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ANANDA MOHAN SEN AND ANR.

v.

STATE OF WEST BENGAL

MAY 16, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860—ss.498A and 306—Unnatural death of married lady at her matrimonial home—Immediately after the occurrence, accused—husband and father-in-law fled away—Conviction of husband and father-in-law by Courts below—Justification of—Held, justified—Specific allegation that deceased was subjected to cruelty—Systematic torture evident—Presumption against accused under s.113A of the Evidence Act—Prosecution established ingredients of offences falling both under ss. 498A and 306—Burden shifted on the accused which they failed to discharge—Evidence Act, 1872—s. 113A.

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The daughter-in-law of Appellant No.1 was found dead at her matrimonial home. Appellant No.2 is the husband of deceased. Immediately after the occurrence, all the inmates of the house including the accused-Appellants fled away from the house. A First Information Report was lodged on the very day of incident alleging that the deceased committed suicide being unable to bear physical and mental torture upon her by the accused-Appellants. Trial Court convicted the Appellants under ss.498A and 306 IPC. High Court upheld the conviction. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1.1. It may be that there are certain contradictions and omissions but in a case of this nature the conclusion must be drawn from the totality of the circumstances. Deceased admittedly died an unnatural death. The prosecution evidences brought on records clearly suggest that she had been subjected to cruelty both physical and mental. Existence of discord between the parties in regard to torture at least at one point of time is not in dispute. She had been driven out of her house. She had to come back to her parents house again and again. Her husband did not even make any enquiry about her, when she was staying with her parents. A settlement had been arrived at

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wherefor intervention of the members of the panchayat had been sought for. Only upon the said settlement, the deceased came back to her matrimonial home. Unnatural death of the deceased must be considered from that point of view. [Para 25] [1097-F, G; 1098-A]

1.2. The submission that the dispute was between deceased and her mother-in-law which is an usual thing and other members of the family were not involved, does not appear to be correct. Deceased made allegations against all the family members. There is absolutely no reason if allegations against all the family members had not been made, why a settlement had to be arrived at. Evidence of PW-9, a close friend of the deceased, in this regard is significant. [Para 26] [1098-A, B]

2. Explanation appended to Section 498A defines cruelty in three parts. Clause (a) of the said Explanation itself is in two parts. One is any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide and the second part is to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. It may be that death by itself may not lead to an inference that cruelty was meted out to the deceased, but in this case there are specific allegations. The witnesses proved the same. Ex.3-C, whereupon reliance has been placed by the Appellants, although no allegation had been made against her husband, the deceased categorically stated the type of torture which was being meted out to her. In Ex. 3, however, she categorically stated that even the garments which had been presented by her parents were not liked by her husband and she had been abused and insulted by her husband. In some of the letters, it appears that she expressed her vent that she had thought of committing suicide but then consoled her mother that she would not do so. The contents of those letters had not been denied or disputed. Even in one of the letters Ex. A-1, she made allegations against her in laws during her stay at matrimonial home. Her mental condition during the stay at her matrimonial home can be well-imagined. For establishing a charge of cruelty, it is not necessary that the husband must always stay in the matrimonial home. Systematic torture of the deceased is evident in this case. [Para 27] [1098-C-G]

3. It is nobody's case that the death was an accidental one. In the First Information Report, it was categorically stated that the deceased had committed suicide. In the medical report, the exact cause of death could not be stated, as the viscera preserved by the autopsy surgeon was to be sent to the chemical expert. However, the viscera contained a whitish violate fluid with

A a smell like that of kerosene. PW-11, the autopsy surgeon, was definitely of the opinion that the death was due to the effect of poisoning, but he merely stated that he would be able to hold conclusively as to the cause of the death by poisoning only if he could find detection of poison in the viscera report. His deposition if read as a whole would clearly go to show that he could not B give definite opinion only in regard to the nature of poison. If an accidental consumption of poison was required to be proved, the accused persons would not have fled away from their house. Had it been a case of accident, they would have at least made an attempt to take her to the hospital.

[Paras 30, 31 and 34] [1099-B-E; 1100-D]

C *Taiyab Khan and Ors.* v. *State of Bihar (Now Jharkhand),* [2005] 13 SCC 455; *Harjit Singh* v. *State of Punjab,* [2006] 1 SCC 463 and *Wazir Chand and Anr. etc.* v. *State of Haryana etc.,* [1989] 1 SCC 244, referred to.

4.1. Involvement of all the accused persons to commit the offence must be determined having regard to the entirety of the situation and the materials D brought on records. Section 113-A of the Evidence Act raises a presumption against the accused, subject of course to the following conditions: (a) That the husband or any member of his family had subjected the married woman to cruelty within the meaning of Section 498A IPC; (b) The presumption is not mandatory; it is only permissive according to the facts and circumstances of a given case and (c) A consideration of all the other circumstances of the E case may strengthen the presumption or may cause the Court to abstain from drawing the presumption. [Para 37] [1101-D, E, F]

4.2. Death took place on the verandah of the matrimonial house of deceased. Ordinarily suicide would be committed at a secluded place and not F in open place. It would not be committed before anybody and certainly not when everybody in the house was present. In a case of this nature, Section 113-A of Indian Evidence Act would be attracted. Appellants did not adduce any evidence. All the inmates of the house were accused. All came within the purview of Section 113-A of the Evidence Act. Onus shifted to them to show that the death was accidental in nature. Those who were near the deceased at the relevant G time should have shown as to how the accident took place. It is difficult to believe that an educated woman would take poison accidentally.

[Para 38] [1101-F, G, H; 1102-A]

P. Mani v. *State of Tamil Nadu,* [2006] 3 SCC 161, distinguished.

H 5. The case at hand indicates the participation of the accused

immediately before the commission of the crime. The prosecution having established the ingredients of offences falling both under Sections 498A and 306 of the IPC, the burden shifted on the accused which they failed to discharge. [Para 40] [1102-F]

Randhir Singh v. *State of Punjab*, **[2004] 13 SCC 129, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 743 of 2007.

From the Final Judgment and Order dated 10.04.2006 of the High Court at Calcutta in Crl. A. No. 351 of 2003.

Pradip K. Ghosh, Sr. Adv. Rauf Rahim and Md. Iqbal for the Appellants.

Avijit Bhattacharjee and Saumva Kundu for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

INTRODUCTION

2. Appellants are before us being aggrieved by and dissatisfied with the judgment of conviction and sentence dated 10.04.2006 passed by a Division Bench of the Calcutta High Court in Criminal Appeal No. 351 of 2003, affirming a judgment of conviction and sentence passed by the learned Assistant Sessions Judge, Burdwan in Sessions Case No. 218 of 1995 under Sections 498A and 306 of the Indian Penal Code (for short, 'IPC'). The High Court, however, modified the sentence in respect of charge under Section 306 IPC, reducing it from five years to three years, so far as the first Appellant is concerned.

PROSECUTION CASE:

3. The prosecution case is as under :

Deceased Bakulbala was married to Appellant No.2 (Gouranga Mohan) in the year 1991. On 03.02.1994 at about 07.30 a.m. she was found dead at the verandah of her matrimonial home. Immediately after the occurrence, all the inmates of the house including the appellants fled away from the house. It was locked. PW-1, Shyam Sundar Dey, father of the deceased received information about the death of his daughter. He having reached the place of

A occurrence found the dead body of his daughter lying. A First Information Report was lodged on the same day at about 2105 hrs. before the officer in charge of Khandaghosh Police Station, alleging physical and mental torture upon her by all the accused. PW-1 opined that the deceased committed suicide being unable to bear such torture.

B 4. The officer in charge of the police station upon receipt of the said First Information Report arrived at the place of occurrence at about 10.30 p.m. The inquest report of the dead body, however, was conducted on the next day, which, *inter alia*, reads as under :

C "On primary investigation it was found that the deceased was given in marriage to Shri Gounrana Mohan Sen, the eldest son of Sri Ananda Mohan Sen of village Dubrajpur on 21st Magh 1397. Since after her marriage husband, father-in-law, mother-in-law, brother-in-law, Kartick Sen-all combined used to commit various physical and mental torture on her in connection with household duties. Yesterday D dated 03.02.1994 at about 7 a.m. husband, father-in-law, mother-in-law and brother-in-law Kartick abused her again in connection with household duties and asked deceased Bakul "can you not die by taking poison? Go out of the house". Being mentally shocked she took poison named "sumidon" and as a result she died at 7.30 a.m. Many persons know about the physical and mental torture committed E to her.

For ascertaining the real cause of death the dead body is sent to FSM Medical College, Burdawan through Shankar Das Bairagya, Constable."

F *EVIDENCE BEFORE THE COURT*

5. The post-mortem examination was conducted at about 12.30 hrs. on 04.02.1994. Dr. S. Chakraborty (PW-11), the autopsy surgeon, reserved his opinion in regard to the cause of the death pending chemical examiner's report. The condition of the heart and contents of the stomach, however, were G noticed therein as under:

"Heart — All the chamber full of blood and its clots to pinpoint haemorrhage on its surface.

H Stomach and its contents — Non-congested contains 250 ml. of

whitish violate fluid with a smell like that of kerosene. "

6. The statements of Smt. Kanan Bala Dey (PW-5), mother of the deceased, Haradhan Halder (PW-8), a neighbour and relative of PW-1 and Himadri Sekhar Dey (PW-10), brother of the deceased, were recorded under Section 161 of the Code of Criminal Procedure. The statements of Smt. Madhavi Halder (PW-6) and Smt. Bithika Paul (PW-9), aunt and friend respectively of the deceased were recorded on 12.02.1994. Investigation was carried out in a slip-shod manner. Viscera was also sent for chemical examination only on 14.03.1994. It is difficult to appreciate that the investigating officer took such a long time in sending the article for chemical examination after such a long time.

7. Before the learned Trial Judge, 13 witnesses were examined on behalf of the prosecution. Out of the said witnesses, Shib Shankar Ghosh (PW-2) and Biswanath Mallick (PW-3), who were the residents of the same village as that of the accused, were declared hostile. Another co-villager of the appellants, Bhutnath Pal (PW-4) was only tendered for cross-examination. The investigation was carried out principally by Sub Inspector S.D. Saha (PW-12). Charge-sheet, however, was submitted by another Investigating Officer, namely, Sub Inspector M.M. Das (PW-13). Dr. S. Chakraborty, who conducted the post-mortem examination examined himself as PW-11.

8. Appellants herein along with Smt. Shakti Sundari Sen, mother-in-law of the deceased and Nityananda Sen (brother-in-law of the deceased) were charged for commission of the offence punishable under Sections 498A and 306 IPC. Smt. Shakti Sundari Sen died on 14.10.1998. Examination of the witnesses before the learned Trial Judge also took a long time i.e. between 09.07.2001 and 06.06.2003. The learned Trial Judge found the appellants guilty of commission of the said offences and sentenced Appellant No. 1 to undergo simple imprisonment for 2 years under Section 498A IPC and to pay a fine of Rs. 1000/-; and to undergo simple imprisonment for 5 years under Section 306 IPC and to pay a fine of Rs. 2,000/-, in default of payment of fine to undergo simple imprisonment for one and two months under Sections 498A and 306 IPC respectively; and sentenced Appellant No. 2 to undergo simple imprisonment for 2 years under Section 498A and to pay a fine of Rs.1,000/- and to undergo simple imprisonment for 8 years under Section 306 IPC and to pay a fine of Rs.2,000/-, in default of payment of fines to undergo simple imprisonment for one and two months under Sections 498A and 306

A IPC respectively.

9. Appeal preferred by the appellants herein was dismissed by the High Court by its impugned judgment dated 10.04.2006.

10. It is stated that Nityananda one of the convicted persons committed B suicide 11.04.2006.

SUBMISSIONS

11. Mr. Pradip K. Ghosh, learned Senior Counsel appearing on behalf of the appellants, in support of the appeal, submitted that the High Court C committed a serious error in passing the impugned judgment of the conviction and sentence insofar it failed to take into consideration that essentially it was a typical case of a dispute between the mother-in-law and the daughter-in-law. Gouranga (Appellant No.2 herein) was not residing at the village and in that view of the matter his presence immediately before the occurrence has not been proved. Involvement of Ananda Mohan Sen, Appellant No.1, (father-D in-law), the learned counsel Senior Counsel contended, is also not beyond reasonable doubt. In any event, it was not a case where the ingredients of Section 306 IPC can be said to have been proved and for arriving at the said conclusion, it was obligatory on the part of the High Court to conclusively arrive at a finding that the deceased had committed suicide. A serious error E has been committed by the High Court insofar as it had arrived at certain contradictory or inconsistent findings which have vitiated the reasonings for recording a judgment of conviction, namely :

(i) No poison was detected in the viscera;

F (ii) There was a long time gap between sending viscera and examination;

(iii) A judicial notice can be taken of the fact that such long gap between sending of the viscera and the examination thereof would cause the poison to be degraded and decomposed, for which no G authority has been noticed.

(iv) The High Court committed an error in opining :

"Sitting in Appeal we are not supposed to count the errors and take stock of the mistakes. It would serve no purpose and it would H be more appropriate to find out the remedy rather than to address us

with the disease. A

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Reticence on the part of the court, in our view, has not helped the matter at all. As observed by us earlier, in a first appeal we would not be correct to simply locate the fault lines and keep quiet, but it would be expected of us B to salvage the ruins from the debris of a wanting situation and restore it to its pristine value for giving a wholesome effect to the Criminal Justice System.

After all we have to achieve the truth and merely like a bad workman not find fault with the tools of the decision making process."

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12. A death whether homicidal or suicidal or accidental in nature would be determinative of the nature of offence and, thus, the High Court was not correct in relying upon the decision of this Court in *Taiyab Khan and Ors.* v. *State of Bihar (Now Jharkhand)* [2005] 13 SCC 455 in arriving at the conclusion that the result of the viscera examination would make no difference to the fate of the case, as an offence under Section 304B IPC was involved. D

13. Section 113A of the Indian Evidence Act, 1872 will have no application inasmuch as in order to invoke presumption arising thereunder, it must be established as an issue of fact that the deceased had committed suicide.

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14. A distinction must also be borne in mind between the ingredients of offences under Section 306 IPC and 304B thereof.

15. There is no evidence to suggest, as was alleged by PW-1, that Bakulbala had been killed.

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16. In absence of any evidence by the medical expert that the death was homicidal, suicidal or accidental in nature, the conclusion of the High Court that she had committed suicide was not proved.

17. In any view of the matter, there is nothing to show that the appellants herein had incurred joint liability. Section 113A of the Evidence Act in the G facts and circumstances of the case would not be attracted so far as husband of the deceased is concerned, as there is nothing to show that he had any role to play in regard to the alleged physical or mental torture of the deceased. The evidence of PW-5 to the effect that he used to assault Bakulbala cannot be believed, as no such statement has been made under Section 161 of the

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A Code of Criminal Procedure.

18. Similarly, statement made by PW-10 to the said effect cannot be believed. The High Court furthermore failed to notice the letters wherein it was stated : "Your son-in-law loves me and that is a big relief". "Your son-in-law lovingly states that he would be relieved", "There is no trouble from B the side of your son-in-law" and Gauranga used to stay at Burdwan on week days and used to return on week ends.

19. So far as Ananda Mohan Sen (Appellant No. 1 herein) is concerned, even the High Court has observed that his role was diminutive. No specific instance of any act of cruelty has been mentioned by any of the witnesses C against him. As a matter of fact he had all along been asking her to stay at Burdwan with her husband, which contradicts any cruelty on his part.

20. There is no direct or circumstantial evidence in regard to any act of cruelty or torture between 02.06.1993 and 03.02.1994 when she died i.e. after the purported talk of settlement was made.

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21. Mr. Avijit Bhattacharjee, learned counsel appearing on behalf of the State, on the other hand, would refer to the judgment of the High Court, which according to him, dealt with all the evidences both oral and documentary at great details.

E *ANALYSIS OF THE EVIDENCE*

22. The fact that death of Bakulbala took place within seven years of marriage is not in dispute. The deceased was lovingly called as 'Mamoni'. According to PW-1, she used to complain about her ill-treatment by her husband, parents-in-law and brother-in-law. According to the said witness F they used to abuse and assault the deceased. He had deposed that his son Himadri had gone to the house of Bakulbala on 15th Falgoon, 1399 i.e. 7-8 months prior to her death. Both of them were driven out whereafter only he went to his daughter's house for settlement. A settlement was arrived at whereafter she was taken to her matrimonial home. Despite the same, the G assault and abuse on her continued.

23. We may not deal with the evidences of PWs 2 to 4. As noticed hereinbefore, PWs 2 and 3 were declared hostile and PW-4 was tendered on cross-examination. PW-5 was the mother of the deceased. She was also categorical in her statement in regard to ill-treatment meted out to her daughter. H She categorically stated that she was assaulted by the parents-in-law and

brother-in-law of the deceased and she had been driven out together with her son on 16th Falgoon. Even after settlement her daughter was severely assaulted. On the fateful day, the accused persons assaulted and killed her by pouring poison in her mouth and left the house under lock and key. PW-6, Smt. Madhavi Halder, is the paternal aunt of the deceased. She found marks of injuries on the dead body of Bakulbala. She expected the dispute would be settled after she gave birth to a child. Jagat Kumar Das (PW-7) is an independent person. Settlement preceded the dispute. The dispute arose because of torture. He is a witness to the settlement. PW-8, Harddhan Halder, a resident of Baidyapur village also supported the prosecution case. Smt. Biuthika Paul, who examined herself as PW-9 was a close friend of Bakulbala. This witness in no uncertain terms stated that the deceased used to complain about the ill-treatment meted out to her in her in-laws house and it would have been better if she had not been married and continued her studies. The deceased had stated before her that she had been abused and assaulted even for minor and insignificant mattres. She was made to do domestic works like a maid servant and even she had been denied proper meal. According to this witness, the brother-in-law of Bakulbala asked her sleep with him when her husband was out the house; but on her reporting thereabout she was assaulted by her husband.

24. PW-10 is the younger brother of Bakulbala. He was the witness to the incident of 16th Falgoon, when he and Bakulbala were assaulted and driven out from the house.

FINDINGS

25. The learned Trial Judge in arriving at the conclusion had , inter alia, taken note of the fact that despite the deceased suffering from the skin disease, she had never been taken to the doctor, nor any paper was filed as to whether any treatment was given. It may be that there are certain contradictions and omissions but in a case of this nature the conclusion must be drawn from the totality of the circumstances. Bakulbala admittedly died an unnatural death. The prosecution evidences brought on records clearly suggest that she had been subjected to cruelty both physical and mental. Existence of discord between the parties in regard to torture at least at one point of time is not in dispute. She had been driven out of her house. She had to come back to her parents house again and again. Her husband did not even make any enquiry about her, when she was staying with her parents. A settlement had been arrived at wherfor intervention of the members of the panchayat had

A been sought for. Only upon the said settlement, the deceased came back to her matrimonial home. Unnatural death of the deceased, in our opinion, must be considered from that point of view.

26. Submission of Mr. Ghosh that the dispute between mother-in-law and daughter-in-law is an usual thing and other members of the family were B not involved, does not appear to be correct. She made allegations against all the family members. There is absolutely no reason if allegations against all the family members had not been made, why a settlement had to be arrived at. Evidence of PW-9, a close friend of the deceased, in this regard is significant. Naturally, a married girl would confide with a close friend or C mother. A mother, on the other hand, may not bring everything to the notice of her husband on the belief that the things will improve.

27. Indian Penal Code was amended by Criminal Law Amendment Act 1983 with a view to deal with menace of dowry deaths. Explanation appended to Section 498A defines cruelty in three parts. Clause (a) of the said explanation D itself is in two parts. One is any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide and the second part is to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. It may be that death by itself may not lead to an inference that cruelty was meted out to the deceased, but in this case there are specific allegations. The witnesses proved the same. Ex.3-C, whereupon reliance has E been placed by Mr. Ghosh, although no allegation had been made against her husband, the deceased categorically stated the type of torture which was being meted out to her. In Ex. 3, however, she categorically stated that even the garments which had been presented by her parents were not liked by her husband and she had been abused and insulted by her husband. In some of F the letters, it appears that she expressed her vent that she had thought of committing suicide but then consoled her mother that she would not do so. The contents of those letters had not been denied or disputed. Even in one of the letters Ex. A-1, she made allegations against her in laws during her stay at matrimonial home. Her mental condition during the stay at her matrimonial home can be well-imagined. For establishing a charge of cruelty, it is not G necessary that the husband must always stay in the matrimonial home. Systematic torture of the deceased is evident in this case. We do not find any reason to differ from the findings of the learned Trial Judge or the High Court.

28. The question which now arises for consideration is as to whether a case for conviction under Section 306 IP has been made out. It is no doubt

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true that for arriving at such a conclusion, the prosecution must , *inter alia*, establish that the deceased committed suicide and she had been subject to cruelty within the meaning of Section 498A IPC. [See *Harjit Singh* v. *State of Punjab*, [2006] 1 SCC 463.

29. It may also be true that for the aforementioned purpose a degree of certainty has to be arrived at, as was held in *Wazir Chand and Anr. etc.*, v. *State of Haryana etc.*, [1989] 1 SCC 244.

30. The fact that the deceased had died an unnatural death is not in dispute. It is nobody's case that her death was an accidental one. In the First Information Report, it was categorically stated that the deceased had committed suicide. In the medical report, the exact cause of death could not be stated, as the viscera preserved by the autopsy surgeon was to be sent to the chemical expert. We have, however, noticed hereinbefore that viscera contained a whitish violate fluid with a smell like that of kerosene. She was found dead early morning at the verandah of her matrimonial home. PW-11 was definitely of the opinion that the death was due to the effect of poisoning, but he merely stated that he would be able to hold conclusively as to the cause of the death by poisoning only if he could find detection of poison in the viscera report. In his report it was stated :

> "....There was vermilion marks on forehead and front middle of scalp hairs whitish froth was coming out from nostril and facial stains at the (illegible) region....."

31. His deposition if read as a whole would clearly go to show that he could not give definite opinion only in regard to the nature of poison. The cause of death by poisoning was, therefore, not in issue. A plastic bottle with while cork with a label 'Sumidon' was also seized. The autopsy surgeon noticed the smell of kerosene.

32. It is of some significance to note that even before the learned Trial Judge, an argument was advanced by the learned counsel for the appellants that it was a case of suicide, stating :

> "Learned Advocate for the accused persons, during his argument, stated that Bakulbala personally took the poison in her mouth and died and the onus of proving this is upon the prosecution and while such death is caused by consumption of poison, then two other points are to be considered whether that death is homicidal or

A accidental in take or not...."

In *Taiyab Khan* (supra), this Court opined :

"....It is a case of unnatural death. The learned counsel for the appellant argued that the viscera report would have shown as to whether the B death occurred on account of consumption of poison. This report was never received and therefore, it cannot be said to be a case of death by poisoning. In our view, the absence of viscera report does not make any difference to the fate of the case. The fact remains that it is a case of unnatural death....."

C 33. It may be, as was submitted by Mr. Ghosh, that therein the offence alleged to have been committed was one under Section 304B IPC, but in a case of this nature, the legal principle thereof can be applied. In that case on the basis of the materials on records even a suggestion that the deceased had taken poison of her own and committed suicide has been disbelieved.

D 34. In the instant case, everybody proceeded on the basis that it is a case of suicide. If an accidental consumption of poison was required to be proved, the appellants and accused persons would not have fled away from their house. Had it been a case of accident, they would have at least made an attempt to take her to the hospital. Had it been done, such an argument E was possible to be advanced. No doubt there exists a difference between the ingredients of Section 306 and 304B IPC, as has been held by this Court in *Harjit Singh* (supra), but then it is not necessary for us in this case to go into that aspect of the matter as it is not a case where the appellants have been charged under Section 304B IPC but only for commission of an offence under Section 306 IPC.

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35. In *P. Mani* v. *State of Tamil Nadu,* [2006] 3 SCC 161 the accused were charged under Section 302 IPC. It was in that situation, this Court opined that the provision of Section 113A of the Evidence Act was not available. Therein, it was noticed :

G "11. The High Court furthermore commented upon the conduct of the appellant in evading arrest from 4-10-1998 to 21-10-1998. The investigating officer did not say so. He did not place any material to show that the appellant had been absconding during the said period. He furthermore did not place any material on record that the appellant could not be arrested despite attempts having been made therefor. H Why despite the fact, the appellant who had been shown to be an

> accused in the first information report recorded by himself was not arrested is a matter which was required to be explained by the investigating officer. He admittedly visited the place of occurrence and seized certain material objects. The investigating officer did not say that he made any attempt to arrest the appellant or for that matter he had been evading the same. He also failed and/or neglected to make any statement or bring on record any material to show as to what attempts had been made by him to arrest the appellant. No evidence furthermore has been brought by the prosecution to show as to since when the appellant made himself unavailable for arrest and/or was absconding."

The said decision was rendered on its own facts.

36. In the aforementioned situation, invocation of Section 113-A of the Evidence Act, in our opinion was misconceived. Such is not the position here.

37. Involvement of all the accused persons to commit the offence must be determined having regard to the entirety of the situation and the materials brought on records. Section 113-A of the Evidence Act raises a presumption against the accused, subject of course to the following conditions :

(a) That the husband or any member of his family had subjected the married woman to cruelty within the meaning of Section 498A IPC.

(b) The presumption is not mandatory; it is only permissive according to the facts and circumstances of a given case.

(c) A consideration of all the other circumstances of the case may strengthen the presumption or may cause the Court to abstain from drawing the presumption.

38. A young lady committed suicide in the morning. Ordinarily, in a village, all members of the family would get up early. Death took place on the verandah of her house. Ordinarily suicide would be committed at a secluded place and not in open place. It would not be committed before anybody and certainly not when everybody in the house was present. In a case of this nature, Section 113-A of Indian Evidence Act would be attracted. Appellants did not adduce any evidence. All the inmates of the house were accused. All came within the purview of Section 113-A of the Evidence Act. Onus shifted to them to show that the death was accidental in nature. Those who were near the deceased at the relevant time should have shown as to how the accident

A took place. It is difficult to believe that an educated woman would take poison accidentally.

39. In *Randhir Singh* v. *State of Punjab,* [2004] 13 SCC 129, it was observed:

> "9. Great stress was laid on the victim's statement having not expressed before her friends about any harassment. In a tradition and custom-bound Indian society no conservative woman would disclose family discords before a person, however close he or she may be. Merely because the deceased had not told close friends about the demand of dowry or harassment that does not positively prove the absence of demand of dowry. The said circumstance has to be weighed along with the evidence regarding demand of dowry. If the evidence regarding demand of dowry is established, is cogent and reliable merely because the victim had not stated before some persons about the harassment or torture that would be really of no consequence."

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It was also observed:

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> "13. In *State of W.B.* v. *Orilal Jaiswal* 1 this Court has observed that the courts 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 the 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."

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40. Each case, however, is required to be determined on its own facts. The case at hand indicates the participation of the accused immediately before the commission of the crime. The prosecution having established the ingredients of offences falling both under Sections 498A and 306 of the Indian Penal Code, the burden shifted on the accused which they failed to discharge.

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41. In the facts and circumstances obtaining in this case, we are of the opinion that it is not a case where interference with the impugned judgment is called for. The appeal is dismissed accordingly.

H B.B.B. Appeal dismissed.