* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of reserve : 15.03.2012
Date of decision:27.03.2012

\+ **Crl.A. 167/2011**

RAKESH SHARMA ..... Appellant

Through: Sh. R.N. Sharma with Sh. Manish Kumar Singh and Sh. Avinash Vats, Advocates.

Versus

STATE ..... Respondent

Through: Sh. Sanjay Lao, APP, for the State along with Sh. Kundu, Advocate, for the complainant.

\+ **Crl.A. 358/2011, CRL.M.A. 3297/2011 (for exemption)**

SANJAY SHARMA ..... Appellant

Through: Sh. Rajtilak Guhan Roy, Advocate.

Versus

STATE GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Sh. Sanjay Lao, APP.
Sh. R.N. Sharma with Sh. Manish Kumar Singh and Sh. Avinash Vats, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. This judgment will dispose of two appeals. Crl. Appeal 167/2011 is a convict's appeal against the judgment and order of a learned Additional Sessions

Judge, Delhi, dated 14-1-2008 in SC 65/2008, convicting him of offences under Section 498A/306 IPC and sentencing him to undergo imprisonment for seven years' rigorous imprisonment and to pay fine for the offence under Section 306 IPC, and to undergo two years imprisonment with fine, for the offence under Section 498-A. The appellant in the said appeal would hereafter be referred to as "the Appellant". The second appeal, Crl. Appeal, 358/2011 has been preferred by the complainant (the appellant being alluded to hereafter as "complainant") under proviso to Section 372 Cr. PC. By this, the complainant is aggrieved by the conviction against the appellant, under Section 306 IPC and urges that the conviction ought to have been recorded under Section 304-B IPC.

2. The brief facts according to the prosecution are that are that on 1.10.2006, police received information about the death of a woman; on being assigned this intimation DD No. 11A, (Ex.PW-14/A), ASI Ved Parkash, with HC Rajinder Singh reached the House No. RZ-2/40A, West Sagar Pur, New Delhi, where they found the body of a woman hanging from the ceiling fan; the body was of Smt. Savita W/o Rakesh Sharma. Information about this was given to the Sub Divisional Magistrate (SDM) and parents of the deceased. The Crime team was called to the spot and on the directions of the SDM Savita's dead body was sent to the DDU hospital mortuary. Later, the SDM recorded the statement of Sh. Sanjay Sharma (PW-1) brother of the deceased. He said that the deceased had got married to the appellant in 1999. Her married life was not good from the beginning; soon after the marriage, Savita's in-laws started harassing her for more dowry. Her sister-in-law too used to harass her; however since she got married about 3 years ago, she stopped harassment. Six months before the incident, Savita's in-laws had demanded rupees one lakh to construct a house and they paid a sum of ₹ 50,000/- to them. He mentioned about a time when Savita was seriously ill due to such

harrrasment and was admitted to DDU hospital. At that time, the matter was settled by the intervention of police. On 1.10.2006, at about 4.00A.M. the deceased had called him on telephone and told him that her husband had beaten her mercilessly and he will kill her. She also requested him to take her from her matrimonial house. Thereafter, at about 11.00 AM, he received a telephone call from Rakesh, who told him that Savita died. PW-1 suspected that Savita had been killed.

3. On the basis of this statement, the police registered a case for commission of the offences under Section 498A/304B/34 IPC. After collecting the post mortem report, and other documents relating to the case, as well as recording the statements of material witnesses, the police filed a charge sheet against all accused. They had been arrested, in the meanwhile. They pleaded innocence, and claimed trial.

4. To prove its case, the prosecution relied on the testimony of 15 witnesses, and a number of documents and circumstances. After considering all these, the Trial Court held that the charge under Section 304-B had not been made out, and that since the charge of cruelty under Section 498-A IPC had been established, the provision of Section 113-A Evidence Act, operated on the facts of this case. It therefore, held that the Appellant was guilty for the offence punishable under Section 306 IPC. However, as regards the other accused, the Trial Court concluded that the offences had not been proved and acquitted them.

5. The appellant urges that the Trial Court erred fundamentally in concluding that the prosecution failed to prove its case beyond reasonable doubt. It was urged that no case under Section 302/34 IPC was made out. There is no eye witness in the present case. All indications were that the deceased committed suicide. The allegations of dowry demand were missing in the FIR. In fact, the Court disbelieved the prosecution story about cruelty motivated by dowry harassment.

PW14 SI Ved Parkash, (who inspected the spot, after commission of suicide by the deceased) deposed to finding the room locked from inside. This was supported by PW 11 SI Rajender Singh, PW-12 Addl. SHO Inspector Vijay Chandel, PW4 Sh. Surender Singh, the SDM, and PW-2 ASI Rajender. Once it was proved that the place of the incident was locked from inside, there was no possibility that it could be opened from outside. Therefore, the question of unnatural death for which the Appellant could be held responsible or his being involved in murder, could never arise. The Trial Court recognized this aspect, and did not convict the appellant for those offences. It was further argued that so far as demand for dowry was concerned, the testimonies of PW1 Sanjay Sharma, PW3 Devender Kumar, PW-5 Pradeep Kumar, PW6 Bohri Lal and PW7 Smt. Raj Kali contradicted each other and were inconsistent regarding the date, month or year of such demand or the date, month or year of meeting such demand or the source of money through which the demands were fulfilled by the complainant.

6. It was submitted that as far as the injuries on deceased were concerned, they were simple in nature and not connected with the cause of death. PW 9 Dr. B.N Mishra, stated in cross-examination that such injuries could be caused to a person, who was trying to hang herself and fell upon some hard substance like bed, chair or floor, prior to completion of hanging. It was urged that even if injuries No. 2 to 7 were attributed to the Appellant, as the one responsible, prior to her suicide, the Court could render a conviction only under Section 323 IPC. He relied on the judgment reported as *State of Himachal Pradesh Vs. Nikku Ram,* AIR 1996 SC 67.

7. It was contended that in *Nikku Ram* (supra) the Supreme Court had ruled out the applicability of Section 306, IPC, and held that merely because a serious injury is inflicted by an accused (the husband, on the wife, as in this case) a conviction under Section 306 IPC would be unwarranted, if the victim commits suicide.

Reliance was also placed on the decision reported as *Indrasing M. Raol v. State of Gujarat* 1999 (3) Guj LR 354, particularly the following observations:

> *"In short what can be said is that Sec. 498A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely usual wear and tear of matrimonial life. It should hardly be stated that the prosecution has to establish the charge beyond reasonable doubt. No doubt arithmatical accuracy is not expected from the prosecution, but it has to adduce such evidence which would be credible leaving no room to any reasonable doubt; and pointing to the guilt of the accused."*

It was urged that apart from the nature of the evidence of cruelty being vague and unsatisfactory, which impelled the Trial Court to disbelieve the prosecution case, and not return a conviction under Section 304-B IPC, there was nothing on record to justify a conviction even under Section 498-A. It was submitted that the cruelty envisioned under that Section was of such kind and intensity, in order to return a finding under Section 306 IPC, as would have resulted in a high degree of probability of suicide, or driven the woman to commit suicide. It would be only in such cases, that the statutory presumption under Section 113-A Evidence Act, be justified. Reliance was placed on the decision reported as *R.P. Bidlan v State of Maharastra* 1993 Cr. LJ 3019, to the following effect:

> *"In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the berating or harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of the husband or the in-laws."*

8. Learned counsel for the appellant also relied on the decision reported as *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC, where it was held that:

> *"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."*

It was argued that there was no known standard by which to find the appellant guilty under Section 306 IPC.

Complainant's submissions

9. It was submitted by the complainant that though under Section 302 IPC, there was no direct eye witness yet there were circumstances to connect the accused in the present case for the offence under Section 302 IPC. The first circumstantial evidence is statement of PW1 Sanjay Sharma, regarding telephonic call at 4.00 AM in the morning, on 1.10.2006. This was mentioned in the FIR Ex. PW PW8/A. The second circumstance was the IO ASI Ved Parkash, who visited the spot as a result of the intimation by PW-1 and saw the body hanging. Another circumstance is the conduct of the accused. When ASI Ved Paraksh reached at the spot, all of them were found there. When all the accused were in the house, there was no explanation why they had not taken the deceased to the hospital, or intimated to the police.

10. Learned counsel for the complainant argued that the impugned judgment is unsustainable because there were sufficient circumstances pointing to unnatural death, if not to the deceased's murder. Most importantly, reliance was placed on

the Postmortem Report (Ex. PW-9/A) and the photographs and the testimony of PW-9, the doctor, who stated that the injury marks on the body indicated that physical assault prior to hanging could not be ruled out. It was emphasized that seven *ante-mortem* injuries were seen on the body of Savita. Learned counsel relied upon the decision reported as *State v. M.D. Kangil* AIR 1972 SC 1797 and contended that whereas the postmortem speaks of the death and other medical conditions, it was not open to the Court to speculate as to what could have transpired before the death, and base its findings on such theorizations. Learned counsel submitted that since the death in this case had occurred within seven years of the deceased's marriage, in the same premises where the accused lived, the Court should have drawn the right conclusion, based on the presumption mandated under Section 304B IPC. Learned counsel for the complainant argued that the demand for dowry was consistently deposed by several prosecution witnesses, i.e. PWs-1, 3, 5, 6 and 7. The facts pertaining to cruelty meted out to the deceased Savita were deposed by many witnesses, including PW-1, who even deposed that a demand for Rs. 1 lakh six months before the death had been made, out of which Rs. 50,000/- had been paid to the appellant. In fact, the telephone call received by PW-1, the complainant, at 04.00 AM claims this fact and it ought to be treated as dying declaration. Learned counsel also argued that if indeed, the deceased was minded to commit suicide, she would never have telephoned her brother, alleging her physical abuse and likelihood of being killed. Learned counsel also argued that the Trial Court fell into error in acquitting Hari Prasad and Veena Sharma, overlooking testimonies of PWs-2 and 10. Their depositions clearly suggested that not only the appellant, but others from his family were present around the time of death. Learned counsel argued that all indications emerging from the record were that the death did not occur as a result of hanging on account of strangulation. He

relied on *Modi's Medical Jurisprudence* and submitted that there is difference between "hanging" and "strangulation". In case of "hanging", the neck would be stretched and elongated and *asphyxia* results only when cartileges and other neck bones are broken. This physical condition was absent since the bone and cartilages were intact. Learned counsel relied upon the judgment reported as *Kunhi Abdulla v. State of Kerala* 2004 (4) SCC 13 where it was held that five ingredients have to be proved in a case before the Court can convict an accused for offence punishable under Section 304B IPC – namely (i) unnatural death of a woman in the case of burns, bodily injury etc. (ii) death occurring within seven years of her marriage; (iii) the woman having been subjected to cruelty or harassment by the husband or relative of the husband; (4) because of cruelty due to demand for dowry, and (5) cruelty or harassment should be soon before her death. It was submitted that all the ingredients were satisfied in this case.

11. Learned APP submitted that the appeals are unmerited and have to be rejected. It was urged that the Trial Court has not erred in convicting the appellant under Sections 498A/306 IPC. In this context, it was argued that even though the Postmortem Report confirmed the death much prior to 11.00 AM, the appellant chose to be silent and did not report the incident. As a matter of record, the incident was reported by PW-1. Learned counsel submitted that although the appellant and his family members were charged with committing offences under Section 304B IPC, a crucial aspect which weighed with the Trial Court in not convicting them or the appellant was that the deceased had locked herself inside – a fact confirmed by the photographs and deposed to by more than one witness. This crucial aspect ruled out the possibility of unnatural death.

12. Learned APP submitted that the finding with regard to the appellant being guilty of the offence punishable under Section 306 IPC was justified. In this

context, it was urged that though the Postmortem Report (Ex.PW-9/A) and the doctor's (PW-9) deposition mentioned that the injuries being inflicted on the deceased prior to hanging could not be ruled-out, the Court was correct in holding that dowry demand had not been made. However, the Court quite rightly concluded that having regard to the number of injuries – which was seven, and the further circumstance that the appellant was at home when the incident occurred, having regard to the larger context of history of physical abuse meted out to the deceased, this was a case where the deceased was driven to commit suicide.

13. It was submitted that the most incriminating circumstance which implicated the appellant was the history of beating to which the deceased was subjected at his hands (deposed to by her brothers, PWs-1, 5 and 7) and the proximity of time and the nature of injuries which were fresh. It was argued that there was no suggestion given to the doctor that the injuries were self-inflicted and the entire emphasis was to show that the deceased had made unsuccessful attempts at hanging herself. The appellant did not dispute his presence in the premises at the time when the deceased ended her life. He, therefore, owed an explanation to the Court as to what had transpired in the last hours of her death, or at least within 8-10 hours of the time when her body was recovered. His failure to give any explanation meant that he did not discharge the onus which the latter had placed on him under Section 106 Evidence Act. The prosecution, for its part, proved all the incriminating circumstances, such as the instances when he beat-up the deceased and connected that with the seven injuries found on her body. No doubt, the fact that the deceased had bolted herself inside a room and proceeded to commit suicide, absolved the appellant of the responsibility of the offence under Section 304B, yet, he could not give any explanation about what caused the deceased to take the extreme step of ending her life. If in fact, there was a prior history of quarrel or she had undergone

depression, the appellant could not establish it by objective and independent evidence. In these set of facts, therefore, the impugned judgment should not be interfered with, because neither the appellant nor the complainant established any substantial or compelling reason for the High Court to exercise its appellate jurisdiction.

14. From the above discussion, it is apparent that the deceased's body was seen by the police first pursuant to the intimation (Ex.PW-14/A). That document mentions PW-1 and PW-5 as the persons who informed the police, and the time mentioned as 11.00 AM. ASI Ved Prakash reached the spot along with other police personnel and recorded the statement of PW-1, Sanjay Sharma (Ex. PW-1/A), which led to the filing of the FIR (Ex. PW-8/A). The appellant does not dispute this sequence of facts. Thus, the incident was not reported by the appellant who was the deceased's husband. The Crime Team reached the spot at 11.30 AM and carried-on its inspection till 12.30 PM, evident from Ex. PW-11/A. Although the postmortem was conducted on 02.10.2006, the doctor appears to have recorded that the time of death was approximately 4-5 hours before the commencement of the procedure, i.e. 03.30 PM. In his deposition, he clarified that the time since death was 4-5 hours over and above 24 hours. Such being the case, the time of death, if reckoned at around 28-29 hours before the starting of the Postmortem examination, would be between 09.30-10.00 AM, on 01.10.2006. The Postmortem Report and the testimony of the doctor have revealed that there were seven injuries on the deceased's body. They are as follows:

"XXXXXX XXXXXX XXXXXX

1. Ligature mark was present on the anterior and right lateral aspect of the neck at the level of thyroid cartilage. It was placed diffused in pattern with more marked (deep) on the right side of the neck and the back on left side. Total length measured was 29 cm in

length and 2-3 cm in width with hard and leathery in-consistency with dark brown in colour.

2. One swelling with bruise of size 5 x 3 cm present on left eyebrow with reveling haematoma on section of said bruise.

3. One bruise of size 3 x 2 cm present on the lateral aspect of the left eyebrow.
4. Both upper and lower lips found bruised.
5. One bruise of size 2 x 1.5 cm present on the right shoulder.
6. One bruise (haemotoma) of size 5 x 3 cm present on the right forearm.
7. Multiple abrasion cum bruise present on the back, left forearm and right wrist.

XXXXXX XXXXXX XXXXXX"

15. There were seven injuries on the body of the deceased. The first one, a ligature mark on the neck, in the doctor's opinion, was the cause of death. The doctor, PW-9, in his deposition indicated that the death could be the result of hanging. In the report, he did not mention that the cause of death was either homicidal or suicidal. In these circumstances, when cross examined, he conceded that death could be suicidal. The prosecution was permitted to ask leading questions, which it did. In reply, the doctor specifically said that according to his opinion, death could not be the result of forcible strangulation. In these background of circumstances, and the ocular testimony of the witnesses, who assisted in the removal of the body, after seeing it hanging in the premises, it would be both idle and dangerous to speculate or conclude that death was homicidal. For the Court to conclude that death was homicidal, sole reliance on a theory, propounded by Modi's Medical Jurisprudence – which was concededly not put to the accused under Section 313 Cr. PC, is insufficient to convert a conviction under Section 306 to one under Section 302, IPC, as the complainant wants this court to do.

16. As far as the complainant's argument about unnatural death is concerned, this Court is acutely alive to the fact that it is not every unnatural death which occurs within seven years of marriage, of a woman, which can result in a presumption under Section 304-B IPC, but those cases, where "soon before the death" of a woman, she is harassed for dowry, or treated with cruelty, in that regard. As regards dowry demand, the evidence, in the opinion of this Court, is woefully lacking. The Trial Court recorded the following finding on this aspect:

> *"In the present case, as per PW1 Sanjay Sharma, the demand of rupees one lac was alleged to have made by accused Rakesh Sharma, while he was constructing the house and amount of rupees fifty thousand is alleged to have paid by PW1 Sanjay Sharma. As per PW3 Devender Kumar, the construction of house was done by accused Rakesh Sharma in the year 2005 and PW Devender Kumar, too, had, purchased a car in the year 2005. Incident, in the present case, has taken place on 1.10.2006. It means that there is a gap of ten months between the alleged demand of dowry and unnatural death of Savita, which does not fulfills the essential ingredients of Section 304-B IPC."*

We further notice that there was no attempt on the part of the prosecution witnesses to fix the date or time, or even the month, when the money was allegedly demanded and given, with some amount of precision. If indeed, it was their case that ₹ 1,00,000/- was demanded out of which half the amount could be given, as a result of which the Appellant nursed some grudge, there was a strong likelihood of their having remembered some details. The absence of any details, left the Court guessing; it took the most favourable view and concluded that even if the amount was given in December, 2005, the time gap between the alleged demand and the death was over 10 months, and not "soon before". We do not see any infirmity in this finding.

17. Quite apart from the evidence of the doctor, as to the death of Savita, there is a strong circumstance which rules out homicide or the element of unnaturalness; it is that the room, where the deceased was found hanging, was locked from inside. The Trial Court held that:

> *"As per the prosecution version, the dead body of the deceased Savita was hanging, prior to reaching of PW14 SI Ved Parkash, PW2 HC Rajinder and PW12 Inspector Vijay Chandel. As per own version of the prosecution, the room in which, the dead body was hanging was bolted from inside and the same was got opened in the presence of aforesaid witnesses i.e PW14 SI Ved Parkash, PW-2 HC Rajinder and PW-12 Inspector Vijay Chandel and thereafter, the dead body was sent for conducting postmortem examination. The statement of PW-14 SI Ved Parkash, PW-2 HC Rajinder and PW12 Inspector Vijay Chandel remains un-rebutted on the record as no cross-examination is done by he accused persons on this account.*
>
> *On the other hand, PW1 Sanjay Sharma, during his cross-examination has specifically admitted that the said room was having only one door. There is no other door or space, except the said door to come out of the said room. The photograph Ex PW13/6 also confirms that room was bolted from inside and window of the said room is affixed with an iron grill and there is no other space to come out of the said room. Since, the room was bolted from inside and the dead body was hanging inside the room, there was no occasion for the accused persons to enter into the said room and commit murder of deceased Savita. In these circumstances, committing murder of deceased Savita, by the accused persons is completely ruled out."*

The above finding reflects a perfectly reasonable inference which the Trial Court was entitled to legitimately draw. Besides, we have independently examined the photographs, and satisfied ourselves that the findings are correct. In addition, we notice that the photographs reveal that the only window – through which the witnesses apparently saw the body hanging, was completely covered with a grill. The single entry through the only door, and the grill attached to the window, rules out the possibility of anyone killing Savita, and fleeing the spot. The fact that the

door was latched or locked from inside makes it almost certain that the death was suicidal.

18. The next question which has to be addressed is whether the facts of this case show that the Appellant was guilty for the offences punishable under Sections 498-A IPC and 306 IPC. Section 306 IPC reads as follows:

> *"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 also be libable to fine."*

Section 498-A IPC reads as follows:

> *"Whoever, being the husband or the relative of the husband of a woman, subjects such woman, to cruelty shall be punished within 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 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."*

Abetment, and punishment for abetment are dealt with by Sections 107 and 109, IPC; they read as follows:

***Section 107**:-*

> *"A person abets the doing of a thing, who-- First, Instigates any person to do that thing; or*

Secondly, Engages with one or more other 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."

Section 109, IPC, provides for punishment of abetment; it reads as follows:-

"Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for punishment of such abetment, be punished with the punishment provided for the offence.

Explanation :-- An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

19. The interplay between Sections 306 and 498-A IPC, and the potential presumption which the court can draw, by virtue of Section 113-A Evidence Act, was dealt with by the Supreme Court, in *Ramesh Kumar v State of Chhatisgarh* AIR 2001 SC 3837, where the Court held as follows:

"A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) 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 above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The 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'. 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. The expression-'The other circumstances of the case' used in Section 113A suggest 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 113A is defined in Section 4 of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such act as provided, unless and until it is disproved or may call for proof of it.'"

In *Sai Ram v. State of U.P.* (AIR 1975 SC 125), the Supreme Court held that in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. It held that mere proof that the crime could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirement of Section 107 IPC. In In *Sanju v. State of M.P.* 2002 Cri LJ 2796, the Supreme Court held that:

"Section 107 I.P.C defines abetment to mean that a person abets the doing of 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.

Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

In Swamy Prahaladdas v. State of M.P. & Anr. , 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked 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.

In Mahendra Singh v. State of M.P., 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"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."

This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased…"

20. It is thus apparent that unlike Section 304-B, IPC read with Section 113-B, of the Evidence Act, there is no statutory compulsion for a Court to draw adverse inference if it finds that a woman was treated with cruelty within the meaning of Section 498-A IPC; if suicidal death is proved, then, having regard to the overall circumstances, the Court "may" presume that the accused is guilty for the offence punishable under Section 306 IPC. This distinction is critical, because it affirms that the Courts have to confirm to a higher threshold of proof, in the case of suicide by a woman, and not *invariably* presume that the accused had abetted in the crime. To put it differently, the prosecution has to prove other factual elements necessary for the Court to return a finding of guilt under Section 306. This is where, a closer analysis of the facts becomes necessary in this case.

21. PW-1, PW-3 and PW-5, the deceased's brothers, consistently speak about her giving birth to an infant daughter in November, 2001 (5 years before the death) and also about her having fallen ill at that time. They depose that a quarrel took place between the accused and them at that time; hot words were exchanged, and later the quarrel was resolved through compromise. They next talk about beatings being given to the deceased. The third aspect of cruelty which they testify to is that on the date of the incident, one of them received a phone call at 4:00 AM from the deceased, alleging that she would be killed. They also deposed that the deceased's matrimonial home had a land line phone. However, there is no proof about this; neither are the call records of the land line or the deceased's mobile phone, nor are those of her brothers' mobile phones, produced to corroborate this. Worse, there is a contradiction between PW-5 and PW-3 on this aspect. PW-3, who claims to have received the call at 4:00 AM, deposed about having been informed by the appellant, Rakesh regarding the hanging, at around 10 AM, and that he made a call to No. 100 from Ghaziabad at 11:30; however, PW-3's testimony suggests that PW-5 made a call from Delhi, about receiving his sister's telephone call voicing her apprehension.

22. Now, the Trial Court rejected the prosecution theory about dowry harassment. If that were the case, the only material which implicated the accused was the strong circumstance of the deceased having been beaten – based on the testimony of PW-9 and the post-mortem report. If this evidence of physical cruelty in the form of beating is to be believed – and we have no reason to hold, in this context that the Trial Court acted in error, in any manner- the further question which arises is whether that by itself can lead the Court to draw on the presumption under Section 113-A of the Evidence Act.

23. Here, the Court would have to recollect that Section 306, and Section 107 IPC, which collectively deal with the question of abetment of suicide, require some proof of behavior – rather aggravated behavior which incites, or drives the victim to commit suicide. The fact that Section 498-A talks of suicide does not automatically result in the Court taking the step forward and concluding that in every case where cruelty is proved, within the meaning of that expression, the Court should necessarily take recourse to Section 113-A of the Evidence Act, and convict the accused. Such an interpretation would be setting at naught Parliamentary intention, and also contrary to the authorities and the law declared by the Supreme Court. What the prosecution would have to necessarily prove is some form of persistent obnoxious or offensive behavior, which drives the victim to commit suicide.

24. The decision in *Randhir Singh & Anr. Vs. State of Punjab* [(2004) 13 SCC 129] establishes that abetment involves a mental process of *instigating* a person or intentionally aiding a person in the doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction under Section 306 IPC cannot be sustained. In *Kishangiri Mangalagiri Goswami v State of Rajasthan*, (Crl. A. 169/2009 decided by Supreme Court on 28-1-2009) the conviction under Section 306, where suicide was committed on account of unreasonable demands for dowry, sought to be proved through letters, was set aside; it was held:

> *"There was no material to show that the appellant had subjected the deceased to such cruelty and harassment as to instigate her to commit suicide."*

In *State Of West Bengal vs Orilal Jaiswal* AIR 1994 SC 1418 the Court recommended a cautionary approach, in the following terms:

> *"In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A I.P.C. and Section 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Eater v. Bater (1950) 2 All ER 458 at p.459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter……We may add here 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.*

25. The facts of this case reveal that the deceased and the accused were married in 1999; at the time of Savita's death, the couple had three children. The one incident of quarrel – with the deceased's brothers, which they speak of, occurred in November, 2001, after the birth of a baby girl. The allegations of dowry demand,

and harassment on that score, were discarded by the Trial Court. We are satisfied that those findings are sound, and reasonable, since primarily the prosecution witnesses were vague on what kind of demands were made. As far as cruelty is concerned, this Court notices that a similar vagueness about the routine or habitual beatings of the deceased, which took place at the hands of the accused, was spoken to. The witnesses could not say when they had lodged any complaint with the police about such cruel behavior. As this Court has remarked earlier, the nature of injuries on the deceased clearly incriminate the Appellant. However, it would be difficult to conclude that the beating incident alone constituted incitement to the deceased, to commit suicide, and impel the Court to rely on Section 113-A and presume that the suicide was abetted by the accused. We are conscious of the fact that the Appellant and his wife were alone at home, when the incident took place. However, this fact does not automatically lead us to assume that the beating alone was sufficient to amount to an incitement or drive her to commit suicide. The couple had been married for nearly 7 years, and had three children. The allegations of physical beatings though made, are vague, and are unsubstantiated before the incident. Even the allegation about PW-5 having received a telephone call at 4:00 AM in the morning, has not been proved. Having regard to all these factors, this Court feels that it would be unsafe to conclude that the Appellant Rakesh was guilty of abetting the suicide of his wife, Savita, on that fateful day.

26. In view of the above findings, the Appellant's conviction for the offence punishable under Section 306 IPC is set aside. His conviction under Section 498-A IPC is affirmed. The sentence of seven years imprisonment and fine, for the offence under Section 306 IPC is consequently set aside. The sentence of two years RI for the offence under Section 498-A IPC is however, left undisturbed. Crl.

Appeal No. 167/2011 is allowed to the above extent; the appellant shall be released if he has undergone the period in respect of the offence under Section 498-A IPC, and if he is not required for any other offence. Crl. Appeal No. 358/2011 is, consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

MARCH 27, 2012