

A GUMANSINH @ LALO @
RAJU BHIKHABHAI CHAUHAN & ANR.

v.

THE STATE OF GUJARAT
B (Criminal Appeal Nos. 940-941 of 2021)

SEPTEMBER 03, 2021

[S. ABDUL NAZEER AND KRISHNA MURARI, JJ.]

C *Penal Code, 1860 – ss.498A and 306 – Married woman committed suicide in her matrimonial home within 8 months of marriage, purportedly, by consuming pesticide – Conviction of appellants (husband and mother-in-law) by Courts below u/ss.498A and 306 IPC – Challenge to – Held: Prosecution proved that deceased was harassed with a view to coerce her to meet unlawful demand of Rs.25,000/- and such harassment was on account of*
D *her failure to bring said amount from her father (PW-1) who was financially incapable to meet such demand – Charge u/s.498-A of cruelty clearly established against the appellants – Defence failed to adduce any evidence to rebut presumption as to abetment of suicide u/s.113-A of the Evidence Act – Prosecution successful in*
E *establishing the evidence that deceased was left with no choice than to commit suicide – Conviction u/ss.498A and 306 IPC, affirmed – Evidence Act, 1872 – s.113A.*

Crime Against Women – Domestic cruelty – Witness – Evidentiary value of close relatives/interested witness – Held: Most
F *often, the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness – Also, normally no independent or unconnected person would prefer to become a witness for a number of reasons – Nothing*
G *unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives – Law does not disqualify the relatives to be produced as a witness though they may be interested witness – Penal Code, 1860 – s.498A.*

Evidence – Witness – Interested witness – Appreciation –
H *Held: Evidence of an interested witness requires scrutiny with*

utmost care and caution – If the evidence of any interested witness/ relative on a careful scrutiny by the Court is found to be consistent and trust-worthy, free from infirmities or any embellishment that inspires the confidence of the Court, there is no reason not to place reliance on the same. A

Evidence Act, 1872 – ss.113A and 4 – s.4 defines the phrase ‘may presume’ used in s.113-A – Definition of the word ‘may presume’ — Meaning and effect of. B

Evidence Act, 1872 – s.113A – Applicability – To attract the applicability of s.113-A, three conditions are required to be fulfilled :- (i) The woman has committed suicide, (ii) Such suicide has been committed within a period of seven years from the date of her marriage, and (iii) The charged-accused had subjected her to cruelty – However, the existence and availability of above said three circumstances are not to be invoked, like a formula, to enable the presumption being drawn and the presumption is not an irrebuttable one. C
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Dismissing the appeals, the Court

HELD: 1. Whether prosecution has successfully established the charge of cruelty as laid down in Explanation (b) of Section 498-A IPC. E

1.1. Most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reasons. There is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives. The evidentiary value of the close relatives/interested witness is not liable to be rejected on the ground of being a relative of the deceased. Law does not disqualify the relatives to be produced as a witness though they may be interested witness. [Para 21] [34-G-H] F
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A 1.2. However, when the Court has to appreciate the
evidence of any interested witness it has to be very cautious in
weighing their evidence or in other words, the evidence of an
interested witness requires a scrutiny with utmost care and
caution. The Court is required to address itself whether there
B are any infirmities in the evidence of such a witness; whether
the evidence is reliable, trust-worthy and inspires the confidence
of the Court. Another important aspect to be considered while
analyzing the evidence of interested witness is whether the
genesis of the crime unfolded by such evidence is probable or
not. If the evidence of any interested witness/relative on a
C careful scrutiny by the Court is found to be consistent and
trustworthy, free from infirmities or any embellishment that
inspires the confidence of the Court, there is no reason not to
place reliance on the same. [Para 22][35-B-D]

D 1.3. In the case at hands, PW-1,2,3 and 4, though they are
related to the deceased, are natural witnesses. There being no
bar in examining the family members or any other person as
witnesses, their evidence is not liable to be discarded on this
ground. The evidence of the aforesaid witnesses is found
consistent without any material contradiction and inspires
confidence. The Courts below have also properly scrutinized
E their evidence prior to taking them into account and there is
nothing unusual in believing their testimonies. [Para 24][37-F-
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F 1.4. From the evidence of the prosecution witness, it is
clear that prosecution has proved that the deceased was
harassed with a view to coerce her to meet unlawful demand of
Rs.25,000/- and such a harassment was on account of failure by
her to bring the said amount from her father (PW-1) who was
financially incapable to meet such demand. On the basis of the
aforesaid evidence, the prosecution has been successful in
G proving the charge of cruelty under Explanation (b) of Section
498-A IPC. [Para 25][37-G-H; 38-A]

H 2. Whether the accused can also be held guilty for the
offence punishable under Section 306 IPC (which provides
punishment for the offence of abetment of suicide) with the aid
of Section 113 A of the Evidence Act. [Para 27][39-A]

2.1. Section 113-A of the Evidence Act, provides for presumption as to abetment of suicide by a married woman within seven years of marriage, by her husband or any of his relative. Explanation added to Section 113-A of the Evidence Act clearly provides that ‘cruelty’ shall have the same meaning as in Section 498-A of the IPC. [Paras 13, 14][31-F; 32-B]

2.2. To attract the applicability of Section 113-A of the Evidence Act, three conditions are required to be fulfilled :- (i) The woman has committed suicide, (ii) Such suicide has been committed within a period of seven years from the date of her marriage, and (iii) The charged-accused had subjected her to cruelty. From the facts of the case at hands, all the three conditions stand fulfilled. However, the existence and availability of the above said three circumstances are not to be invoked, like a formula, to enable the presumption being drawn and the presumption is not an irrebuttable one. [Paras 32, 33, 34][41-C-F]

2.3. Admittedly, in the case at hands, the evidence clearly establishes the offence of cruelty or harassment caused to the deceased and thus the foundation for the presumption exists. Admittedly the appellants have led no evidence to rebut the presumption. Thus, in the facts and circumstances of the case, it can be safely concluded that the Courts below committed no illegality in holding that the accused-appellants abetted the suicide of the deceased. The matter can be viewed from another angle. The prosecution was successful in establishing the charge under Section 498-A of cruelty against the appellants from which a reasonable inference can be drawn that the deceased committed suicide by consuming pesticides. The deceased was in the custody of the appellant and died within the four walls of her matrimonial home under suspicious circumstances. [Paras 37 and 38][42-B-D]

2.4. Not only a specific charge was framed against the accused-appellants, on one hand, the defence failed to adduce

- A any evidence to rebut the presumption under Section 113-A of the Evidence Act and on the other hand the prosecution was successful in establishing the evidence that the deceased was left with no choice than to commit suicide. No fault can be found with the Trial Court and the Appellate Court placing reliance on the evidence in drawing the presumption under Section 113-A
- B particularly, when there was no material brought on record by the defence to disprove the facts. [Paras 44, 45][45-G; 48-A-B]

3. Both the Trial Court as well as the High Court have threadbare considered the evidence and have recorded cogent reasons to come to the conclusion that the prosecution has been
- C successful in proving the case against the appellants beyond reasonable doubt. [Para 46][48-B-C]

Gurjit Singh v. State of Punjab (2020) 14 SCC 264 – distinguished.

- D *Maranadu and Anr. v. State by Inspector of Police, Tamil Nadu* (2008) 16 SCC 529 : [2008] 13 SCR 487 ; *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618 : [2001] 4 Suppl. SCR 247 ; *Ramesh Vithal Patil v. State of Karnataka & Ors.* (2014) 11 SCC 516 ; *Satish Shetty v. State of Karnataka* (2016) 12 SCC 759 : [2016] 3 SCR 145 ; and *K. Prema S. Rao & Anr. v. Yadla Srinivasa Rao & Ors.* (2003) 1 SCC 217 : [2002] 3 Suppl. SCR 339 – relied on.
- E

Case Law Reference

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|---|-------------------------|---------------|---------|
| | [2008] 13 SCR 487 | relied on | Para 23 |
| F | [2001] 4 Suppl. SCR 247 | relied on | Para 31 |
| | (2014) 11 SCC 516 | relied on | Para 39 |
| | [2016] 3 SCR 145 | relied on | Para 40 |
| | [2002] 3 Suppl. SCR 339 | relied on | Para 40 |
| G | (2020) 14 SCC 264 | distinguished | Para 42 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.940-941 of 2021.

From the Judgment and Order dated 28.12.2018 corrected vide order dated 08.02.2019 of the High Court of Gujarat at Ahmedabad in

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GUMANSINH @ LALO @ RAJU BHIKHABHAI CHAUHAN & 29
ANR. v. THE STATE OF GUJARAT

R/Criminal Appeal No.833 of 2000 and final order and judgment dated 07.03.2019 in Criminal Miscellaneous Application No.1 of 2019. A

Ms. Akriti Chaubey, Md. Tahir M. Hakim, Ejaz Maqbool, Varish A. Mansuri, Muhammad Isa M. Hakim, Advs. for the Appellants.

Ms. Deepanwita Priyanka, Aniruddha P. Mayee, Advs. for the Respondent. B

The Judgment of the Court was delivered by

KRISHNA MURARI, J.

1. Leave granted.

2. These appeals arise out of final order and judgment of the Hon'ble High Court of Gujarat at Ahmedabad (hereinafter referred to as 'High Court') dated 28.12.2018 corrected vide order dated 08.02.2019 in R/Criminal Appeal No. 833 of 2000 and final order and judgment dated 07.03.2019 in Criminal Misc. Application (for extension of time) No. 1 of 2019 filed by the appellants challenging the order of conviction against them. C D

3. By the said judgment, the High Court has dismissed the appeal filed by the appellant herein challenging the judgment dated 27.07.2000 passed by the Learned Sessions Judge, Vadodara in Sessions Case No. 92 of 1998 convicting the appellant in respect of the offence punishable under Section 306, 498A read with Section 114 of the Indian Penal Code (hereinafter referred to as 'IPC') is confirmed. E

4. In brief, the prosecution case is that the marriage of Appellant No. 1 was solemnized with Tahera (hereinafter referred to as the 'Deceased') on 27.04.1997 and after the marriage, the deceased was residing with both the appellants. The Appellant No.1 was constantly asking the deceased to bring Rs.25,000/- from her father (PW-1) in order to purchase buffaloes as, he was keen on doing milk business. Due to poor financial condition, PW-1 was not able to satisfy the demand of Appellant No. 1. Therefore, Appellant No.1 frequently started beating the deceased, while Appellant No. 2 who was her mother-in-law used to pick up quarrel with her on the pretext that she neither knew how to cook nor do any house-hold work properly. The deceased committed suicide on 14.12.1997 between 17:00 and 17:30 hours by consuming poison at her matrimonial home for the sole reason that she was unable to bear the continuous mental and physical cruelty meted out to her by the appellants in a short span of 8 months. F G H

A 5. The PW-1, father of the deceased filed a complaint with Padra Police Station which was registered as ICR No. 34 of 1997 for the offences punishable under Section 498A and 306 read with Section 114 of the IPC. After completion of the investigation, charge-sheet was filed in the Court of Learned Judicial Magistrate First Class, Padra, who committed the case to the Court of Sessions. The case was registered
B as Sessions Case No. 92 of 1998 and was made over to the Learned Additional Sessions Judge for trial. Charges were framed and against the appellants and they pleaded not guilty and claimed to be tried.

C 6. In order to substantiate the case, the prosecution has examined seven witnesses and all the incriminating evidence was put to the appellants while recording their statement under Section 313 of Code of Criminal Procedure Code, wherein they totally denied the case of the prosecution.

D 7. The Trial Court came to the conclusion that the Appellants subjected the deceased to physical and mental cruelty which lead her to commit suicide and convicted the appellants for offences punishable under Section 498A and 306 of IPC and sentenced them to undergo Rigorous imprisonment for a period of one year and pay fine of Rs. 500/- as well as two years Rigorous imprisonment and pay fine of Rs. 500/-.

E 8. Aggrieved by the same, the accused appellants filed an appeal before the High Court and mainly contended that there was no demand of money by Appellant No. 1 as he was only asking for loan to purchase buffaloes in order to start milk business. It was further contended that the deceased was under medical treatment as she was suffering from
F some mental illness. It was pointed out that only relatives were examined as witnesses though independent witnesses were available and therefore, the prosecution case becomes doubtful. It was further contended that the appellants were not present in the house when the deceased committed and prayed for the appeal to be allowed and the conviction of the appellants be set-aside.

G 9. However, the High Court observed that the evidence produced by the prosecution clearly indicates the deceased was subjected to mental and physical cruelty by the appellants on the account of non-fulfillment of demand of Rs.25,000/- and, therefore, the judgment and order of conviction passed by the learned Trial Court was
H confirmed.

10. Being aggrieved by the conviction and sentence under Section 498-A IPC and Section 306 IPC, the accused have preferred these appeals. Ms. Akriti Chaubey, learned Counsel for the appellants vehemently submitted that the conviction as recorded by the learned Trial Court and confirmed by the High Court is not tenable. It is submitted that the evidence of the material witnesses suffer from major contradictions and there was no demand of any money by the appellant No.1 because he was only asking for loan to purchase buffaloes with an intention to start milk business. She further submitted that the deceased was suffering from some mental illness for which she was under medical treatment. Her further submission is that only close relatives were examined as witnesses and there was no independent witness. A B C

11. Per contra, Ms. Deepanwita Priyanaka, learned counsel appearing on behalf of the State submitted that there is a concurrent finding of both the Courts below as such no interference is warranted. It is further submitted that all the ingredients necessary for conviction under Section 306 IPC stands proved with the aid of Section 113-A of the Evidence Act, 1872 as such the present appeals deserved to be dismissed. D

12. We have considered the rival submissions and also perused the impugned judgment as also the testimony of the witnesses with the aid of learned counsel for the parties. E

13. It is undisputed that the suicidal death of the deceased occurred within a short span of eight months of marriage. Section 113-A of the Evidence Act, provides for presumption as to abetment of suicide by a married woman within seven years of marriage, by her husband or any of his relative. The said section reads as under :- F

“113A. 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 G H

A *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 498A of the Indian Penal Code (45 of 1860).”

B 14. Explanation added to Section 113-A of the Evidence Act clearly provides that ‘cruelty’ shall have the same meaning as in Section 498-A of the IPC and thus it would be relevant to extract said section which reads as under :-

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

D *Explanation.- For the purpose of this section, “cruelty” means-*

E (a) *any willful 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*

F (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.”*

G 15. The prosecution case was that the marriage of the deceased who was the daughter of the complainant was solemnized with appellant no. 1 around eight months before the alleged incident and thereafter she was residing in her matrimonial home along with her husband, the appellant no.1 and mother-in-law, the appellant no. 2. For about two months, they had a peaceful life, thereafter the appellant no. 1 started pressing deceased to bring Rs.25,000/- from her father to purchase buffaloes as he was interested in starting business of milk. It was further stated that the complainant PW-1 was unable to satisfy the

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demand on account of his weak financial condition. When the demand of Rs.25,000/- could not be met by the complainant, the appellant no.1 started beating the deceased and appellant no. 2, the mother-in-law also used to quarrel with her on the pretext that she was not knowing cooking and was not doing household work properly. On account of physical and mental cruelty meted out to her during a short span of eight months of marriage, when it became unbearable she committed suicide on 14.12.1997 between 17:00 and 17:30 hours by consuming poison at her matrimonial home.

16. Aforesaid complaint lodged by PW-1, the father of the deceased, was registered vide I-C.R.No. 341 of 1997 for the offences punishable under Sections 498-A and 306 read with Section 114 of the Indian Penal Code.

17. A perusal of evidence of PW-1, Mustufa Chhotubhai Ghor, the father of the deceased would establish that deceased was married to appellant no. 1, eight months prior to the alleged incident. He stated in his testimony that the married life of the two was smooth for initial two months, however, after two months of the marriage, the appellant no. 1 started insisting Tahira (the deceased) to ask for a sum of Rs.25,000/- from PW-1 to purchase buffaloes for milk business, but he was unable to pay the said amount as he was earning his livelihood by running a tea stall and was also indebted. He also stated that since he could not fulfill the demand because of his weak financial position, his deceased daughter was ill-treated and beaten frequently by appellant no.1. He further stated that the appellant no. 2, the mother-in-law of the deceased also started quarreling on the pretext that the deceased could not make chapatti properly nor could she do the household work and her father has not taught her anything. He also stated that the deceased used to share her trauma with her mother (PW-4) who in turn used to tell her everything. He further stated that the son-in-law was very suspicious and he did not let Tahira (the deceased) to go alone to any place and used to beat her. He also stated that lastly appellant no. 2 came to his house along with the deceased and demanded Rs.500/- from his wife (PW-4), as her husband was to go to Ajmer. He also stated that in the night at about 1:30A.M., PW-3 his brother, came and informed about the death of the deceased. In the cross-examination, his testimony was unshaken. Though during cross-examination, it was tried to be elicited from this witness that deceased was suffering from some kind of illness prior to marriage and was undergoing some

A treatment. The witnesses admitted in the cross-examination that the deceased was suffering from some pain and his wife used to take her for treatment and was given medicine. Apart from above, neither the nature of illness nor the details of the treatment or medication could be elicited from this witness. As a matter of fact, there was not even a suggestion by the defence that deceased was suffering from any kind of mental illness or undergoing treatment for the same.

18. The evidence of PW-1 stands corroborated by the evidence of PW-4, Dariyaben Mustufa Ghori, the mother of the deceased, as well as PW-3 Ahmadbhai Chhotubhai Ghori, the brother of complainant and PW-5, Hanif Mustufa Ghori, brother of the deceased.

19. It is pertinent to mention that much emphasis has been laid by learned counsel for the appellants on the cross-examination of PW-1, wherein he stated that even before marriage the deceased was undergoing treatment and medication. Learned counsel for the appellants vehemently contended that the deceased was suffering from some mental disease and was undergoing treatment and her mental instability might have resulted in suicide. The argument is not liable to be accepted inasmuch as neither any evidence was produced by the defence in this regard nor anything about the illness or medication was stated by them in their statement under Section 313. The deceased lived in her matrimonial home with the appellants for about eight months after marriage and if she was undergoing any prolonged treatment, it was not possible for the appellants not to have acquired knowledge of the said facts.

20. It was next submitted by the learned counsel for the appellants that all the witnesses are relative and interested witnesses and no independent witness was examined by the prosecution to prove the case, thus, the prosecution case becomes doubtful.

21. Most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reasons. There is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives. The evidentiary value of the

close relatives/interested witness is not liable to be rejected on the A
ground of being a relative of the deceased. Law does not disqualify
the relatives to be produced as a witness though they may be interested
witness.

22. However, when the Court has to appreciate the evidence of B
any interested witness it has to be very cautious in weighing their
evidence or in other words, the evidence of an interested witness
requires a scrutiny with utmost care and caution. The Court is required
to address itself whether there are any infirmities in the evidence of
such a witness; whether the evidence is reliable, trust-worthy and C
inspires the confidence of the Court. Another important aspect to be
considered while analyzing the evidence of interested witness is whether
the genesis of the crime unfolded by such evidence is probable or not.
If the evidence of any interested witness/relative on a careful scrutiny
by the Court is found to be consistent and trust-worthy, free from
infirmities or any embellishment that inspires the confidence of the Court,
there is no reason not to place reliance on the same. D

23. A three-Judge Bench of this Court in the case of *Maranadu
and Anr. Vs. State by Inspector of Police, Tamil Nadu*¹, while
considering this issue, has observed as under:-

*“Merely because the eyewitnesses are family members their E
evidence cannot per se be discarded. When there is
allegation of interestedness, the same has to be established.
Mere statement that being relatives of the deceased they are
likely to falsely implicate the accused cannot be a ground
to discard the evidence which is otherwise cogent and
credible. We shall also deal with the contention regarding F
interestedness of the witnesses for furthering prosecution
version.*

*“....Relationship is not a factor to affect credibility of a G
witness. It is more often than not that a relation would not
conceal actual culprit and make allegations against an
innocent person. Foundation has to be laid if plea of false
implication is made. In such cases, the court has to adopt a
careful approach and analyse evidence to find out whether
it is cogent and credible.*

¹ (2008) 16 SCC 529

A *11. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-*

B *“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has*
C *cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”*

D *The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.*

E *13. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh’s case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:*

F *“25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on*
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the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel." A B

14. Again in *Masalti and Ors. v. State of U.P.* (AIR 1965 SC 202) this Court observed: (p. 209-210 para 14):

"14.....But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct." C D

15. To the same effect is the decisions in *State of Punjab v. Jagir Singh* (AIR 1973 SC 2407), *Lehna v. State of Haryana* (2002 (3) SCC 76) and *Gangadhar Behera and Ors. v. State of Orissa* (2002 (8) SCC 381). E

24. In the case at hands, PW-1,2,3 and 4, though they are related to the deceased, are natural witnesses. There being no bar in examining the family members or any other person as witnesses, their evidence is not liable to be discarded on this ground. From a perusal of the evidence of the aforesaid witnesses, we find that it is consistent without any material contradiction and inspires confidence. The Courts below have also properly scrutinized their evidence prior to taking them into account and there is nothing unusual in believing their testimonies. F

25. Thus, from the evidence of the prosecution witness we have no hesitation to hold that prosecution has proved that the deceased was harassed with a view to coerce her to meet unlawful demand of Rs.25,000/- and such a harassment was on account of failure by her to bring the said amount from her father (PW-1) who was financially incapable to meet such demand. We find, on the basis of the aforesaid G H

A evidence, that the prosecution has been successful in proving the charge of cruelty under Explanation (b) of Section 498-A IPC.

26. Suicidal death by consuming pesticide stands affirmed by the evidence of PW-2, Dr. Anand, who was one of the panel members of doctors who carried out post-mortem of the deceased. He stated in

B his cross-examination that :-

C *“On 15/12/1997 I was serving as the PMC medical officer at Gandhi. At noon 3-15 hours the dead body of Tahera Gumansinh Chauhan was brought to be and the time was around 3-30 hours. In the panel doctor was Dr. Rolisharan and he is at present at the Rajkot Medical College. While checking the dead body, as for the internal injuries, on the legs the threads were placed. There was normal injury on the right thigh. There was no other external injury that could prove that the death occurred due to beating. Even thereafter, the stomach was opened and the particular that came out had plunging smell. The samples of her intestine, liver, kidney and blood were obtained and were sent for analysis at the forensic science laboratory, Ahmedabad, so that the actual facts could be known. This analysis report was sent by the forensic department to us. One was sent to police station. But I have not received a copy. Therefore, I can give further deposition if the copy of police is shown to me. I am as on today shown the mark 8/9 being the papers of the prosecution and upon seeing I state that, in the intestine of the deceased the poisonous pesticide Diazinon Organophosphate was found. This proves that, the death of Taheraben had occurred due to consuming of poison. The panel doctor along with me undertook the post mortem of deceased. I am shown the mark 8/7 PM report and we both doctors have prepared the same. The doctor along with me has signed it in my presence. It has my signature. I identify the same. It is given exhibit 17.”*

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His statement was intact in the cross-examination and nothing contradictory could be elicited from him.

27. Now, the question that falls for our consideration is the prosecution having successfully established the charge of cruelty as laid down in Explanation (b) of Section 498-A IPC and also the fact that

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the deceased committed suicide by consuming pesticide within seven years of marriage, whether the accused can also be held guilty for the offence punishable under Section 306 IPC with the aid of Section 113 A of the Evidence Act. A

28. In the case at hands, the prosecution failed to adduce any direct evidence to establish that the accused abetted deceased into committing suicide. The prosecution has placed reliance on Section 113-A of the Evidence Act to establish the charge of abetment against the accused. B

29. Section 107 of IPC describes offence of abetment as under:-

“Section 107 of IPC- C

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 D

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

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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act. F G

30. Section 306 of IPC provides punishment for the offence of abetment of suicide, reads as under:- H

A “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.”

B 31. This question came up for consideration before a three-Judge Bench in the case of **Ramesh Kumar Vs. State of Chhattisgarh**². In paragraph 12 of the said judgment, it has been observed as under :-

C *“This provision was introduced by Criminal Law (Second Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. How-ever still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicabilty of Section 113- A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. 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 above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to ‘all the other circumstances of the case’. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - ‘The other circumstances of the case’ used in*

H ² (2001) 9 SCC 618

Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says- 'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

32. From the above observations, it becomes clear that to attract the applicability of Section 113-A of the Evidence Act, three conditions are required to be fulfilled :-

- i. The woman has committed suicide,
- ii. Such suicide has been committed within a period of seven years from the date of her marriage,
- iii. The charged-accused had subjected her to cruelty.

33. From the facts of the case at hands, all the three conditions stand fulfilled. There is no dispute about the facts that the deceased committed suicide within a period of seven years from the date of her marriage and charged-accused had subjected her to cruelty, as we have confirmed the findings of the Trial Court as well as High Court that prosecution has been successful in proving the charge of cruelty under Explanation (b) of Section 498-A IPC.

34. It is no doubt correct that the existence and availability of the above said three circumstances are not to be invoked, like a formula, to enable the presumption being drawn and the presumption is not an irrebuttable one, as held by a three-Judge Bench of this Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh (Supra)**.

35. At this stage, we may also make a reference to Section 4 of the Evidence Act, which defines the phrase 'may presume' used in Section 113-A, which reads as under :-

"Shall Presume - whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

A 36. The above definition of the words ‘may presume’ makes it clear that whenever the act provides that the Court may presume a fact, the said fact is to be regarded as proved, unless and until it is disproved.

B 37. Admittedly, in the case at hands, the evidence clearly establishes the offence of cruelty or harassment caused to the deceased and thus the foundation for the presumption exists. Admittedly the appellants have led no evidence to rebut the presumption.

C 38. Thus, in the facts and circumstances of the case, it can be safely concluded that the Courts below committed no illegality in holding that the accused-appellants abetted the suicide of the deceased. The matter can be viewed from another angle. The prosecution was successful in establishing the charge under Section 498-A of cruelty against the appellants from which a reasonable inference can be drawn that the deceased committed suicide by consuming pesticides. The deceased was in the custody of the appellant and died within the four walls of her matrimonial home under suspicious circumstances.

D 39. A two-Judge Bench of this Court, in the case of **Ramesh Vithal Patil Vs. State of Karnataka & Ors.**³ in almost identical facts and circumstances, has observed in paragraph 26 of the judgment as under:-

E *“Moreover, admittedly the deceased committed suicide within a period of seven years from the date of her marriage. Section 113-A of the Evidence Act is, therefore, clearly attracted to this case. Presumption contemplated therein must spring in action. This provision was introduced by Criminal Law Second Amendment Act, 1983 to resolve the difficulty of proof where married women are forced to commit suicide but incriminating evidence is difficult to get as it is usually available within the four walls of the matrimonial home.*

F *In this case, the prosecution has led evidence to establish cruelty and harassment caused to the deceased which is rightly taken into account by the High Court. Thus, the foundation for the presumption exists. The appellant, however, has led no evidence to rebut the presumption.*

H ³ (2014) 11 SCC 516

Therefore, it can be safely concluded in the facts of this case that the appellant abetted the suicide of the deceased.” A

40. Reference may also to be made to the following observations of this Court in the case of **Satish Shetty Vs. State of Karnataka**⁴ :-

*“Once the prosecution succeeds in establishing the component of cruelty leading to conviction under Section 498 A, in our view only in a rare case, the Court can refuse to invoke the presumption of abetment, if other requirements of Section 113-A of the Evidence Act stand satisfied. This proposition is amply supported by the view taken by the three-Judge Bench of this Court in the case of **K.Prema S.Rao & Anr. Vs. Yadla Srinivasa Rao & Ors.**⁵.”* B C

41. In the case of **K. Prema S. Rao (Supra)**, this Court while holding that in view of Section 215 Cr.PC omission to frame charge under Section 306 IPC has not resulted in any failure of justice and thus, there was no necessity to remit the matter to the Trial Court for framing the charge under Section 306 IPC and direct a retrial for that charge. It further went on to observe as under:- D

“The same facts found in cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing “dowry death” under Section 304B which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A, IPC.” E F

(Emphasis applied)

42. The reliance placed by learned counsel for the appellants on the judgment of this Court rendered by a two-Judge Bench in the case of **Gurjit Singh Vs. State of Punjab**⁶ is totally mis-founded, as the case is distinguishable on facts. In the said case, this Court found that though the prosecution was successful in proving the case under Section 498A of the IPC but the prosecution had failed to prove that the cruelty was G

⁴ (2016) 12 SCC 759

⁵ (2003) 1 SCC 217

⁶ (2020) 14 SCC 264 H

A of such a nature which left no choice to the deceased than to commit suicide. It was found that the prosecution has failed to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the
B deceased by the accused due to which the deceased had no other option than to commit the suicide. It may be relevant to extract the following observations made in the judgment :-

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

D *“That you all on 28.9.94 in the area of Village Bohan, the death of Jaswinder Kaur wife of you, Gurjit Singh and daughter-in-law of you, Gurdial Singh and Mohinder Kaur and sister-in-law of Ranjit Kaur, was caused otherwise than under normal circumstances, you all being*
E *her relatives, within a period of seven years of her marriage subjected her to cruelty and harassment for all in connection with demand for dowry and thereby committed an offence of dowry death punishable under section 304B of the Indian Penal Code, and within my*
F *cognizance.”*

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

43. On the contrary, in the case at hands, the following charge was framed against the accused-appellants vide order dated 29.05.2000
H *by the Trial Court :-*

CHARGES

I, Mr. A.C. Modi, Vadodara District Additional Sessions Judge, hereby frame charges against both of you the accused that,

The marriage of the accused no. 1 took place with Taheraben and therefore Taheraben and both accused resided together. The accused no. 1 used to undertake milk business, the accused no. 1 asked regularly Taheraben to bring an amount of Rs.25,000/- from her father, for the purchase of milk. But as Taheraben had the idea of financial condition of her father, she could not fulfill the demand. Due to this, the accused no.1 used to time and again beat up Taheraben. Meanwhile the accused no.2 being the mother-in-law of Taheraben, she used to remark that Taheraben was not doing household work in a proper manner, is not cooking food properly and thereby in such a manner the accused no. 1 was wrongly incited by the accused no 2 and thus Taheraben was beaten. In this manner, you both the accused, within a span of eight months of marriage, caused mental and physical harassment to Taheraben, made her life worse, created a situation whereby she wished for death and due to your such behaviour, left with no other option, in order to end her life on 14/12/1997 from 17:00 hours to 17:30 hours, Taheraben consumed pesticide at Medhad village, thereby committed suicide and hence she died.

In this manner, you both the accused have abetted the suicide of Taheraben and thereby have committed the crime under Sections 306, 498-A and 114 of the IPC.

I hereby declare to hold judicial proceedings against you as for the same.”

44. Thus, it would be seen that not only a specific charge was framed against the accused-appellants, on one hand, the defence failed to adduce any evidence to rebut the presumption under Section 113-A and on the other hand the prosecution was successful in establishing the evidence that the deceased was left with no choice than to commit suicide. A reference may be made to the oral testimony of PW-3, the uncle of the deceased, the relevant part of his examination-in-chief is extracted here under:-

On the second day, my mother Sakina, my wife Rashida and I i.e., we three persons, went to Medhad in three wheeler tempo. We meet the mother-in-law of Tahera at that place. The mother-in-law of Tahera told me that, son of her elder brother was to be operated and he has to go to hospital. We asked her to send Tahera with us and she replied that the father-in-law of Tahera was to go to Ajmer due to which she should be returned. Thereafter I brought Tahera to my house at Bhoj. Tahera remained at my house for a period of 2-3 days and Tahera told me that even now she is harassed. Even now Gumansinh is seeking the amount and he is beating her. Moreover, her mother-in-law is even stating that Tahera is not cooking well and that she does not do work properly. Thus, her mother-in-law would in some other manner start a quarrel with her and make Gumansinh beat her. Tahera told me that, she will not be able to keep up with it, if this goes on and that she will not return. The father-in-law of Tahera was to go to Ajmer and therefore we told Tahera that these sorrowful days will pass, thereby sent her to her matrimonial house. I told her that, I will not send her if further harassment would be kept. I explained her this thing and sent her to her matrimonial house.

She was dropped to her matrimonial house at Medadh by my son and other two persons in the Tempo. Thereafter on that very night at 11:00 to 11:30 hours, Fatmaben being the mother-in-law of Tahera and vikram being the son-in-law of Fatmaben along with another one man arrived at my house. They told me that Tahera consumed poison and therefore has expired. I told these people to inform this to her father Mustufa, thereafter I searched for a vehicle and went to inform this thing to my brother Mustufa at Fertilizernagar. I also informed this to my other brother Usman who resided at Tandalja and also informed this to others. I told my brother to inform this to all and went to the house of my brother Musfufa. I informed him that Tahera has expired in her matrimonial house as she consumed poison

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A 45. The testimony of this witness was unshaken during cross-examination and nothing contrary could be elicited from him, and thus we find no fault with the Trial Court and the Appellate Court placing reliance on the evidence in drawing the presumption under Section 113-A particularly, when there was no material brought on record by the defence to disprove the facts.

B 46. Both the Trial Court as well as the High Court have threadbare considered the evidence and have recorded cogent reasons to come to the conclusion that the prosecution has been successful in proving the case against the appellants beyond reasonable doubt.

C 47. Having gone through the relevant facts and the reasonings recorded by the Trial Court and affirmed by the High Court, we are not persuaded to take a different view. Thus, we find no reason to interfere with the impugned judgment. The appeals are, therefore, dismissed.

Bibhuti Bhushan Bose

Appeals dismissed.