

(2019) 11 BOM CK 0065
In the Bombay High Court
Case No : Criminal Appeal No. 450 Of 1997

State Of Maharashtra

APPELLANT

Vs

Anil Kurkotti And Ors

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 306, 498A

Evidence Act, 1872 — Section 113A

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 11 BOM CK 0065

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Anamika Malhotra, Rushikesh Kale, Chandni Sachade, V.V. Purwant

Final Decision : Dismissed

Judgement

1. Appellant has approached this court impugning a judgment delivered on 21-3-1997, whereby four accused were acquitted against a charge of offence punishable under Sections 498A and 306 of the Indian Penal Code. Section 498A and Section 306 read as under:

Section 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 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.

Section 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.

2. The prosecution had also made arguments relying upon Section 113A of the Indian Evidence Act, i.e., presumption as to abetment of suicide by a married woman. In this provision, if the married woman 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. The exact date of marriage has not been given anywhere. Even the father of the deceased, P.W.-2, when he remembers in which year his brother joined service or daughter of Accused No.3 was given in marriage to his brother or in which year deceased Swati was born, strangely does not remember whether marriage of his daughter Swati was performed in the year 1985 or the date of marriage. Swati (hereinafter referred to as Swati or deceased) died on 23-9-1995. From the evidence of P.W.-1, it does appear that it was certainly more than 7 years after the marriage the deceased committed suicide. Therefore, the presumption under Section 113A of the Indian Evidence Act, cannot apply.

3. The deceased Swati, who is the daughter of the complainant (P.W.-2), was married to Accused No.1 more than seven years prior to her death. Swati was born in 1974 and marriage appears to have taken place in 1985, so she was 11 years of age when she got married. P.W.-2, in the cross-examination says at one place that she attained her puberty in the matrimonial home, but in another place states that two years after the marriage, Swati lived in the parental house because she had not attained the age of puberty. This is just one of the mysteries I have not been able to unravel. There are many other gray areas or mysteries.

4. The prosecution's case is that ever since Swati got married, she was constantly harassed by Accused No.1, who was the husband, Accused No.2, who was her father in law, Accused No.3, who was her mother in law and Accused No.4 who was her brother in law (husband's brother). What kind of harassment, whether it is physical, mental, is not described anywhere. There are only general statements. There are no eye witnesses to even one incident of harassment. The prosecution proceeded on the basis of what the deceased Swati told others that, she was being harassed, the Accused suspected of her infidelity and told her that she was suffering from Tuberculosis (T.B.). It is pertinent to note that P.W.-2 father of the deceased Swati and the Accused No.3 were siblings. It appears that Accused No.3 was the oldest of all the children and P.W.-2 was one of the 6 sons in the family. Therefore, deceased Swati and her husband-Accused No.1 were first cousins. It has also come in evidence that, the daughter of Accused No.3 was married to the brother of Accused No.3 and he also was the brother of

complainant- P.W.-2. Therefore, the marriage was within the family. There are allegations that deceased complained to some of the witnesses about the harassment including not being given proper food. Some of the witnesses have also mentioned that Accused compelled deceased Swati to sign on a blank stamp paper. No such blank stamp paper is produced. P.W.-2 has stated that he received a letter from deceased Swati at some stage, in which she narrated her ordeal of harassment by the Accused. That letter is not produced in evidence and P.W.-2 has stated that the letter is lost. None of the witnesses have stated that they have seen the deceased being harassed or treated with cruelty, either physical or mental by the Accused.

5. It is also the case of the prosecution that the Accused told complainant to take Swati back to his house because they did not want her to live with them and he took her back. But through mediation of a third party, who is not a witness, the Accused were advised to treat Swati well, the Accused assured that Swati would be treated well and took her back to the matrimonial home, but continued the harassment. Subsequently, Accused No.1 and Swati moved out of the matrimonial home and started living separately and in that house, Swati committed suicide. It is also an admitted case that Accused Nos.2, 3 and 4 were not present in the house, where Accused No.1 and Swati were living and at the time when Swati was alleged to have committed suicide.

6. It is alleged that on 23-9-1995, at about 5.00 a.m. Swati committed suicide by hanging in the residential house of Accused No.1. It is alleged that Swati committed suicide because of harassment and cruelty by Accused. On 23-9-1995, Accused No.1 informed the police about the death of Swati. When the police visited the suicide spot, Swati was found hanging from the ceiling fan on a cotton rope. The inquest panchnama of dead body of Swati was drawn and body was sent for postmortem. Postmortem confirms the death by hanging. On the same day, the father of deceased (P.W.-2) lodged a complaint on the basis of which offence came to be registered. After due investigation was over, the Accused were chargesheeted on 2-12-1995 in the Court of Chief Judicial Magistrate, Solapur and the same was committed to the Court of Sessions on 26-2-1995.

7. Charge for the offence punishable u/s 498A and 306 read with Section 34 of the IPC came to be framed. It was read over and explained to the Accused, who all denied the charge. It appears from the cross-examination and the statements recorded under Section 313 of the CrP.C., the stand of the defence was that they never treated the deceased with any cruelty, but were always nice to her. According to Accused No.1, as it appears in his statement under Section 313, the deceased was fond of children and as she could not conceive even after 7 or 8 years of marriage she was unhappy. Accused No.1 also states that his staying away from the house for long hours due to his work, also did not go down well with the deceased. Accused No.1 has also stated that his coming home late in the night at times and his eating food outside at times, were not acceptable to

the deceased and that led to quarrels. It is the case of Accused No.1 that on 22-9-1995, the night before the deceased committed suicide, he reached home late after eating food outside. He decided to sleep in the varandah of the house to avoid usual quarrel on account of his late arrival. In the morning, as the door was locked from inside, he pushed the door, but the door did not open and the deceased also did not open the door. So Accused No.1 exerted force on the door and the door opened and he noticed the deceased hanging from the ceiling fan. Accused No.1 immediately rushed to his neighbour P.W.-5 and informed him about the act of the deceased and also informed his relatives and parents of the deceased. There is no evidence regarding the door. I have to note here that, the police have not done the spot panchnama to examine the door or whether door was broken open or whether such a door could be opened by exerting pressure or led evidence regarding the strength of Accused No.1 to break open such door which was locked from inside. The prosecution have not led evidence to debunk the story of Accused No.1 that he broke open the door.

8. In order to prove its case, the prosecution has examined in all 9 witnesses. Sachin (P.W.-1) is the younger brother of the deceased. Sangmeshwar (P.W.-2), Complainant, is the father of the deceased. Snehalata (P.W.-3) is the cousin of the deceased. Suvarna (P.W.-4) is the younger sister of the deceased. Ramling Gaikwad (P.W.-5) is the neighbour of Accused No.1 and lived near the house where the deceased committed suicide. Sanjay (P.W.-6) is the neighbour of the complainant (P.W.-2). Tulshiram (P.W.-7) is the neighbour of the maternal grandfather of the deceased who was living in another village. Vitthal Satre (P.W.-8) was the land lord of Accused No.1, Nagnath Nannaji Kale (P.W.-9) is the Investigating Officer.

9. On considering the entire evidence led by the prosecution, I find that there is no material to convict any of the Accused. In the evidence of many witnesses, there are lot of omissions and contradictions and some, I would say, are also hearsay.

P.W.-1 was 18 years old on 13-2-1997, when his evidence was recorded. He was 16 years and few months at the time of alleged offence. P.W.-1 says that after the marriage, the deceased went to reside with her husband and whenever he went with his father to visit his sister, the deceased, she used to complain to them that the Accused used to suspect her of infidelity and alleged that she was suffering from Tuberculosis (T.B.) and she was barren as she could not conceive. P.W.-1 also stated that the Accused used to not provide her food and also used to beat her. P.W.-1 does not say anywhere that he has seen the deceased being beaten or being treated with cruelty or the Accused making the allegations as stated by him. I have to note here that in the cross-examination of P.W.-2, who is the father of P.W.-1 and with whom P.W.-1 is alleged to have gone to visit the deceased after the marriage, has in the end stated that "it is true that my daughter Swati did not go to matrimonial home for two years after her marriage as she did not attained majority (SIC)". P.W.-1 says that on day of

Rakshabandhan, he went to the house of the deceased and Accused No.1 was at home and Accused No.1 asked him, whether he has brought money and when P.W.-1 answered in the negative, Accused No.1 did not allow him to see the deceased but he saw the deceased was weeping. P.W.-1 does not say anywhere when any demand for money was made, what for the demand was made and to whom. There is not even a hint anywhere why did Accused No.1 demand any money from P.W.-1 when no other witnesses including P.W.-2 have not said anything about demand of money by Accused. Even in the entire evidence of P.W.-2, P.W.-3 and P.W.-4 or P. W.-7, they have not alleged anywhere that the Accused ever demanded money. Strangely, P.W.-1 says that Accused No.1 asked him whether he has brought money. Even P.W.-2 says that P.W.-1 informed him that Accused No.1 asked him for money, which though not just being a hearsay evidence, is again without any basis. This is because P.W.-2 in his entire evidence or complaint has not stated anything about demand of money.

P.W.-1 thereafter had stated that when Accused No.1 did not allow him to come inside the house, he stood in front of the house for sometime. When Accused No.1 went away, he met his sister, at which stage, his sister complained to him that the Accused were harassing her. P.W.-1 states that he stood in front of the house, if he stood in front of the house for sometime, certainly Accused No.1 would see him waiting there when he left the house. P.W.-1 does not say that he was hiding behind a tree or the house or any wall or anywhere and waited for the accused no.1 to leave and when Accused No.1 left, he quietly slipped in and met his sister. Therefore, there cannot be much credence given to the evidence of P.W.-1. Further, as the brother of the deceased, he is an interested witness.

10. P.W.-2 is the father of the deceased. P.w.-2 says that marriage of the deceased took place 7 to 8 years before her death. In the examination in chief, P.W.-2 says that after the marriage, his daughter Swati went to Surpur to live in the matrimonial home and when he went to visit the deceased with his son on one or two occasions, the deceased Swati complained about the harassment, accusations of the Accused suspecting her of infidelity and they kept watch on her movements and that she was suffering from T.B. and that she was barren as she could not conceive. P.W.-2 also stated that the Accused used to beat her. P.W.-2 is purely relying on the statements, which the deceased is supposed to have made to him. In his cross-examination, P.W.-2 states after marriage, the deceased went to matrimonial home only after two years when she attained puberty and until then was living in her parental home. Therefore, there is a contradiction in the evidence of P.W.-2. Moreover, Accused No.3, who is the mother in law of the deceased, was the sister of P.W.-2. P.W.-2 does not say anywhere that he even broached the topic with his sister or inquired with her as to why they were harassing his daughter and what was the need to suspect her of infidelity or did they see her going with another man or she was close to any other man, who is other than Accused No.1 and what was the basis for them to allege the deceased was suffering from having T. B. These are all bald and general allegations being made without an iota of evidence. There might have

been some issues, which I would assume, like any other married couple would have and certain persons were involved to mediate, but evidence of none of the witnesses gives the court confidence to hold any of the Accused guilty of offence punishable under Section 498A or Section 306 of the IPC. P.W.-2 states that after mediation, when the Accused took the deceased back to the matrimonial home, they continued the harassment and he received a letter from the deceased informing about the ill-treatment. The letter is not produced and P. W.-2 states it is lost. P.W.-2 tried to corroborate what P.W.-1 has stated that on Rakshabandhan when P.W.-1 went to the house of Accused No.1 and the deceased, Accused No.1 demanded money and when P.W.-1 told him that he did not bring any money, he was not allowed to see the deceased. As P.W.-2 had not accompanied P.W.1, it was pure hearsay. Moreover, P.W.-2, does not state anywhere that Accused No.1 ever demanded money or dowry from him or how much money was demanded or when were the demands made or how frequently the demands were made. Therefore, I am unable to believe P.W.-2 on this point. P.W.-2 also agrees that there was an omission in as much as he did not say in the FIR that the deceased complained to him that the Accused used to allege that the deceased was suffering from T. B. and that she was unable to conceive. P.W.-2 tries to cover up by saying that he was not in the proper mental state when he lodged the complaint. Moreover, in the cross-examination, P.W.-2 states "it is true that two years after the marriage of the deceased, the first menstrual cycle started in the matrimonial home" and later says "it is true that my daughter Swati did not go to the matrimonial home for two years after her marriage as she did not attained majority (SIC)". He keeps contradicting himself. P.W.-2 also says that when he enquired with the neighbours, they told that prior to the incident, there was a quarrel between Accused No.1 and the deceased and the said quarrel lasted whole night. Again that is hearsay. At the same time, the neighbour P.W.-5 says that he heard commotion between 10 p.m. to 11.p.m. on 22-9-1995. I would deal with the evidence of P.W-5 later to show how that also lacks credibility. P.W.-2 also admits that in the FIR he did not mention about the deceased informing about the Accused taking signature on blank stamp paper. P.W.-2 also says that in the FIR there is an omission that he never mentioned about his son informing him about his son's visit to the house of Accused No.1 on Rakshabandhan and the demand of money by Accused No.1. Therefore, the evidence of P.W.-2, who is an interested person, does not enthuse much confidence. Even if, I accept that the FIR being lodged on 23-9-1995, the date on which the deceased Swati committed suicide and being a father P.W-2 would be distracted and not in a proper frame of mind and it would be difficult for any person in that state of mind to remember every incident in detail and even if, I ignore all those omissions, still the entire allegation is based on what the deceased informed P.W.-2 about the alleged cruelty and harassment. The allegations of harassment are so general. The witness has not seen deceased Swati being harassed or beaten. Witness does not say anywhere that there was a demand for money from the Accused. Witness does not even say that he confronted or inquired with the Accused, who are his relatives, Accused No.1 was his nephew before becoming a

son-in-law and Accused No.3 was his sister before becoming a mother in law of the deceased, as to why they were harassing or treating Swati with cruelty. P.W.-2 does not even mention that he found any scars on deceased of beating by the Accused. In the circumstances, I will have to discard the evidence of P.W.-2 also.

11. P.W.-3, who is the cousin of the deceased begins her examination in chief by saying " I came to know from uncle (P.W.-2) and my cousin brother (P.W.-1) that Swati was being harassed at the house of the Accused persons at Village Surpur." This portion is hearsay. Thereafter, she says that when she met Swati at the house of P.W.-2, Swati complained to her about the Accused suspecting her of infidelity, beating her, not providing food and taking her signature on blank stamp for divorce purpose and that the Accused told Swati that she suffers from T.B. This is all on the basis of Swati who has supposed to told P.W.-2. Swati is not, unfortunately, there to corroborate those statements. P.W.-3 also states that she does not know whether there was any dispute between Accused No.3 and her brothers. Two of the brothers of Accused No.3 are P.W.-2 and the father of P.W.-3. This evidence also does not enthuse any confidence.

12. P.W.-4, who is the younger sister of the deceased also has begun by saying "that for a period of two years after marriage Swati resided with her parents because she did not attained puberty and two years after marriage her father reached Swati to her matrimonial home". P.W.-4 states that six months thereafter, her father and brother went to the house of the Accused to see Swati when Swati complained to her father and brother against the Accused that the Accused suspect her character. This is hearsay. Evidence of P.W.-4 is based on what her father told her and there is no first hand evidence.

13. P.W.-5, an independent witness, begins by saying that he used to hear quarrels between Accused No.1 and his wife Swati the deceased. P.W.-5 used to work at Tasgaon and used to visit his house at Solapur on 2nd and 4th Saturday. Swati and Accused No.1 were his neighbours at Gokul Nagar in Solapur. Therefore, according to P.W.-5 whenever he visited on 2nd and 4th Saturday, he used to hear quarrel between Accused No.1 and the deceased. P.W.-5 says that he could not understand what the quarrel was about as they were speaking in Kannada and he did not understand Kannada. At the same time P.W.-5 says that he did not notice Swati to out of her matrimonial home, which means he has never seen Swati. P.W.-5 also says, whenever Accused Nos.2 to 4 used to come to the house of Accused No.1, there were as usual quarrel. In his cross-examination, P.W.-5 admits that he never saw Accused Nos.2 to 4 visiting the house of Accused No.1 at any time. Then when he has not seen Swati or even Accused Nos.2 to 4 visiting Swati's house and how does he say that there were usual quarrel. P.W.-5 says that on 22-9-1995 at about 10 p.m. to 11 p.m. when he was at home he heard a commotion between the Accused No.1 and Swati but he did not come out of the house as it was an usual quarrel between them. This again is not believable because (a) he has never seen Swati as mentioned above,

(b) Accused No.1 in his statement has stated he came home much after midnight and (c) the prosecution has not led any evidence to disprove that. In his cross-examination, P.W.-5 states that he has in fact assumed that because voice was loud there was a quarrel and has also admitted that just because one speaks in loud voice does not unnecessarily mean there is a quarrel. P.W.-5 has also stated that Swati never complained to him or his wife about Accused No.1 at any time. It was only P.W.-5, who was staying in Tasgaon but his family was living in Solapur and still the deceased never complained to his wife about Accused No.1. P.W.-5 then admits that he is not sure whether real quarrel used to take place between Accused No.1 and the deceased. Funnily, P.W.-5 states that Kannada people speak in loud tone. This I am not aware of. Therefore, evidence of P.W.-5 has to be discarded.

14. P.W.-6 an independent witness, was the neighbour of P.W.-2, i.e., neighbour of Swati's parents. His evidence also starts on hearsay basis because it states "..... Swati complained to my wife that accused Nos.2 to 4 harassed her and accused no.1 did not co-habit with her. She was also expressing that she had a fear from the accused persons. Father of Swati also complained to me that accused persons harassed his daughter Swati." P.W.-6, of course, thereafter adds that Swati also complained to him that the accused harassed her. P.W.-6 does not say when Swati informed him, how many times Swati informed him or what were the harassment and the cause for those alleged harassment. P.W.-6 says in the cross-examination that Swati complained to his wife in the year 1992, that again is hearsay. P.W.-6 also admits that in his statement to the police he has not stated that Swati complained to him that the accused harassed her. Evidence of this witness also is of no assistance to the prosecution.

15. P.W.-7, who is the neighbour of the maternal grand father of the deceased, parrots the same that Swati informed him that the Accused suspect her of infidelity and therefore, they keep watch on her, the Accused alleged that she is suffering from T.B. and that she was barren and she was told to sign on blank stamp paper. All witnesses appear to be tutored. P.W.-7 says that when Swati visited her maternal grand father Lingappa Kalwantre, she complained to him about the harassment. P.W.-7 does not say he saw Swati being harassed. He also does not say when Swati informed him or how many times Swati informed him the cause for the alleged harassment. P.W.-7 says that two years ago, Swati had visited the maternal grand father at which time, all the Accused persons came there and took Swati back and Lingappa Kalwantre invited him to his house. According to P.W.-7, at that stage, the accused admitted that they were harassing Swati but assured that they would stop any further harassment. P.W.-7 also says that 5 or 6 months later, Lingappa informed him about the settlement meeting regarding Swati's matrimonial dispute and he also went to Krishna Lodge at Solapur, where he, Lingappa Kalwantre, Dhansingh Rathod, Kodyal, Sanjay Bhandari were present. In the cross-examination, P.W.-7 admits that in his statement to Police he did not state that Sanjay Bhandari was present in the meeting at Krishna Lodge and he also did not state that Sanjay Bhandari and

Kondyal assured to the parents of Swati that the accused would not give any more trouble to Swati . But in cross-examination he states that Kondyal and Sanjay Bhandari assured that the Accused would not give any harassment and, therefore, requested Swati be sent to the house of the Accused. P.W.-7 also says that though in the examination in chief, he has stated that when Lingappa Kalwantre invited him to his house, the accused admitted that they were harassing Swati but he has not stated to the police when his statement was recorded that Accused Nos.2 and 3 were present in the said meeting. If, Accused Nos.2 and 3 were not present in the meeting, how do Accused Nos.2 and 3 even admit about the harassment to the deceased. Therefore, the evidence of P.W.-7 also is not convincing.

16. P.W.-8 is a landlord and Accused No.1 was his tenant in the year 1993-1994. P.W.-8 was residing on the ground floor whereas the Accused No.1 with the deceased was living on the first floor. P.W.-8 states that he heard a conversation between Accused No.1 and Swati and when he inquired with Accused No.1 the reason for loud tone, Accused No.1 told that it was their usual tone and asked him not take it otherwise. P.W.-8 also states that he does not understand Kannada language. P.W.-8 says that the deceased never used to come out of the house and she never made complaint against Accused No.1 and the deceased would always confine herself to her room. P.W.-8 has assumed that Swati is not coming out of the room because she might be under pressure of Accused No.1. P.W.-8 used to hear conversation every 4 to 8 days between Accused No.1 and the deceased in a loud tone. That makes no sense because P.W.-8 has admitted that he does not understand Kannada and just because somebody speaks in a loud tone does not mean it is a quarrel. P.W.-8 in his cross-examination also agrees that neighbours had no complaint against Accused No.1 and he never had an occasion to ask Accused No.1 to vacate the tenanted premises. In the examination in chief, P.W.-8 says that Accused Nos.2 to 4 sometimes used to visit the house of Accused No.1 and therefore, he knew Accused Nos.2 to 4. There is an omission in as much as he has not stated so in the statement recorded by him to the police.

17. P.W.-9 is the Investigating Officer.

18. There will be ordinary wear and tear in any matrimonial life but that does not amount to cruelty or harassment. It is settled law that every type of harassment or every type of cruelty, would not attract Section 498A or Section 306 of IPC. It must be established that the harassment or cruelty was with a view to force the wife to commit suicide or to fulfill illegal demands of husband or in-laws. The witnesses have given evidence of harassment only on the basis of what the deceased Swati is supposed to have told them. The deceased Swati was married for 8 years but P.W.-2 did not feel it was necessary to report the matter to the police even once. In the present case, the allegations against Accused was not that Swati was subjected to cruelty on account of any illegal demand. Except bare words of the witnesses that Swati used to complain about harassment,

there is no other positive evidence on cruelty. When Swati committed suicide, Accused Nos.2 to 4 were residing at Village Surpur and they came from village Surpur on receiving information about the commission of suicide by Swati. There is no evidence to show that the Accused in any way instigated or aided Swati to commit suicide. Therefore, the Trial Court has rightly concluded that on the face of records, there is no evidence to conclude that the Accused in any way abetted the commission of suicide.

19. Cruelty under Section 498A means any willful conduct which is of such nature as is likely to drive the woman to commit suicide. It also means 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. Therefore, the prosecution has to prove a willful conduct, which is of such nature as is likely to drive the woman to commit suicide. No such willful conduct has been established because none of the witnesses have given evidence to have seen the Accused indulging in such willful conduct that could drive a woman to commit suicide. Moreover, if a woman is harassed, that harassment should be 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. Therefore, the prosecution has to prove that there was any unlawful demand for any property or valuable security by the Accused. None of the witnesses have stated that there was any such demand by the Accused. Therefore, the charge under Section 498A cannot stick.

20. Under Section 306, any person who abets the commission of suicide shall be punished with imprisonment and fine, as the court may decide. Abetment involves a mental process of instigating a person in doing something. A person abets the doing of a thing when he instigates any person to do that thing or engages one or more persons in any conspiracy for the doing of that thing or he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word instigate literally means to provoke, incite, urge on or bring about by persuasion to do anything. Section 113A of the Indian Evidence Act requires that there must be material to show that the victim was subjected to cruelty or harassment and then there can be a presumption of abetment. The prosecution has not proved any where the harassment or any willful conduct that drove the woman to commit suicide.

21. Paragraphs 15, 16 and 17 of the Apex Court Judgment in the matter of UDE Singh Vs. State of Haryana AIR 2019 SC 4570 reads as under:-

"15. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the

abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

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, self- confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.

17. Having taken an overall view of the applicable principles, we may notice that the real questions arising in this appeal are:

(i) Whether the accused persons are guilty of the acts and utterances attributed to them; and

(ii) If the answer to the question (i) is in the affirmative, as to whether such acts and utterances had only been of insult or intimidation or had been of instigation; and whether such acts and utterances amounted to abetment of suicide?

....."

22. Keeping in view the legal position, let us examine whether there has been abetment in committing suicide. The allegations of harassment are very general in nature. In fact the allegations of harassment meted out by the Accused against deceased appears for the first time at the time of filing the FIR. Reliance on general oral testimonies of prosecution witness, without any supporting evidence, would be misplaced. Mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 of IPC will not be sustainable. There has to be positive action that creates a situation for the victim to put an end to life.

23. The defence of the Accused No.1 appears to be more probable, according to whom Swati was fond of children, but as she could not conceive after 7 to 8 years after marriage, she was unhappy. Added to that she was unhappy with him returning home late or eating outside due to his work. There used to be quarrel between husband and wife but eating out or quarreling, cannot be considered as harassment or cruelty as contemplated under Section 498A of the IPC. Of course, in the instant case, there is no evidence that prior to her suicide she was subjected to any cruelty.

24 The Apex Court in *Chandrappa & Ors. V/s. State of Karnataka* (2007) 4 SCC 415 in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

.....

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

25. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

26. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

27. Appeal dismissed.