

Gurjit Singh vs The State Of Punjab on 26 November, 2019

Equivalent citations: AIR 2020 SUPREME COURT 1785, AIR ONLINE 2019 SC 1569, (2019) 16 SCALE 634, (2020) 1 ALLCRILR 407, (2020) 1 DMC 231, (2020) 1 HINDULR 417, (2020) 77 OCR 282

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Bench: N.V. Ramana, R. Subhash Reddy, B.R. Gavai

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 1492–1493 OF 2010

GURJIT SINGH

... APPELLANT(S)

VERSUS

STATE OF PUNJAB

... RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. These appeals by special leave challenge the judgment and order dated 20.2.2009 passed by the Division Bench of the Punjab and Haryana High Court in Criminal Appeal No. 544□DBA of 2001 and Criminal Appeal No. 959□SB of 2000. All the four accused, including the appellant herein (accused No.3), who is husband of the deceased, were charged and tried by the learned trial Court for the offence punishable under Section (hereinafter referred to as “IPC”). The other accused were the 16:15:03 IST Reason:

father (accused No.1), the mother (accused No.2) and the sister□in□law (wife of brother) (accused No.4) of the appellant. The Additional Sessions Judge, Hoshiarpur, held that the prosecution had succeeded in proving the case against accused Nos. 1 to 3 for the offence punishable under Section 498□A of the IPC but has failed to prove

the case against the said accused (Nos. 1, 2 and 3) for the offence punishable under Section 304B of the IPC. Insofar as accused No. 4 is concerned, it was held that the prosecution has failed to prove the case against her for both the offences and she was accordingly acquitted of the offence charged. The trial Judge, therefore, convicted the appellant and his father and mother for the offence punishable under Section 498A of the IPC and sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 4000/each and, in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

2. Being aggrieved by the conviction and sentence under Section 498A of the IPC, the appellant along with his parents preferred an appeal (being Criminal Appeal No.959B of 2000) before the High Court. So also, the State preferred an appeal (being Criminal Appeal No.544DBA of 2001), being aggrieved by that part of the order by which the trial Court acquitted accused No. 4 and also acquitted accused Nos. 1, 2 and 3 for the offence punishable under Section 304B of the IPC. The High Court upheld the conviction of accused Nos. 1, 2 and 3 for the offence punishable under Section 498A of the IPC. It also upheld the acquittal of accused No. 4 and further held that, though the prosecution could not bring the case under Section 304B of the IPC, the appellant herein was liable to be punished for the offence punishable under Section 306 of the IPC. The High court maintained the order of the sentence and fine as recorded by the trial Judge for the offence punishable under Section 498A of the IPC. For the offence under Section 306 of the IPC, the High Court sentenced the appellant herein to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 5000/and in default of payment of fine, to further undergo rigorous imprisonment for a period of five months. Being aggrieved thereby, the present appeals are preferred by the appellant.

3. Shri Rajeshwar Singh Thakur, learned counsel for the appellant, submitted that the conviction as recorded by the learned trial court and confirmed by the High Court under Section 498A of the IPC is not tenable. It is submitted, that the conviction is only on the basis of the evidence of PW10 Bishan Singh, the father of the deceased. It is submitted, that there is no corroboration to the said evidence. It is submitted, that in any case, the conviction under Section 306 of the IPC is not tenable. It is contended that the charge was for the offence punishable under Section 304B of the IPC, the ingredients of which are totally different than the ingredients of Section 306 of the IPC. It is submitted that as such grave prejudice was caused to the appellant. It is further submitted that the evidence shows that the father of the deceased, PW10, has stated, that even during the course of the trial, the appellant was on congenial meeting terms with the father of the deceased and as such the unnatural human conduct would discredit his testimony.

4. Per contra, Smt. Jaspreet Gogia, learned counsel appearing on behalf of the State, submitted that insofar as conviction under Section 498A of the IPC is concerned, since there is a concurrent finding, no interference is warranted. She further submitted, that since the ingredients of Section 304B and Section 306 of the IPC are almost similar, no prejudice was caused to the appellant by convicting him under Section 306 of the IPC though no charge was framed for the same. It is submitted that all the ingredients necessary for conviction under Section 306 with the aid of Section 113A of the Indian Evidence Act, 1872 were duly proved by the prosecution and as such no

interference is warranted in the present appeals.

5. The perusal of the record would reveal that though the appellant has disputed the date of marriage to be 04.02.1989, both the courts have disbelieved him and rightly so. The deceased died an unnatural death on 28.09.1994 by consuming poison. As such, the unnatural death occurred within a period of seven years of the marriage. The learned trial Judge has acquitted the appellant for the offence punishable under Section 304□B of the IPC since the prosecution has failed to prove the demand for dowry, while convicting him along with the parents for the offence punishable under Section 498□A of the IPC. The High Court maintained the conviction under Section 498□A of the IPC, however, it also convicted the appellant for the offence punishable under Section 306 of the IPC with the aid of Section 113□A of the Indian Evidence Act, 1872.

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

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

“107. Abetment of a thing □A person abets the doing of a thing, who—
First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

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

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

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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.

xxx 498□A. Husband or relative of husband of a woman subjecting her to cruelty.— Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purposes of this section, “cruelty” means— (a) any wilful conduct which

is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

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

“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 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 IPC (45 of 1860).”

9. The perusal of the evidence of PW10 Bishan Singh, the father of the deceased, would establish that the deceased, Jaswinder Kaur was married to appellant on 04.02.1989. His daughter had two issues. The elder one was four years old and the son was about 1 ½ years old at the time of the occurrence. He stated, that after the marriage, accused were harassing his daughter for giving less dowry. In the year 1992, he had given one steel almirah to his daughter but the accused were not satisfied with the dowry article. In March 1993, he had purchased one fridge through his son-in-law, Jagtar Singh, from the Military Canteen for Rs. 6,600/- which was given to the accused persons. Even then the accused were not satisfied. The accused were pressing his daughter, Jaswinder Kaur, to bring Rs. 50,000/- from her parents. He further stated, that the accused were compelling his daughter out of anger to bring Rs. 50,000/- in cash, as they were to purchase a plot at Hoshiarpur. He further stated that on two-three occasions, his daughter came to his Village Kharal Kalan and he requested her that Rs. 50,000/- were not with him at that stage and after selling the paddy crop he can pay that amount. He stated that, thereafter, after consoling his daughter, he sent her to her in-laws house. He further stated, that on 28.09.1994 when he was in his house, he came to know that his daughter had died. Suspecting that his daughter was given poison or she consumed poison, he lodged a report with the police.

10. To some extent, the evidence of PW10 is corroborated by the evidence of PW13 Iqbal Singh. He has stated, that prior to the occurrence, i.e., the death of the deceased there was a dispute between the accused persons and the deceased, Jaswinder Kaur, as Rs. 50,000/- was being demanded by the accused persons from the parents of the deceased for purchasing a plot. He further stated, that the parents of the deceased could not pay Rs. 50,000/- and promised to pay the same after selling paddy crop. He further stated, that before demand of Rs. 50,000/- one refrigerator and one almirah was given to the accused persons by the parents of the deceased on their demand

and this was over and above dowry given at the time of the marriage.

11. Thus from the evidence of PW□10 which is corroborated to an extent by PW□3, we have no hesitation to hold that the prosecution has proved that the deceased was harassed with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or such a harassment was on account of failure by her or any person related to her to meet such a demand. We find, that on the basis of aforesaid evidence, the prosecution has proved the charge under Explanation (b) of Section 498□A of the IPC.

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

13. The said question fell for consideration before the bench of three learned Judges of this Court in the case of Ramesh Kumar vs. State of Chhattisgarh¹. This Court, after reproducing the provisions of Section 306 of the IPC and Section 113□A of the Indian Evidence Act, 1872 observed thus:

“12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26□12□1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in□laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113□A shows that to attract applicability of Section 113□A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests. Secondly, the existence 1 (2001) 9 SCC 618 and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — “the other circumstances of the case” used in Section 113□A suggests the need to reach a cause□and□effect relationship between the cruelty and the suicide for the purpose of raising a presumption.

Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113A is defined in Section 4 of the Evidence Act, which says — “Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

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

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

- (i) The woman has committed suicide,
- (ii) Such suicide has been committed within a period of seven years from the date of her marriage,
- (iii) The husband or his relatives, who are charged had subjected her to cruelty.

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

16. It has been further held that when the case does not fall under clauses secondly and thirdly of Section 107 of the IPC, the case is to be decided with reference to the first clause, i.e., whether the accused appellant abetted the suicide by instigating her to do so. It will be further relevant to refer to following observations in Ramesh Kumar (supra):

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

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

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

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

17. The Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. Though the court observed that to satisfy the requirement of instigation, 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. However, it has been observed that a reasonable certainty to incite the consequence must be capable of being spelt out. Relying on the judgment of this court in the case of State of West Bengal vs. Orilal Jaiswal 2, it is observed that the court should be extremely careful in assessing the facts and circumstances of each case and the 2 (1994) 1 SCC 73 evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. It has further been held that Section 498A and Section 306 of the IPC are independent and constitute different offences. It has been observed, that depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498A of the IPC. It has further been observed, that if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, it may also amount to abetment to commit suicide. It is further observed,

that, however, merely because accused had been held liable to be punished under Section 498A of the IPC, it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

18. Another three Judge bench of this Court in the case of K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors.³ had an occasion to consider the question as to whether in the circumstances of framing charge only under Section 304B of the IPC and not framing the one under Section 306 of the IPC, could the conviction under Section 306 of the IPC read with 3 (2003) 1 SCC 217 Section 113A of the Indian Evidence Act be tenable? In the said case, the Court found that the charge specifically mentioned as under.

“That on or about the 22nd day of October, 1989, at your house at Tunikipadu of Gampalagudem Mandal, Yedla Krishna Kumari, wife of A among you and daughter in law of A² and A³ among you, committed suicide by consuming poison, and that you all subjected her to such cruelty and harassment as did drive her to commit suicide, with the object of extracting ac. 5.00 of land as dowry to A and thereby committed an offence punishable under Section 304B of the Indian Penal Code, 1860 and within the cognizance of this court.

or alternatively That, prior to the 22nd day of October, 1989, at your house at Tunikipadu, you subjected Yedla Krishna Kumari, wife of A among you and daughter in law of A² and A³ among you, to such cruelty and harassment as did drive the said Krishna Kumari to commit suicide, and thereby committed an offence punishable under Section 498A of the Indian Penal Code, 1860 and within the cognizance of this court.”

19. The court, therefore, held that the ingredients to constitute an offence under Section 306 of the IPC were already found in the charge and as such no prejudice was caused to the accused therein, though no separate charge was framed under Section 306 of the IPC. Apart from that, the evidence on record established that when the letters concealed by the husband were discovered by the wife and handed over to the father and she was driven out of the house, this cruel conduct of the husband led the wife to commit suicide. It could thus be seen, that in the facts of the said case, the Court found that the conviction under Section 306 of the IPC could be recorded. It was found that, apart from the earlier acts of harassment for parting with the land which she had received in marriage as stridhana, there was an act of driving the deceased out of the house which had direct nexus with the deceased committing suicide.

20. The bench of two Judges of this Court had an occasion to consider a similar issue in the case of Hans Raj vs. State of Haryana⁴. It will be relevant to refer to following paragraphs:

“12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the

doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113A of the Indian Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113A further clarifies that cruelty shall have the same meaning as in Section 498A of the Indian Penal Code.....

4 (2004) 12 SCC 257

13. Unlike Section 113B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113A of the Indian Evidence Act. Under Section 113A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in Section 498A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.....”

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

22. This court in the case of Hans Raj (supra) has also referred to the judgment of this court in the case of State of West Bengal vs. Orilal Jaiswal (supra), wherein it is observed that the requirement of

proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A of the IPC and Section 113A of the Indian Evidence Act.

23. It will be relevant to refer to the following observations of this Court in the case of Pinakin Mahipatray Rawal vs. State of Gujarat⁵ :

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

27. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extramarital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

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

25. In Mangat Ram vs. State of Haryana⁶ this Court observed thus:

“28. We have already indicated that the trial court has found that no offence under Section 304B IPC has been made out against the accused, but it

convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused.

The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

26. After observing the aforesaid, this Court, relying on the judgment of this Court in the case of Hans Raj (supra), observed that even if it is established that the woman concerned had committed suicide within a period of seven years from the date of marriage and that her husband has subjected her to cruelty, the court is not bound to presume that suicide has been abetted by her husband. It is required to take into consideration all other circumstances of the case.

27. It could thus be seen, that the view taken by the three Judge Bench of this Court in the case of Ramesh Kumar (supra) that when a case does not fall under clause secondly or thirdly, it has to be decided with reference to the first clause, i.e., whether the accused has abetted the commission of suicide by intentionally instigating her to do so; has been consistently followed. As such, we are of the view that merely because an accused is found guilty of an offence punishable under Section 498A of the IPC and the death has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of the IPC by employing the presumption under Section 113A of the Evidence Act. Unless the prosecution establishes that some act or illegal omission by the accused has driven the deceased to commit the suicide, the conviction under Section 306 would not be tenable.

28. Insofar as the judgment of this Court in K. Prema S. Rao (supra), on which the High Court had relied, is concerned, we have already discussed hereinabove that in the said case there was evidence on record proving that immediately prior to committing the suicide the deceased was driven out of the house. As such, it was held that the said cruelty would amount to abetment to commit suicide.

29. Insofar as the judgment of this Court in Modinsab Kasimsab Kanchagar vs. State of Karnataka & Anr.⁷ is concerned, no doubt that the learned counsel for the State is 7 (2013) 4 SCC 551 justified in relying on the said judgment as the conviction in the said case is for the offence punishable under Section 498A of the IPC and Sections 3, 4 & 6 of the Dowry Prohibition Act, 1961. However, in the said case, the conviction under Section 304B of the IPC was set aside by this Court. However, the question, as to whether when the charge is framed only under Section 304B of the IPC could the conviction be recorded under Section 306 of the IPC did not fall for consideration in the said case.

30. In the case of Thanu Ram vs. State of Madhya Pradesh⁸ this Court by observing that on account of interplay between Section 113A of the Indian Evidence Act, 1872 and Sections 498A, 107 and 306 of the IPC, held that the appellant was liable for conviction for the offence punishable under Section 498A and Section 306 of the IPC. However, it is to be noted that in the said case the Court relied on the dying declaration of the deceased wherein she stated that she had been treated with both mental and physical cruelty. In the said case, there was a dying declaration of the deceased which was believed by the court. The said dying declaration was corroborated by the evidence of PW-3, on the basis of which 8 (2010) 10 SCC 353 the Court held that the ill treatment was such which triggered her immediate intention to commit suicide.

31. In the case of Satish Shetty vs. State of Karnataka⁹ the victim was found to have injuries on her person. Though, the deceased and the husband had slept together in the same room before she consumed poison, the appellant's husband had not at all explained the injuries sustained by the victim. In these circumstances, the conviction under Section 306 of the IPC, as recorded by the High Court for the first time, was maintained by this Court.

32. Insofar as the judgment of this Court in the case of Narwinder Singh vs. State of Punjab¹⁰, it is by the two learned Judges of this Court and it does not take into consideration the judgment by three learned Judges of this Court in Ramesh Kumar (supra)..

33. Applying the aforesaid principles to the present case, we find that though the prosecution is successful in proving the case under Section 498A of the IPC, we are of the view that the prosecution has failed to prove that the cruelty was of such a nature which left no choice to the deceased than to commit suicide. The prosecution has not been in a position to place on 9 (2016) 12 SCC 759 10 (2011) 2 SCC 47 record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide. We are of the view, that there is no material placed on record to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption.

34. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In the case of Sanju Alias Sanjay Singh Sengar vs. State of M.P.¹¹ this Court found that there was time gap of 48 hours between the accused telling the deceased 'to go and die' and the deceased 'committing suicide'. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased. 11 [(2002) 5 SCC 371]

35. 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 304B 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:

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

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

37. In the foregoing circumstances, the appeals are partly allowed. Conviction under Section 498-A of the IPC is maintained and the conviction under Section 306 of the IPC is set aside. The appellant is acquitted of the charge under Section 306 of the IPC.

38. The appellant is stated to be on bail, his bail bonds shall stand discharged and he is directed to surrender within four weeks for serving the remaining period of his sentence, if not already undergone. 39.

.....J. [NAVIN SINHA]J. [B.R. GAVAI] NEW DELHI;

NOVEMBER 26, 2019.