*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 07th January, 2020

\+ CRL.A. 25/2012

KUNWAR PAL ..... Appellant

versus

STATE ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Apurva Upmanyu, Adv.

For the Respondents: Mr. Hirein Sharma, Addl. PP for the State

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Appellant impugns judgment on conviction dated 13.12.2011 and order on sentence dated 15.12.2011 whereby appellant has been convicted for the offences punishable under Sections 498A/306 Indian Penal Code (IPC for short) and sentenced to undergo rigorous imprisonment for a period of 2 years for the offence under Section 498A IPC with fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for a period of one month and sentenced to undergo rigorous imprisonment for a period of 3 years for the offence punishable under Section 306 IPC and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of two months.

2. Appellant is the husband of the deceased.

3. As per the case of the prosecution information was received at 2.40 PM on 27.02.2009 that a lady had committed suicide. When the Investigating Officer reached spot, he found the deceased hanging from the fan. Investigating Officer also found one suicide note written in Hindi and signed in English dated 27.02.2009.

4. The contents of the suicide note are as under: -

> *"My name is Kavita and I am going to commit suicide today because my husband has beaten me a lot today and for getting rid of him, I am committing suicide. For this my husband, Shyam Lal and one Janki are responsible because my husband used to beat me because of them and my husband has some relations with Janki to which I had objection."*

5. In the inquest proceedings, on 28.02.2009, Shri Rajender Singh, father of the deceased in his statement recorded before SDM, alleged that he married his daughter to accused Kunwar Pal on 24.02.2007 and at the time of marriage accused raised no demand for dowry and he had given the articles from their own will in the marriage.

6. He further alleged that accused started harassing his daughter for dowry just after the marriage and also demanded motorcycle. Despite of their efforts, he did not leave his habit of harassing his

daughter and he used to send his daughter to village because he had illicit relations with neighbouring lady.

7. He further alleged that on 15.02.2009, he brought his daughter to Delhi and on that day the elder brother of accused Kunwar Pal, assured that thereafter accused Kunwar Pal would not say anything to his daughter. He further alleged that a day prior at 3 o'clock he got information that his daughter had committed suicide. He was informed by Yash Pal. He further stated that she committed suicide due to bad behaviour and bad character of the accused. He further alleged that one day prior also his wife received a call from his daughter that accused was demanding Rs. 30,000/- to which they told that they would arrange the same by Sunday.

8. He further alleged that his daughter committed suicide due to illicit relations of accused and further alleged that accused had also stolen the jewellery of his daughter. His wife Shyamwati also agreed with his statement before SDM.

9. With regard to the allegations of illicit relations of the accused with one Janki, it was enquired into by the IO from the neighbors but none of them supported the allegations.

10. Chargesheet was filed under Section 498-A/304-B IPC and charges were also framed under Section 498-A/304-B IPC.

11. The hand writing expert in his opinion with regard to the alleged suicide note, opined that though some similarities were observed in formation of some letters but all features/vowel signs occurring in the questioned writings could not be accounted for similarly in the standard writings and no admitted signatures were given for comparison and accordingly no opinion could be expressed on the hand writing and signatures.

12. It was stated in the report that further attempt could be made if further admitted writings and signatures were provided for comparison. Trial court has noticed that no steps were taken by the Investigating Agency to provide admitted signatures for forensic examination. Trial court has further found that the handwriting expert report could not prove that the suicide note was in the handwriting of the deceased.

13. During Trial, none of the witnesses of the prosecution supported the case of the prosecution. Even the parents and relatives of the deceased and the neighbours did not support the case of the prosecution. The parents and relatives of the deceased denied having made a statement about any demand or harassment for dowry. The father of the deceased even stated that the deceased was short tempered and threatened to commit suicide. The parents also did not confirm the suicide note and stated that being illiterate they could not confirm or deny the handwriting.

14. The Trial Court on appreciation of evidence brought forth by the trial court held that the prosecution had been unable to prove demand of dowry and harassment on account of dowry by the accused. The Trial Court further held that the prosecution had been able to prove that it was a case of suicide.

15. The Trial Court further held that the fact that the suicide note was recovered from the body of the deceased was proved. The Trial Court ruled out the possibility of planting of the suicide note as no relative of the deceased was present at the spot.

16. With regard to the Suicide note, the trial court held that once the recovery of the suicide note from the body of the deceased was trustworthy, mere non corroboration of the handwriting did not lead to the conclusion that the suicide note was not written by the deceased because the expert opinion did not lead to the conclusion that the note was not written by the deceased.

17. The Trial Court further noticed that as per the post mortem report, there were two ante mortem injuries. In the description of the first injury it was noted that the left cheek was found swollen and congested and 3 contusions placed obliquely to the cheek parallel to each other appeared to be impressions caused by fingers of the palm. The second injury was ligature injury on the neck. The opinion of the doctor about cause of death was asphyxia due to hanging.

18. Based on the post mortem report, the Trial Court held that the deceased was subjected to beating on the face prior to commission of suicide.

19. The Trial Court held that none of the prosecution witnesses had supported the prosecution version of illicit relations between accused and Janki. The Trial Court held that even when direct testimony was not supporting the prosecution case, prosecution could rely upon circumstantial evidence, if found credible, and could define the offence committed.

20. Trial Court held that the circumstance of commission of suicide by the deceased within 7 years of marriage in her matrimonial home by hanging and the recovery of the suicide note from the body of the deceased and the contents of the suicide notes raised a finger on the alleged objectionable relationship between accused and Janki and towards frequent beating of the deceased found due corroboration by postmortem report. The Trial Court held that said circumstantial evidence was sufficient to infer cruelty committed by the accused over the deceased.

21. Trial Court held that the persistent beating by the accused on the instigation of Janki and Shyam Lal, as per the suicide note, was also duly corroborated by the medical evidence which showed marks of beating on the face by slapping. Trial Court held that persistent

beating of the deceased by accused alongwith the circumstance of objectionable relationship clearly showed cruelty committed by the accused so as to attract clause A of explanation to Section 498A IPC.

22. Trial Court thus held the Appellant guilty of commission of offence under section 498A IPC. However, since prosecution had failed to prove harassment on account of dowry and allegation of demand of dowry soon before death, Appellant was not found guilty of offence under section 304B IPC.

23. The Trial Court thereafter relying on the Judgment of the Supreme Court in *K. Prema S. Rao & Anr. Vs. Yadla Srniwas Rao & Ors. 2003 Crl. L.J. 69* held that if accused was convicted under section 498A IPC for cruelty then on the same evidence he could be convicted for abetment of suicide under section 306 IPC with aid of section 221 Cr. P.C. and further held that presumption under section 113 A Evidence Act could also be raised against him despite the fact that no specific charge under section 306 IPC was framed against the accused.

24. The Trial Court held that as suicide had been committed within a period of 7 years of her marriage and there was sufficient evidence against the accused of beating duly corroborated by medical evidence on account of his objectionable relationship resulting in driving the deceased to commit suicide and nothing was found in favour of the

accused for not raising such presumption against him, held him guilty of having committed the offence under section 306 IPC.

25. Perusal of the record shows that the Trial court has erred in not appreciating that none of the witnesses had supported the case of the prosecution. Even the family members of the deceased had not supported the case of the prosecution that there was ever any demand of dowry or that any dowry was ever paid or that the deceased had been harassed for dowry. There was no witness to support the prosecution theory of illicit relationship.

26. The only evidence against the appellant is the alleged suicide note.

27. The Trial Court has held that the suicide note was recovered from the body of the deceased. There was no possibility of planting of the suicide note as no relative of the deceased was present at the spot. The mere fact that the handwriting of the deceased was not corroborated did not lead to the inference that the suicide note was not genuine or untrustworthy.

28. There is no infirmity said view taken by the Trial Court. The evidence on record does support recovery of the note from the deceased. It is not the case of the defense that the suicide note was

planted. Admittedly, none of the relatives of the deceased were present when the note was recovered.

29. In the suicide note the deceased has written "*My name is Kavita and I am going to commit suicide today because my husband has beaten me a lot today and for getting rid of him, I am committing suicide. For this my husband, Shyam Lal and one Janki are responsible because my husband used to beat me because of them and my husband has some relations with Janki to which I had objection."*

30. The allegations in the suicide note are *(i) my husband has beaten me a lot today, (ii) my husband used to beat me because of them and (iii) my husband has some relations with Janki*.

31. The Medical evidence that has been produced by the prosecution shows that apart from the ligature mark caused by the hanging, there was one more injury mark on the deceased i.e. left cheek was found swollen and congested and 3 contusions placed obliquely to the cheek parallel to each other which appeared to be impressions caused by fingers of the palm. The injury mark was suggestive of the deceased having been slapped.

32. Apart from the mark of slap found on the cheek, no other injury mark old or fresh has been reported by the forensic expert. Since only one injury mark and that also of a slap has been found, it does not

support the allegation in the suicide note of the husband of the deceased having beaten her a lot that day. If the deceased had been beaten a lot by her husband, there would have been several injury marks. But there was only one mark of a slap.

33. Section 498A of the IPC reads as under:

> *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.*

34. A person who subjects a woman to cruelty is liable for punishment under section 498A IPC. Cruelty has been defined as any wilful conduct which 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 harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand.

35. In the present case, prosecution has not been able to prove that there was any harassment of the deceased on account of any demand for property or any valuable security. None of the witnesses have deposed with regard to any demand. Prosecution has not been able to prove that there was ever any demand. The only evidence that the prosecution has produced is the suicide note and the suicide note alleges that the deceased was beaten a lot that day and that the appellant used to beat her because of Janki and that he had some relations with Janki to which the deceased had objection.

36. As noticed above, the allegation in the suicide note that the deceased had been beaten a lot that day has not been substantiated by the medical evidence. All that has been established is that the deceased had been slapped. Whether it was the Appellant who had slapped her has not been established. Further the allegation that the Appellant used to beat the deceased has not been established. The witnesses for the prosecution including neighbours, friends and parents of the deceased have not supported this allegation.

37. The allegation that the deceased had any relationship with Janki has not been established. Prosecution has not produced any material to

show as to how the deceased had formed the opinion that the Appellant was having any relationship with Janki.

38. On the other hand the father of the deceased has stated that the deceased was short tempered and used to threaten to commit suicide.

39. In the facts of the present case, the prosecution has failed in establishing that the ingredients of Section 498A are satisfied. The Trial Court has also erred in holding the Appellant guilty of the offence under section 498A IPC.

40. The Trial Court has further held that since the Appellant has committed the offence under section 498A, he can also be convicted for the offence under section 306 IPC.

41. Section 306 IPC reads as under:

> *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.*

42. The Supreme Court in *K.V. Prakash Babu Vs. State of Karnataka (2017) 11 SCC 176* has held that *mere fact that the husband had developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to 'cruelty', but it must be of*

such a nature as is likely to drive the spouse to commit suicide. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

43. Reference may be had to the judgment of the Supreme Court in *Ramesh Kumar vs. State of Chhattisgarh*: (2001) 9 SCC 618, wherein, the Supreme Court laid down as to what conduct would amount to incitement or instigation so as to bring a case within the ambit of Section 306 IPC:-

> *"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion*

without intending the consequences to actually follow cannot be said to be instigation.

21. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

(underlining supplied)

44. Reference may also be had to the judgment of the Supreme Court in *Pawan Kumar vs. State of H.P.: (2017) 7 SCC 780*, wherein, the Supreme Court elaborated upon the expression *abetment* as under:-

"34. The word "abetment" has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case

and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC. Section 107 IPC reads as under:

> *"107. Abetment of a thing.**********
>
> *"Abetment", thus, means certain amount of active suggestion or support to do the act.*

35. Analysing the concept of "abetment", as found in Section 107 IPC, a two-Judge Bench in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] has held: (SCC p. 610, paras 13 & 15)

> *"13. As per the section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.*

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15. *As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in IPC. The meaning of the said word was considered by this Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] ."*

In the said authority, the learned Judges have referred to the pronouncement in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] .

36. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word "urge forward" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts

until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

38. Analysing further, in Randhir Singh v. State of Punjab [Randhir Singh v. State of Punjab, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , the Court has observed thus: (SCC p. 134, para 12)

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

(emphasis supplied)

39. In Praveen Pradhan v. State of Uttaranchal [Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734 : (2013) 1 SCC (Cri) 146] , it has been ruled: (SCC p. 741, para 18)

"18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances

and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. ..."

(emphasis supplied)

40. In Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , the Court, after referring to the authorities in Randhir Singh [Randhir Singh v. State of Punjab, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , Kishori Lal v. State of M.P. [Kishori Lal v. State of M.P., (2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] and Kishangiri Mangalgiri Goswami v. State of Gujarat [Kishangiri Mangalgiri Goswami v. State of Gujarat, (2009) 4 SCC 52 : (2009) 2 SCC (Cri) 62] , has held: (Amalendu Pal case [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , SCC p. 712, para 12)

"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 there 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."

41. A two-Judge Bench in Netai Dutta v. State of W.B. [Netai Dutta v. State of W.B., (2005) 2 SCC 659 : 2005 SCC (Cri) 543] , while dwelling on the concept of abetment under Section 107 IPC especially in the context of suicide note, observed: (SCC p. 661, paras 6-7)

"6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no

ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal."

42. At this juncture, we think it appropriate to reproduce two paragraphs from Chitresh Kumar Chopra [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] . They are: (SCC p. 611, paras 16 & 19)

"16. Speaking for the three-Judge Bench in Ramesh Kumar case [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C. Lahoti, J. (as his Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

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19. As observed in Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

(emphasis in original)

This Court again observed: (SCC pp. 611-12, para 20)

20. ... The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation

react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

(emphasis in original)"

(underlining supplied)

45. As noticed hereinabove, none of the witnesses have supported the case of the prosecution. There is no evidence produced by the prosecution to establish that there was any goading, urging or encouragement of the deceased to as to constitute abetment to commit suicide. There is further no material to show as to what were the surrounding circumstances except for the suicide note, which also does not provide any help in determining the active role played by the Appellant, if any. There are no facts on record so as to establish that the Appellant had created such circumstances, which had created such a situation that the deceased felt totally frustrated and committed suicide or that 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. There is no proof of direct or indirect acts of incitement to the commission of suicide.

46. Further the Trial Court has relied upon the judgment of the Supreme Court in *Prema S Rao versus Yadla Srinivasa Rao (2003) 1 SCC 217* to hold that because Appellant has been convicted of the offence under Section 498A IPC, he can also be convicted under section 306 IPC even though not charged for the said offence.

47. The Supreme Court in *Gurjit Singh Versus State of Punjab 2019 SCC OnLine SC 1516* has held *that merely because an accused is found guilty of an offence punishable under Section 498-A of the IPC and the death has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of the IPC by employing the presumption under Section 113-A of the Evidence Act. Unless the prosecution establishes that some act or illegal omission by the accused has driven the deceased to commit the suicide, the conviction under Section 306 would not be tenable.*

48. With regard to the judgment of the Supreme Court in *K. Prema S. Rao (supra)*, the Supreme Court held that in the said case there was evidence on record proving that immediately prior to committing suicide the deceased was driven out of the house. As such, it was held that the said cruelty would amount to abetment to commit suicide.

49. In the present case, as noticed above there is no evidence on record that the Appellant treated the deceased with cruelty

immediately prior to committing suicide. Further as noticed hereinabove, the allegation in the suicide note that the Appellant had beaten the deceased a lot that day was also not supported by any evidence medical or otherwise.

50. In view of the above, the Trial Court has clearly erred in holding the Appellant guilty of having committed the offence under section 498A and 306 IPC. The impugned judgment on conviction dated 13.12.2011 and order on sentence dated 15.12.2011 are set aside.

51. Since the Prosecution has failed to prove the case beyond reasonable doubt, the appeal is allowed and the appellant is acquitted of all charges. The bail bonds shall stand discharged.

52. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 07, 2020
'*rs*'