as to the abetment of suicide by a married woman by her husband or any relative of his, if it is proved that she had committed the act within a period of seven years from the date of her marriage and that her husband or such relative of his had subjected her to cruelty. The explanation to this section exposits "cruelty" to have the same meaning as attributed to this expression in Section 498-A IPC. For ready reference, Section 113-A of the Evidence Act, 1872 is quoted hereunder as well.

> *"**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 Penal Code, 1860."

82. In the legislative backdrop outlined hereinabove, Section 498-A of the Code also demands extraction:

*"**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."

83. This provision, as the quote hereinabove reveals, renders the husband of a woman or the relative of his, punishable thereby with imprisonment for a term which may extend to three years and also fine, if they or any one of them subject her to cruelty.

84. The Explanation thereto defining “cruelty” enfolds 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 it 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.

85. In the background of the aforesaid logical deduction we are again adverting to the ingredients of the section 306 of the IPC. The pith and purport of Section 306 IPC has been enunciated by the Hon’ble Apex Court in ***Randhir Singh v. State of Punjab, (2004) 13 SCC 129*** and the relevant excerpts therefrom are set out hereunder:

> *“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.”*

86. In ***State of W.B. vs. Orilal Jaiswal, (1994) 1 SCC 73****,* the Hon’ble Apex Court has observed that the courts 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."

87. Further, in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, as had been propounded by the Hon'ble Apex Court in ***S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190.***

88. The Hon'ble Apex Court in the case of ***M. Arjunan v. State*, *(2019) 3 SCC 315*** has reiterated the essential ingredients of Section 306 of the IPC which reads as under**:**

> *"**7.** The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of*

suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

89. In the background of aforesaid legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect.

90. In ***Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681,*** the Hon'ble Apex Court has observed that Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed.

91. This Court, on the basis of the ingredients of Section 306 of the IPC, as has been interpreted by the Hon'ble Apex Court in the aforesaid judgments and considering the testimony of P.W.1 and P.W.2, which has not been disputed in the cross-examination and whatever question has been put, is of the view that these witnesses have remained consistent in their deposition regarding the issue of no child of the deceased, second marriage of the husband of the deceased and the blame being given upon the deceased of having no child even after lapse of four years of marriage.

92. The death since has taken place within the four corner of the matrimonial house of the deceased and the reason is also available leading the deceased to commit suicide as per the testimony of P.W.12,13 and 14 which has been substantiated by the testimony of PW.1 and 2.

93. At para-2 of the examination-in-chief P.W.12 categorically deposed that since Hiramoni was not having any child, therefore, Muneshawar brought a girl and took her in his house and used to cause cruelty with Hiramoni. Further, P.W.13, Rameshawar Mohali has deposed on the same line as stated by the P.W.12.Further, P.W.14 brother of the deceased has specifically deposed that his sister was tortured by her in-laws as because she has no issue and his brother in-law brought other women.

94. Thus, it is evident from the aforesaid testimonies that since deceased was not having any child, therefore, Muneshawar (husband of the deceased) brought a girl and took her in his house and used to cause cruelty with deceased, therefore, it is apparent that the main culpability of ill treatment with deceased is against the Muneshawar Soren (Appellant in Criminal Appeal (DB) No. 312 of 2013). Further being the husband the aforesaid appellant has greater responsibility to solve out the nitty gritty of the matrimonial life.

95. Hence, this Court is of the view based upon the said testimonies of PW.12 and 13 who are the independent witnesses that it is not a case of Section 302 of the IPC in absence of any direct evidence in this regard and particularly by taking into consideration the testimony of the doctor who has not found any external injury as also he has found the injury at the upper part of ligature just below the chin, as has been referred hereinabove and further, the opinion has been given that the death has been caused due to hanging.

96. At this juncture the question arises herein that when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused.

Nonetheless, all other ingredients necessary for the offence under Section 306 IPC would stand established. Can the accused be convicted in such a case for the offence under Section 306 IPC without the said offence forming part of the charge?

97. In the aforesaid context it will be profitable to refer herein the Section 222(1) Criminal Procedure Code which lays down that when a person is charged with an offence consisting of several particulars and combination of only some of the particulars constituting a minor offence is proved then he can be convicted of the minor offence with which he may not have been charged. Section 222(2) lays down that when a person is charged with an offence but the facts proved constitute a minor offence then he can be convicted of the minor offence despite the fact that he may not have been charged with that offence. Sub-section (3) of Section 222 lays down that a person charged with an offence, can be convicted of an attempt to commit such offence even though a separate charge may not have been framed on that account.

98. Further, Section 464(1) lays down that any error, omission or irregularity in the framing of charge including any misjoinder of charges, will not invalidate a finding, sentence or order by a court of competent jurisdiction unless the higher court comes to a conclusion that failure of justice has been occasioned. Sub-

section (2) of Section 464 specifies the modes which can be adopted by the court of appeal, confirmation or revision, if such court is of the opinion that a failure of justice has been occasioned on account of non-framing of charge or any error, omission or irregularity in the framing of charge.

99. The aforesaid question has come before a two-Judge Bench of the Hon'ble Apex Court in ***Lakhjit Singh v. State of Punjab [1994 Supp (1) SCC 173*** wherein it has been observed that if a prosecution failed to establish the offence under Section 302 IPC, which alone was included in the charge, but if the offence under Section 306 IPC was made out in the evidence, it is permissible for the court to convict the accused of the latter offence.

100. But, in the case of ***Sangaraboina Sreenu vs. State of A.P., (1997) 5 SCC 348,*** the Hon'ble Apex Court has taken a different view and has observed that the appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC which was the only charge framed against him the High Court could not have convicted him of the offence under Section 306 IPC.

101. In view of apparent conflict in the views expressed by two-Judge Bench decisions in ***Sangaraboina Sreenu v. State of A.P. (supra)*** and ***Lakhjit Singh v. State of Punjab [Lakhjit Singh v. State of Punjab***, (supra) the matter was referred to a

three-Judge Bench of the Hon'ble Apex Court in ***Dalbir Singh v. State of U.P., (2004) 5 SCC 334*** where a charge for the offence under Section 306 had not been framed against the accused though accused had faced trial in respect of the charges under Section 302, 498A and 304B IPC as has happened in the instant case where the accused have been tried for the offences punishable under Section 498A, and 302 IPC and the Hon'ble Apex Court had answered in the affirmative in ***Dalbir Singh(supra)*** by arriving at the following conclusion:

> *"14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 CrPC? Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 CrPC is in the nature of a general provision which empowers the court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely, Chapter XXXV which deals with irregular proceedings and their effect. This chapter enumerates various kinds of irregularities*

which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this section provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent court unless the appellate or revisional court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In Lakhjit Singh [Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173 : 1994 SCC (Cri) 235] though Section 464 CrPC has not been specifically referred to but the Court altered the conviction from Section 302 to Section 306 IPC having regard to the principles underlying the said section. In Sangaraboina Sreenu [Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348 : 1997 SCC (Cri) 690] the Court completely ignored to consider the provisions of Section 464 CrPC and keeping in view Section 222 CrPC alone, the conviction of the appellant therein under Section 306 IPC was set aside.

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence

for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu [Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348 : 1997 SCC (Cri) 690] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

102. In the aforesaid case it has been observed that it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion and in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which appellant is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.

103. In the backdrop of the aforesaid settled position of law now this Court proceeds further that whether the appellant was aware of the basic ingredients of the offence for which appellant is being convicted.

104. The facts and circumstances of the present case may now be examined in the light of the principle discussed above. It is evident from the perusal of testimony of the prosecution

witnesses particularly P.W.12, 13 and 14 as discussed and referred hereinabove that the deceased was subjected to cruelty by the appellant husband. At para-2 of the examination-in-chief P.W.12 categorically deposed that since Hiramoni was not having any child, therefore, Muneshawar brought a girl and took her in his house and used to cause cruelty with Hiramoni. Further, P.W.13, Rameshawar Mohali has deposed on the same line as stated by the P.W.12. Further, P.W.14 brother of the deceased has specifically deposed that his sister was tortured by her in-laws as because she has no issue and his brother in-law brought other women. Thus, it is evident from the aforesaid testimonies that since deceased was not having any child, therefore, Muneshawar (husband of the deceased) brought a girl and took her in his house and used to cause cruelty with deceased. The said conduct of the appellant husband amount to torture and come under the purview of cruelty against the deceased.

105. Further from record it is evident that there was no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner.

106. This Court, therefore, is of the view that the conviction is to be substituted from Section 302 to Section 306 of the IPC and

accordingly, the judgment of conviction is being modified from the conviction made under Section 302 and Section 498A of the IPC to that of Section 306 and Section 498A of the IPC against the appellant, namely, **Muneshawar Soren (Appellant in Criminal Appeal (DB) No. 312 of 2013)**.

107. This Court, after having the discussed the factual aspects along with the legal position as above and coming to the judgment passed by the learned trial Court, is of the view that the judgment of conviction/sentence needs to be interfered with.

108. Consequently, the judgment of conviction passed by the court below is modified and this Court, hereby, finds the appellant guilty for the offence under Section 306 I.P.C. and under Section 498A IPC.

109. The record shows that the accused/appellant, namely, **Muneshawar Soren (Appellant in Criminal Appeal (DB) No. 312 of 2013)** was into custody since 13 years and on 20.12.2023 he was released from custody on bail after suspension of sentence by the High Court and thus, he has undergone nearly 13 years of imprisonment, as such, he has served the maximum punishment as stipulated under Section 306 of the IPC, therefore, he is discharged from the liabilities of bail bond.

110. Accordingly, the judgment of conviction dated 04.10.2012 and order of sentence dated 05.10.2012 passed by the learned Dist. & Addl. Sessions Judge-Ist, Jamtara in Sessions Trial

No.99/2010 is hereby altered at the extent as indicated hereinabove.

111. Accordingly, the criminal appeal being **Criminal Appeal (DB) No. 312 of 2013** is hereby dismissed with the aforesaid modification in the judgment of conviction and order of sentence to the extent as indicated above.

112. So far as the culpability of the appellant namely **Nuni @ Anita Murmu** (**Appellant of Criminal Appeal (DB) 1109 of 2012**) is concerned, it is evident from the impugned order that she has not been convicted under Section 498 A of the IPC by the learned Trial Court. We are fully agreeing with the view as taken by the learned Trial Court reason being that no any prosecution witnesses had stated about her specific role in the torturing the deceased. Further we have already observed that since this is case of hanging as per the medical report as such, she is acquitted from the charges under Section 302 IPC, therefore, she has been discharged from her criminal liability.

113. So far as the culpability of the appellant namely **Srijal Soren** and **Paklu Baski @ Maiku Baski (Appellants in Cr. Appeal (DB) No.1109 of 2012)** are concerned, it appears from the material available on record that they are in-laws of the deceased and there are general and omnibus allegations have been alleged against them regarding 498A IPC and further, nothing specific has come on record against them. Further, we

have already observed that since this is case of hanging as per the medical report, as such, they are acquitted from the charges, hence, they have been discharged from their criminal liability.

114. Consequently, the judgment of conviction dated 04.10.2012 and order of sentence dated 05.10.2012 passed by the learned Dist. & Addl. Sessions Judge-Ist, Jamtara in Sessions Trial No.99/2010 is hereby quashed so far as it relates to appellants, namely, Srijal Soren, Paklu Baski @ Maiku Baski and Nuni @ Anita Murmu and they are acquitted from the charges levelled against them.

115. Accordingly, the Cr. Appeal being Cr. Appeal (DB) No.1109 of 2012 is hereby allowed.

116. Let this order/judgment be communicated forthwith to the Court concerned along with the Lower Court Records.

I Agree **(Sujit Narayan Prasad, J.)**

(Navneet Kumar, J.) **(Navneet Kumar, J.)**

High Court of Jharkhand, Ranchi
Dated: 18th December, 2024.
Rohit/-**A.F.R.**