
(2013) 01 GAU CK 0037
In the Gauhati High Court
Case No : Criminal Appeal No. 53 of 2007

Shib Sundar Mazumder and Another	APPELLANT
Vs	
State of Tripura	RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 107, 109, 306, 34, 498A

Citation : (2013) 2 GLD 615 : (2013) 2 GLT 424

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S. Sarkar and Mr. N. Mukherjee, for the Appellant; R.C. Debnath, Addl. PP, for the Respondent

Judgement

S.C. Das, J.—This criminal appeal is directed against the Judgment and Order of conviction and sentence dated 19.04.2007 passed by the learned Additional Sessions Judge, Khowai, West Tripura in Sessions Trial No. S.T. 01 (WT/K) of 2007. On the charges framed against the accused-appellants u/s 498A and 306 read with Section 34 of I.P.C., learned Additional Sessions Judge found the appellants guilty of committing the offence and sentenced accused-appellant Shib Sundar Majumder to suffer S.I. for 1 year and to pay a fine of Rs. 1,000/- in default of payment to suffer S.I. for 3 months u/s 498A of I.P.C. The accused-appellant Sova Rani Majumder, under the said Section, has been sentenced to pay a fine of Rs. 2,000/- in default of payment to suffer S.I. for 6 months. For commission of offence u/s 306 of I.P.C., the accused-appellant Shib Sundar Majumder has been sentenced to suffer S.I. for 7 years and to pay a fine of Rs. 2,000/- in default of payment of fine to suffer further S.I. for 6 months. For the same offence u/s 306 of I.P.C., the accused-appellant Sova Rani Majumder has been sentenced to pay a fine of Rs. 5,000/- in default of payment of fine to suffer S.I. for 15 months. He further directed the sentences to run concurrently.

Being aggrieved, the convict-appellants preferred the present appeal.

2. Heard learned counsel, Mr. S. Sarkar for the appellants and learned Additional P.P., Mr. R.C. Debnath for the State respondent.

3. Fact of the case, in short, may be stated thus:-

3.1. Marriage between Dipali Debnath, daughter of the informant Sandhya Rani Debnath (P.W. 1) and accused Shib Sundar Majumder, was solemnized on 10.11.2003 and the marriage was registered with the Office of the Hindu Marriage Registrar, West Tripura, Agartala on 10.11.2003 itself (Exbt. 2). They had love affairs before marriage. The deceased Dipali used to reside in the house of the accused persons since few years before her marriage and that she was loved by the accused Sova Rani Majumder like her daughter. After marriage, Dipali lived and cohabited with her husband Shib Sundar Majumder in the matrimonial home, where, besides her husband, her mother-in-law Sova Rani Majumder also used to reside. A girl child namely, Rubi Majumder was also born after about one year of their marriage. Since after few days of marriage, Dipali was subjected to cruelty by the accused persons on demand of cash money, which she could not fulfill because of the poverty of her parents. She narrated about the cruelty exercised on her by the accused persons to her parents and sister on numerous occasions when she visited her parental home. On 05.02.2005, Dipali consumed organo phosphorus poison and she was taken to Teliamura hospital where doctor declared her dead. Post mortem examination was done over the dead body and on the date of the death itself P.W. 1, Sandhya Rani Debnath, mother of Dipali, lodged a written F.I.R. with the O.C., Teliamura P.S. alleging exercise of cruelty on demand of cash money, on her daughter Dipali and stated that the torture was so severe and unbearable for which Dipali committed suicide by taking poison.

3.2 On receipt of that F.I.R., O.C., Teliamura P.S. registered Teliamura P.S. Case No. 10 of 2005 u/s 498A and 306 read with Section 34 of I.P.C. and O.C. himself took up the investigation.

3.3 In course of investigation, material witnesses were examined by the I.O., marriage certificate was seized by preparing a seizure list and a bottle containing pesticide along with a glass containing smell of pesticide were also seized from the house of the accused by preparing seizure lists. I.O. also collected Post Mortem report from Teliamura hospital wherein it was indicated that the cause of death was because of consuming organo phosphorus poison and the viscera's of the victim was collected at the time of post mortem examination and later on, it was sent to State Forensic Science Laboratory for chemical examination. The report from the State Forensic Science Laboratory was also collected and thereafter, on conclusion of investigation, I.O. submitted charge sheet against the accused persons for commission of offence punishable u/s 498A and 306 of I.P.C.

3.4. Cognizance was taken on the basis of the police report and thereafter, in due course, the case was committed to the Court of learned Additional Sessions

Judge, Khowai, for trial.

3.5. In the course of trial, learned Additional Sessions Judge framed charges against both the accused i.e. son and mother for commission of offence punishable u/s 498A and Section 306 of I.P.C to which, they pleaded not guilty and claimed to be tried.

3.6. In course of trial, prosecution examined as many as 11 witnesses namely, P.W. 1, Smt. Sandhya Rani Debnath, P.W. 2, Shri Bibhash Banik, P.W. 3, Shri Hemanta Debnath, P.W. 4, Shri Chandan Debnath, P.W. 5, Smti. Sefali Debnath, P.W. 6, Shri Samendra Debnath, P.W. 7, Shri Adhir Sarkar, P.W. 8, Dr. Pradip Kr. Rakshit, P.W. 9, Shri Dhiraj Laskar, P.W. 10, Shri Babul Das and P.W. 11, Md. Jalal Uddin.

3.7. Out of the aforesaid witnesses, P.W. 1 is the mother of the deceased and is a star witness of prosecution and she is also the informant of the case. P.W. 5 is the sister of the deceased and she also alleged about the exercise of cruelty by the accused persons on her. P.Ws. 3 and 4 are the close neighbours of the accused and they also stated about the exercise of cruelty on the deceased. P.W. 2 is a witness to the seizure of marriage certificate and a neighbour of the accused. P.Ws. 6 and 7 are also residents of the locality and out of them, P.W. 6 is the scribe of the F.I.R. and P.W. 7 is a rickshaw puller who carried the deceased to hospital. P.W. 8 is the doctor who conducted post mortem examination over the dead body. P.Ws. 9, 10 and 11 are all police officers and out of them P.W. 11 investigated the case.

3.8. Defence cross-examined the prosecution witnesses. After closer of prosecution evidence, accused persons were examined u/s 313 Cr.P.C. In their turn of adducing defence evidence, the accused persons examined two witness namely, D.W. 1 Smti. Malati Das and D.W. 2 Smti. Swapna Debnath, Both of them are the residents of that locality.

3.9. Defence case is that Dipali used to visit the house of accused persons from her childhood. Sova Rani, since lost her daughter, used to love Dipali as her own daughter and because of such love and affection of Sova Rani, Dipali from her childhood was living in the house of accused Sova Rani and Shib Sundar. Gradually, Dipali and Shib Sundar fell in love and ultimately, their marriage was solemnized and the marriage was also registered with the Hindu Marriage Registrar on 10.11.2003. There was no demand of dowry in the marriage and nothing was given by the parents of Dipali in the form of dowry or otherwise. Relationship between Dipali and Shib Sundar was all along cordial and there was no dispute. Dipali by nature was having with a irritating habit and because of her irritation, she might have committed suicide consuming poison. The accused persons neither dealt her with cruelty nor abated her to commit suicide consuming poison.

3.10. Learned Additional Sessions Judge considering the evidence on record, found the accused-appellants guilty of the charges framed against them and

sentenced them accordingly, as aforesaid.

4. Appearing on behalf of the convict-appellants, learned counsel, Mr. S. Sarkar made a very emphatic argument contending that there is nothing in the evidence on record as to the date, time and manner of alleged torture on the victim Dipali by the accused persons and as to the specific amount demanded by the accused persons to the victim which she could not bring from her parents and under such circumstances of the case mere allegation of demand of dowry and omnibus statement of witnesses of such demand should not have been relied upon by the learned trial Judge and on that ground itself, the conviction and sentence of the accused persons is not tenable.

4.1. He has also argued that the accused Sova Rani was had lot of love and affection for the deceased like her daughter and since after death of her own daughter, Dipali used to visit the house of the accused and would reside there for many years. While residing there, Dipali and accused Shib Sundar fell in love and later on, they married and the marriage was registered. Such circumstances, make it clear that there was no point of making any demand of dowry by the accused persons and since the deceased was loved by Sova Rani like her daughter, the allegation of torture on demand of cash money is imaginary and made out of frustration for the untimely death of Dipali by her mother and sister.

4.2. It is also argued that Dipali used to get irritated on tripling issues as stated by P.W. 2 and D.Ws. 1 and 2 and since P.W. 2 was not declared hostile by the prosecution, they are bound by that evidence that Dipali was having with a habit of irritation and for that reason, she might have committed suicide.

4.3. It is further contended by learned counsel, Mr. Sarkar that P.Ws. 3 and 4 are the father and son, next door neighbour of the accused persons and they had inimical relation with the accused persons on boundary dispute and therefore, they were interested to see the accused persons convicted in the case. Learned trial Judge would scrutiny the evidence of P.Ws. 3 and 4 and disbelieved them outright for their having inimical relation with the accused persons.

4.4. He has finally contended that prosecution has failed to prove the ingredients of offence punishable u/s 498A of I.P.C. and also failed to prove the ingredients of abatement as defined in Section 107 of I.P.C. and under such circumstances while the exercise of cruelty was not proved with sufficient evidence, the provision of Section 113A of the Evidence Act cannot help the prosecution case to draw a presumption of guilt of the accused persons.

4.5. In support of his argument, learned counsel, Mr. Sarkar referred the following cases laws:

- (1) Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi),
- (2) Raja Ram Vs. State of Rajasthan reported in (2005) 5 SCC 272
- (3) Kishori Lal Vs. State of M.P.,

5. Per contra, learned Additional P.P., Mr. R.C. Debnath argued that the deceased Dipali died a suicidal death consuming poison in her husband's house, at the age of 25 years, living behind a female child aged about one year and the death was within two years of marriage. The parental home of Dipali and the house of accused persons were in the same village and the nature, character and habit of the deceased Dipali were known to the accused persons since many years, before the marriage was solemnized. While the victim committed suicide, leaving behind a girl child, in her husband's house, taking poison, even if, she had a habit of irritation, the accused has got some responsibility to explain being the husband and mother-in-law, residing in the same house, as to what was the reason of her getting irritated to finish her life committing suicide by taking poison, while on the contrary, the prosecution led evidence that she was subjected to torture by the accused persons for bringing money from her parental home which lead her to commit suicide, get strengthened.

5.1. Drawing attention to the deposition of P.W. 2, in cross, Mr. Debnath, learned Additional P.P. argued that the witness stated that Dipali had little bit of irritation. Further, drawing attention to the deposition of D.Ws., he argued that might be Dipali was having with a habit of irritation, but, that habit was known to the accused persons, well, long before the marriage solemnized and how or why she got irritated before commission of suicide and what was the reason for her taking poison and from where the poison was available, nothing stated by the accused persons in their statement while examination u/s 313 Cr.P.C. nor in the evidence of D.Ws. Under such circumstances, the teamed trial Judge rightly drawn the presumption of guilt of the accused persons with the aid of Section 113A of the Evidence Act.

5.2. Further, argued by learned Additional P.P. that P.Ws. 3 and 4, the next door neighbours, made consistent statement about the cruelty exercised on the deceased and he contended that those witnesses had a dispute on boundary with the accused persons, but that dispute was settled long before and under such circumstances, evidence of P.Ws. 3 and 4 cannot be brushed aside altogether simply because at a certain point of time, they had some dispute with the accused persons. He fairly submitted that under the circumstances, evidence of P.Ws. 3 and 4 may not be the sole basis of conviction, but their statement while corroborated with the evidence of P.Ws. 1 and 5, strengthened the prosecution case and based on such evidence supported by the evidence of the medical officer, who conducted post mortem examination, and found abrasion on the person of the deceased which corroborates assault on her as stated by P.Ws. 3 and 4 makes out a case clearly that the accused persons abated the deceased to commit suicide.

6. It is an admitted fact that there was love affairs between the deceased Dipali and the accused Shib Sundar long before their marriage. It is also an undisputed fact that Dipali used to reside in the house of the accused persons for few years before her marriage since she was loved and affectionately looked after by

accused Sova Rani like a daughter. Marriage between Dipali and accused Shib Sundar was solemnized and registered on 10.11.2003 and thereafter, they lived and cohabited as husband and wife in the matrimonial home. A girl child was born to them out of their wedlock. It is also an undisputed fact that Dipali committed suicide by taking poison on 05.02.2005.

7. Prosecution case is that Dipali was subjected to torture since after solemnization of marriage by the accused persons on demand of cash money which the parents of Dipali could not afford as a result of which, she committed suicide by taking poison.

8. Let us now see how far the prosecution has been able to prove the fact that Dipali was subjected to cruelty on demand of cash money in the form of dowry, since after her marriage with accused Shib Sundar. It is the fundamental principle of criminal law that prosecution is to stand on its own leg. It cannot take the advantage of the weakness in the defence story or in the defence version. In a case punishable u/s 498A and 306 of IPC, prosecution is to first establish its case adducing sufficient evidence that the victim was subjected to cruelty as defined in Section 498A of IPC and if, the prosecution is able to discharge its burden, it may take advantage of the presumption as prescribed in Section 113A of the Evidence Act.

9. For ready reference, we may quote here the provision of Section 498A and 306 of IPC and Section 113A of the Evidence Act, which reads thus:-

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.

Explanation -- For the purpose of this section, "cruelty" means -

(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

(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.

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.

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.

10. Let us now travel through the evidence and materials so far the prosecution brought on record to prove the charges against the accused persons.

10.1. The F.I.R. was lodged on the very date of death of Dipali by none, but P.W. 1, her mother and in the F.I.R., she made the allegation (i) since after marriage, the accused persons were putting pressure on Dipali to bring cash money as dowry from her parents house and (ii) she was often asked to die consuming poison, as a result of which, she committed suicide consuming poison in her husband's house.

10.2. In her deposition, P.W. 1 stated:--

.....After some time of her stay in her matrimonial house both her husband and mother-in-law started demand of dowry in the form of cash money to be paid by us and in many occasions she was sent to our house and we have paid the money to them. She further stated to us that she was mentally and physically tortured for payment of cash money and considering her cruelty we paid money. About one month back from her death they again demanded some cash money to be paid to us and accordingly my daughter was sent to us but due to our poverty we could not pay the money and she was sent back to her matrimonial house without money. In many occasions she used to cry when she visited to our house for her cruelty. After one month from the date of her reaching to her matrimonial house following non-payment of cash by us we were informed by the side of the accused that my daughter was sick and accordingly asked to go to hospital. My younger daughter Smt. Sefali Debnath went to Teliamura hospital and found my daughter Dipali dead. On getting that information I also went to Teliamura hospital and found my daughter dead.....

11. Smt. Sefali Debnath, P.W. 5, the daughter of P.W. 1, sister of deceased Dipali, is the other star witness regarding cruelty on demand of cash money and in her deposition, she stated:--

.....After marriage she went to her matrimonial house. For some period she was alright. After some time Sib Sundar and his mother started demanding money and in this respect my sister was physically tortured by them. In 2/3 occasions she was sent to our house for bringing cash from my parents and accordingly my parents paid. She used to cry for her torture and we came to know from her during her visit to our house. One month before her death, she was sent to our house for bringing further cash amount, but my father could not pay the same and thereafter, she went to her matrimonial house in a depressed condition. In one morning I was informed by a woman that my sister was ill and

I was asked to go to Teliamura hospital. Accordingly, I went and found my sister dead. On being asked it was stated by doctor that at about 2 a.m. in the night she died.....

12. Except the oral evidence of P.Ws. 1 and 5, as reproduced above, regarding the demand of cash money in the form of dowry, there is no other evidence on record. A bare perusal of the above statements of the mother and sister of deceased Dipali, makes it abundantly clear that the allegations of cruelty on demand of cash money are general allegations and there is nothing specific as to date, time etc. and the amount alleged to have demanded by the accused persons or the amount paid by the parents of the deceased. An omnibus statement has been made regarding the demand and harassment, having no particulars at all.

12.1. It is on record that accused Sova Rani used to love the deceased Dipali from her childhood and would treat her as her daughter, since after she lost her own daughter and Dipali used to visit the house of accused persons from her childhood and would stay there often with the accused persons. P.W. 1 in her cross-examination clearly stated--

My daughter Dipali used to stay in the house of my son-in-law occasionally for a period of three years before her marriage as the mother of Sib Sundar loved her very much after expiry of her daughter. My daughter also had her affection towards her mother-in-law after marriage also.

P.W. 5 in her cross-examination stated--

It is a fact that my sister for long years used to stay in the house of Sib Sundar Majumder as there was a good relation between us. Sova Rani also had her affection to my sister as her daughter before her marriage.

13. The above statements, made in cross-examination of the witnesses, shows that since for few years, before marriage, Dipali used to stay in the house of accused persons and she was affectionately loved by Sova Rani like her own daughter. The allegation made by the witnesses is that soon after marriage, both the husband and mother-in-law started torture on Dipali on demand of cash money. Naturally, a question raises as to what was the amount demanded by the accused persons and when the demand was first made. What was the amount paid by the witnesses as alleged in their deposition and when and to whom. In the absence of any such particulars, it is very difficult to depend on such omnibus statement of witnesses regarding alleged demand of dowry and consequent torture for non-fulfillment of the demand.

14. Admittedly, the parental home and matrimonial home of Dipali were in the same village. Both the families were closely known to each other having close visiting terms. Except P.Ws. 1 and 5 i.e. the mother and sister of the deceased, there is no other witness to whom either P.Ws. 1 and 5 or the victim herself disclosed the fact that the victim was subjected to torture in the matrimonial

home.

15. In ordinary course of human nature, at least, the parents of the deceased would disclose about such torture on their daughter to the near relatives or village elders. But, to that effect, there is no evidence at all. P.Ws. 1 and 5 being the mother and sister of the deceased, because of their natural love and affection, for the loss of life of Dipali might have made the allegations of cruelty on demand of cash money.

16. The Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, has observed that in cases of such nature, the testimony of the relative witnesses should be scanned with great caution and care.

In Para 48 of the Judgment, the Court has observed thus:-

48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psycho-logical hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

17. We may therefore, legitimately look for some corroborating evidence to support the statement of P.Ws. 1 and 5 though the allegation as already stated is of omnibus nature.

18. We may now go through the evidence of P.Ws. 3 and 4. They are the father and son, a next door neighbor of the accused persons. P.W. 3 in his examination-in-chief stated:-

I am adjacent house owner of Sib Sundar Majumder. In one dead night on the night of expiry of Dipali Debnath I heard Sib Sundar and his mother shouting in their house and at the same time I also heard the sound of assault by somebody. On the next day at about 10 a.m. I came to learn that Dipali expired. Both the accused persons are present today in the dock.

In cross-examination, he stated:--

I stated to police about the hearing of shouting and the sound of assault but no

such statement is found his 161 statement. It is not a fact that I did not hear any such noise or assault.

19. P.W. 4 in his examination-in-chief stated:-

I am the adjacent house owner of Sib Sundar Majumder. In 2/3 occasions about two months before the death of Dipali Debnath I heard from my house that the accused Sib Sundar and her mother were demanding to Dipali Debnath for bringing cash from her father's house and in this connection they also assaulted her. The fact of assault also could be understood from our house as she raised hue and cry. On night before the incident I heard hue and cry in the house of the accused. On the next day I came to learn that Dipali died. Police also seized one bottle suspected to be poison in my presence. This is my signature in the seizure-list and on identification the signature is marked as Exbt. 3/1.

In his cross-examination, he stated:-

There was a boundary dispute between us and Sib Sundar Majumder and that was settled amicably about 5 years back. At present there is no enmity between us. I did not visit the house of Sib Sundar as I have no time. I am a day labour and running after my daily work. They also did not visit to our house. I am residing with my wife and my parents. I did not state to police that I heard the demand of dowry and resulting assault in 2/3 occasions as I stated above as because I was not asked by police. I can not say the exact date of demand of dowry and assault that I heard. There was a garage in the north to the house of Sib Sundar. My house is adjacent south, in the west there was a cherra and in the east there are some houses after 75 feet. During night there was no person in the garage but in the day time there are persons in the garage. It is not a fact that I did not hear any hue and cry or sound of assault or that I am deposing false as we have previous enmity. Witness Hemanta Debnath is my father.

20. A close reading of the deposition of P.Ws. 3 and 4 shows that both of them were in their house on the previous night of the day Dipali died consuming poison. P.W. 3 stated that he heard the shouting of both the accused in their house and heard the sound of assault by somebody whereas P.W. 4 stated that he heard hue and cry in the house of the accused on that night. The statements therefore, are not corroborating each other in respect of any occurrence in the house of the accused persons on the previous night. P.W. 4 admitted that they had boundary dispute with the accused persons. But, that was amicably settled 5 years ago. Both the D.Ws. stated that the boundary dispute between the accused persons and P.Ws. 3 and 4 were still continuing having no visiting term between them. Had there was cordial relation between the accused persons and the P.Ws. 3 and 4, on the night hearing shouting of the accused persons and/or hearing hue and cry, it was natural for them to enquire about such shouting or hue and cry in the house of the accused persons. But, there is nothing in their deposition that they made any such enquiry. It suggests that the relationship between the two families were not cordial and therefore, P.Ws. 3 and 4 might have made

exaggerated statement with a view to see the punishment of the accused persons. Implicit reliance, therefore, cannot be placed on the statement of P.Ws. 3 and 4 because of their having admittedly boundary dispute between them and the accused persons.

21. It is an undisputed fact that Dipali died consuming organo phosphorus poison in the house of the accused persons and she left behind a female child aged about one year. What was the reason behind for her taking such a decision of finishing her life committing suicide? P.W. 2 stated that Dipali had little bit of irritation. P.Ws. 1 and 5 denied the defence suggestion that Dipali had any sort of irritation or that she was ill-tempered girl. D.W. 1 stated that Dipali was little bit ill-tempered from her childhood. D.W. 2 stated that Dipali was little bit irritative. Might be Dipali was an irritative girl which does not necessarily mean that because of her having been irritative in nature, she committed suicide. Assuming that Dipali was irritative in nature cannot by itself mean that for her such nature, she committed suicide. An irresistible inference cannot be drawn only on that ground in the absence of any evidence as to the nature of irritation. There is nothing in the defence evidence or in the statement of the accused persons made while examination u/s 313 Cr.P.C. as to what had irritated Dipali to commit suicide? Where she got the poison for consuming in it? At what particular time, she consumed it? Wherefrom the poison was available in their house? These all are some aggravating circumstances against the accused persons. But, in the absence of any definite evidence about exercise of cruelty, only on such aggravating circumstances, it will not be appropriate for the court of law to record an order of conviction of the husband and mother-in-law based on omnibus allegation of exercise on cruelty.

22. The Supreme Court in the case of Girdhar Shankar Tawade Vs. State of Maharashtra, has considered as to what constitutes cruelty, defined in Section 498A of I.P.C. In Para 3 and 17, the Apex Court has observed-

3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: Whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498(A).

17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one

does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further deletion is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the Statute: Even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws place and requests the husband to treat her well -- at best some torture and a request to treat her well. This by itself would not bring home the charge u/s 498-A. Demand for dowry has not seen the light of day.

23. In the given facts and circumstances of the present case, I cannot agree with the finding of the learned Trial Judge that the evidence of P.Ws. 1 and 5 is sufficient to hold that Dipali was subjected to cruelty in the matrimonial home on demand of cash money by the accused persons. The principles laid down in *Girdhar Shankar Tawade* (supra) may be fairly applied in the facts and circumstances of the present case in hand.

24. Let us now see whether Dipali was abated and/or instigated to commit suicide. The Supreme Court in the case of *Kishori Lal Vs. State of M.P.*, in Para 6 observed -

6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

25. To arrive at a conclusion, on a charge, u/s 306 I.P.C., prosecution is to establish beyond reasonable doubt that there was abatement on the part of the accused persons for commission of suicide. Since the prosecution could not prove that Dipali was subjected to cruelty, they are not entitled to enjoy the presumption, as prescribed in Section 113A of the Evidence Act. If the allegation of cruelty goes, the charge of abatement cannot stand, as already observed earlier, though there are some aggravating circumstances against the accused persons, but, that itself cannot be held to be sufficient to hold the criminal

charge proved against the accused persons. In the circumstances, the accused persons are entitled to get the benefit of doubt.

26. In view of the discussions made above, the Judgment and Order of conviction and sentence passed by the learned Additional Sessions Judge is liable to be interfered and accordingly, it is set aside. The accused persons are acquitted from the charge on benefit of doubt and set at liberty.