
(2021) 08 SHI CK 0211
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 6 Of 2010

Onkar Krishan And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 173, 313, 394(2)
Indian Penal Code, 1860 — Section 34, 107, 306, 498A
Evidence Act, 1872 — Section 113(A), 113B

Citation : (2021) 08 SHI CK 0211

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Rahul Mahajan,. Nand Lal Thakur, Ram Lal Thakur, Sunny Dhatwalia

Final Decision : Allowed

Judgement

FIR NUMBER,"128 dated 24.05.2006 Registered in Police Station Palampur District Kangra, HP

under Sections 498A and 306 read with Section 34 of IPC

Sessions Trial No.,"Number 9-P/VII-2007, Decided on 11.12.2009 by learned Sessions Judge, Kangra at

Dharamshala, whereby the Sessions Judge convicted the accused persons and sentenced to undergo simple imprisonment for three years each and to pay fine of

Rs.5000/- each, for the commission of both the offences under Sections 498A read

with section 34 of IPC as well as under Section 306 read with Section 34 of IPC, separately, with separate default clauses for each offences..

which raises presumption under Section 113 (A), and the accused have failed to

rebut such presumption.",

ANALYSIS AND REASONS:

12. PW-12, Dharam Das, father of the deceased, testified that he was working as Peon in Government Senior Secondary School, Nagrota Bagwan,"

and the deceased Lata Devi was his youngest daughter. Her marriage took place on 13th February 2004. It has also come in the evidence through,

postmortem report and other investigation that Lata Devi committed suicide on 24th May 2006 by consuming phosphoric poison.,

13. PW1 Swarna Devi, the deceased's mother, admitted that the accused were agriculturists and cultivated the land. They used to get insecticides",

from the government Department to save their grain from pests. Given this, the accused had not intentionally kept the pesticides at home but were",

kept to preserve the grains. Consequently, the non-recovery of the poison's container is insignificant.",

14. PW-8 Arjun Singh, a neighbor of the accused, who was their ward member, stated that on 24.05.2006, at around 12:00 noon/1:00 p.m., he noticed",

the deceased vomiting in her courtyard, and when he reached there, it was emitting the smell of poisonous substance. He also noticed that Chhatanki",

Devi was giving water to her. In the meantime, all of them arranged a vehicle and sent Lata Devi for treatment to Palampur. The accused had also",

accompanied her up to the hospital.,

15. PW-1, the deceased's mother, admitted that the accused had taken her daughter to the hospital for treatment, and they had taken her in a vehicle.",

In cross-examination, PW-1, the deceased's mother, admitted that the younger brother of the accused visited their home in a van and informed that",

Lata Devi was ill and was vomiting. He also stated that he had come to take them along. PW-12, Dharam Das, father of the deceased; PW-3 Shri",

Shiv Kumar, brother of the deceased; and PW-7, Purshottam Das, Mama of the deceased, also admitted that the accused had taken her to hospital and",

had also intimated them about her illness.,

16. The evidence tendered by the deceased's parents and corroborated by PW-3 Shri Shiv Kumar, brother of the deceased, coupled with the",

earliest statement of PW-12 Dharam Singh, father of the deceased, recorded under Section 154 of CrPC, Ex.PW-6/A, which led to the registration of",

FIR, the following incidents of maltreatment meted out to the deceased Lata

Devi:",

FIRST SET OF ALLEGATIONS OF CRUELTY & MALTREATMENT:

17. Around 3-4 months after her wedding, Lata Devi had visited their home and had told her family members that she did not want to return to her",

matrimonial home. (a). She said that her family members, mother-in-law Chhatanki Devi, father-in-law Bhoop Singh, and husband pressurize her to",

keep on doing household chores. (b). They also intimidate her and do not let her blend with their community. (c). They send her to fetch water from,

bauri (a water source where the natural water is collected for the community) as late as 11:00 p.m., and (d). Even when she got fully exhausted, they",

still would not let her take a rest and keep on forcing her to do more and more work.,

18. PW1, Swarna Devi, the deceased's mother, admitted that all the villagers used to bring water from Bouri for drinking, but she said that none would",

bring water at night time. PW-3 Shri Shiv Kumar, the deceased's brother, admitted that Bouri was at a distance of 40-50 meters from the deceased's",

house, and all the villagers fetch water for drinking purposes from the same Bouri.",

19. PW-7, Purshottam Dass, Mama of the deceased (brother of PW-1, Swarna Devi), stated in his cross-examination that accused persons treated",

Lata Devi well for some time after the marriage. They started treating her with cruelty after sometime of her marriage by saying that she did not,

know how to work. Thus, as per the version of the deceased's Mama, the accused had treated the deceased well for some time after her",

wedding. Although the witness did not quantify the time, it could still not be just days or weeks.",

20. Even otherwise, these allegations pertain to the initial three four months of her marriage, i.e., the months of February to May, 2004, and are not",

proximate to her suicide after around two years of such allegations.,

21. In Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh, (2002) 5 SCC 371, Honâ??ble Supreme Court holds that the alleged abusive",

words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998.",

Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it",

cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by",
the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased",
committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is",
alleged that the appellant had used the abusive language and also told the deceased to go and die.,

22. In State of West Bengal v. Indrajit Kundu, 2019 (14) Scale 109, Honâ??ble Supreme Court holds,"

[11]. From the material placed on record, it is clear that respondents are sought to be proceeded for charge under Section 306/34 mainly relying on the",
suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant,"
respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on 05.03.2004 and the,
deceased girl committed suicide on 06.03.2004. By considering the material placed on record, we are also of the view that the present case does not",
present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action,
on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents.,
There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicideâ?!.,

SECOND SET OF ALLEGATIONS OF CRUELTY & MALTREATMENT:,

23. PW-1, the deceased's mother, stated that the accused would ask her to cook a meal but would not allow her to take the meal. It is improbable that",
the mother of a child would survive without taking proper meals. The Post mortem report, Ext. PW-13/A, did not notice any frailty due to fasting or",
lesser food intake.,

24. PW-12, Dharam Das, father of the deceased, testified that the accused did not let her take meals. He called the Panchayat, which settled the",
matter. Before Panchayat, the accused undertook not to maltreat her and after that compromised the matter. In his cross-examination, the defence",
drew his attention to the earliest version, Ex.PW-6/A, wherein the fact that the

accused were not providing her meals, was not recorded. Thus, these",
allegations appear to be exaggerations.,

THIRD SET OF ALLEGATIONS OF CRUELTY & MALTREATMENT:,

25. PW-12, father of the deceased alleged that in 2005, her mother-in-law Chhatanki Devi had pushed her from the stairs. He had complained about",
this with the Pradhan. Subsequently, a compromise had taken place in the Panchayat. PW-1, Swarna Devi, mother of the deceased lends",

corroboration to these allegations. She further qualifies by stating that Chhatanki Devi, A-2, used to push her daughter without any rhyme and reason.",

26. When he reached there, Lata Devi told him to take her back. Although the English version of the statement of PW-12 reads as follows, ""The said",

fact was disclosed by Lata Devi to me, and she insisted upon to go to her matrimonial house, upon which my wife accompanied her and let her in the",

house of the accused."" However, when the Hindi version of this statement is seen, it has been specifically mentioned that she refused to return to her",

matrimonial home. Be that as it may, considering the witness's background and social status, he must have testified in vernacular, i.e., Hindi. Thus, the",

Court proceeds that she had refused to go to her matrimonial home.,

27. Although the deceased's parents admitted that the compromise was scribed and signed by both parties, its non-production is still insignificant given",

the statement of PW-8 Arjun Singh, who was the ward member of the area. He testified that the deceased's father had complained in the Panchayat",

that the deceased's father-in-law and mother-in-law used to quarrel with her. He had accompanied them to their house along with Anil Kumar, who",

was Up-Pradhan at that time. In their presence, both the parties had compromised the matter. He did not state that the cause of the quarrel was the",

push given to her by her mother-in-law.,

FOURTH SET OF ALLEGATIONS OF CRUELTY & MALTREATMENT:,

28. On 05.05.2006, when the deceased had visited their home from her matrimonial home, at that time, she repeatedly told everyone that she did not",

want to return to her matrimonial home. She apprehended her killing, but the complainant wanted her to settle down. Deceased's father explained",

that they had called her to their home, where she stayed for six months. During her stay, she had disclosed that all the accused used to give her",

beatings and refused to return to her matrimonial home.,

FIFTH SET OF ALLEGATIONS OF CRUELTY & MALTREATMENT:,

29. On 21.5.2006, when accused, Onkar Krishan made a phone call to Dharam Singh, father of the deceased, asking him to send the deceased back",

home. PW1, deceased's mother testified that they had brought their daughter to their home, but Lata Devi's husband made a phone call and",

asked them to send her back because her sister-in-law had fractured her leg. She did not want to return but they had sent back the deceased.,

However, she committed suicide after 5-6 days. PW-12, the deceased's father stated that his daughter had committed suicide because of the",

maltreatment and misbehavior of her in-laws.,

30. Give above, despite the reluctance of their daughter, her parents either to save their false social honor, or unable to sustain and keep her along with",

her toddler, or may be financial and space constraints did not heed to her requests, and persuaded her to return to her husband's place, where,",

within a week, she committed suicide.",

31. Lata Devi had died within seven years of her marriage, which would attract the reverse presumption as mandated under Section 113 (A) of the",

Indian Evidence Act.,

32. S. 107 IPC reads as follows:,

107. Abetment of a thing: - A person abets the doing of a thing, who-First. --Instigates any person to do that thing; or Secondly. -Engages with one or",

more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and",

in order to the doing of that thing; or Thirdly. --Intentionally aids, by any act or illegal omission, the doing of that thing.",

Explanation 1.-A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes",

or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. 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.",

33. In *Shri Ram v. State of U.P.*, (1975) 3 SCC 495, Honâ??ble Supreme Court holds,"

[6]. Thus, in order to constitute abetment, the abettor must be shown to have ""intentionally, aided the commission of the crime. Mere proof that the",

crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of,

Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless",

the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is",

not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active,

complicity is the gist of the offence of abatement under the third paragraph of Section 107.,

PRESUMPTION UNDER S. 113-A OF EVIDENCE ACT:,

34. Section 113A of the Evidence Act reads 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 and 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.",

35. In *Gurbachan v. Satpal*, (1990) 1 SCC 445, Honâ??ble Supreme Court holds,"

[4]. â?|Criminal charges must be brought home and proved beyond all reasonable doubt. While civil case may be proved by mere preponderance of,

evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. See *Mancini v. Director of Public Prosecutions*, 1942 AC",

1, *Woolmington v. The Director of Public Prosecutions*, 1935 AC 462. It is true even today as much as it was before. There must not be any",

'reasonable doubt' about the guilt of the accused in respect of the particular

offence charged. The courts must strictly be satisfied that no innocent, person, innocent in the sense of not being guilty of the offence of which is charged, is convicted, even at the risk of letting off some guilty persons.",

Even after the introduction of S. 498A of the I.P.C. and S. 113A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable",

doubt. There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases. See the",

observations of Lord Denning in *Bater v. Bater*, (1950) 2 All ER 458 at p. 459, but the doubt must be of a reasonable man. The standard adopted must",

be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to",

the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile, on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.",

[5]. The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the, judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of, the doubt must be commensurate with the nature of the offence to be investigated.,

36. In *State of W.B. v. Orilal Jaiswal*, (1994)1 SCC 73, Honâ??ble Supreme Court holds,"

[15]. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. 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 498-A Indian Penal Code and Section 113-A of the 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 doubts 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 *Bater v. Bater*, (1950)2 All ER 458 (All ER 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.,

37. In *Ramesh Kumar v. State of Chhattisgarh*, reported in (2001)9 SCC 618, Honâ??ble Supreme Court holds,"

[12]. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to",

resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and,

incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the,

occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal",

law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of",

Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from",

the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid",

circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen",

to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression 'may presume' suggests.",

Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the",

presumption may be drawn the court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other,

circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The,

expression - 'the other circumstances of the case' used in Section 113-A suggests the need to reach a cause-and-effect relationship between the,

cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a",

presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the,

presumption. The phrase 'may presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says - 'Whenever it is provided by',

this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.",

38. In *Hans Raj v. State of Haryana*, (2004) 12 SCC 257, Honâ??ble Supreme Court holds,"

[13]. Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the",

circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A 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 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which",

means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning",

of word 'cruelty' in Section 498-A, I.P.C. 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.",

39. In *Rajbabu v. State of M.P.*, (2008) 17 SCC 526, Honâ??ble Supreme Court holds,"

[18]. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered,

into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Evidence,

Act, under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case,"

that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in,

Section 498-A IPC,

[19]. Under Section 113-A of the Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of",

seven years from the date of her marriage and that her husband or any relative of her husband had subjected her to cruelty. Section 113-A gives a,

discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is",

of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word ""cruelty"" in Section 498-",

A IPC.,

[20]. 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 or,

any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of 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.,

40. In *Amalendu Pal v State of West Bengal*, (2010) 1 SCC 707, Honâ??ble Supreme Court holds,"

[12] Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must",

scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty,

and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in,

cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation,

of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the,

person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.",

[13] In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the",

person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to,

facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the",

prosecution before he could be convicted under Section 306 IPC.,

41. In *S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190, Honâ??ble Supreme Court holds,"

[25] Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of,

the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided",

by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires,

an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into,

such a position that he committed suicide.,

42. In *M. Mohan v. State Tr. Dy. Supdt. of Police*, (2011) 3 SCC 626, Honâ??ble Supreme Court holds,"

[35]. In the instant case, what to talk of existence of instances or illustrations of instigation, there are no specific allegations levelled against the",

appellants. On a careful perusal of the entire material on record, no offence under Section 306 Indian Penal Code can be made out against the",

appellants, in view of our clear and definite finding that there is no material whatsoever against the appellants much less positive act on the part of the",

appellants to instigate or aid in committing the suicide.,

[48] â? Undoubtedly, the deceased had died because of hanging. The deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and",

differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual",

differs from person to person. Each individual has his own idea of self-esteem and self- respect. Different people behave differently in the same,

situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question that remains to be answered is whether the,

appellants can be connected with that unfortunate incident in any manner?,

43. In *Pinakin Mahipatray Rawal v. State of Gujarat*, (2013) 10 SCC 48, Honâ??ble Supreme Court holds,"

[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-1 had instigated, conspired or intentionally aided so as to drive the wife to commit",

suicide or that the alleged extra marital 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. Prosecution has to establish beyond reasonable doubt that the deceased,

committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital 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.",

44. In *Mangat Ram v. State of Haryana*, (2014) 12 SCC 595, Honâ??ble Supreme Court holds,"

[30]. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption",

under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven,

years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under",

Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such",

relative of her husband. The term ""the Court may presume, having regard to all the other circumstances of the case, that such suicide had been",

abetted by her husband"" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that",

the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient",

enough to draw a presumption so as to fall under Section 113A of the Evidence Act.,

45. In *Narayan Malhari Thorat vs Vinayak Deorao Bhagat*, (2019) 13 SCC 598, Honâ??ble Supreme Court held that each individual has his own idea",

of self-esteem and self-respect. Different people behave differently in the same situation. 46. In *Ude Singh v. State of Haryana*, (2019) 17 SCC 301,"

Honâ??ble Supreme Court holds,"

[16]. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could",

hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one,"

involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the",

Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation",

of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person,

to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of,

suicide by another or not, could only be gathered from the facts and circumstances of each case.",

[16.1]. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of",

the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge",

forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is",

otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of",

abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the",

deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an",

active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held",

guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts,

and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show,

of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by",

words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate",

analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on",

the actions and psyche of the accused and the deceased.,

[16.2]. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another,

carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other,

human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the",

question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the",

response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background,"

selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."

47. In *Gurcharan v. State of Punjab*, (2020) 10 SCC 200, a three Judges bench of Honâ??ble Supreme Court holds,"

[15]. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to"

commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or"

show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens"

rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the"

Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction"

of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly"

because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not"

show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.,

48. PW-1, the deceased's mother, admitted that the accused family was a joint family, and they had 5-6 rooms, and every couple was residing in a"

separate room. She also admitted in her cross-examination that she (Lata Devi) used to love her husband but clarified that her husband was ill-treating,

her. Furthermore, she also admitted that they had a communal kitchen. She also admitted that the mother-in-law of the deceased (A-2) washed the"

clothes and cleaned the utensils in a water channel in their house.,

49. I have also gone through the judgment of conviction passed by Ld. Trial Court, to which I beg to differ."

50. In the facts and circumstances peculiar to this case, the prosecution failed to discharge the primary burden that the accused had instigated or"

abetted her suicide. The allegations are non-specific and general, without any proximity to the time of her consuming poison. Thus, the accused are"

entitled to the benefit of doubts.,

51. Given this, the above-captioned appeal filed by the convicts is allowed and the judgment of conviction and sentence is set aside. The accused are",

acquitted of all charges. On the appellants making an application for the refund of the fine, it shall be refunded along with interest, if any, minus taxes,"

by transferring it in their bank accounts. In the case of the refund of Appellant Bhoop Singh (Deceased), it shall be refunded to his wife, the 3rd",

Appellant. Bail bonds are discharged. Pending applications, if any, are closed." ,