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AMALENDU PAL @ JHANTU

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 2091 of 2009)

NOVEMBER 11, 2009

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[DR. MUKUNDAKAM SHARMA AND R.M. LODHA, JJ.]

Penal Code, 1860:

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s.306 – Applicability of – Held: For applicability of s.306, there must be a case of suicide and in the commission of suicide, person said to have abetted it must have played active role by an act of instigation or by doing certain act to facilitate the commission of suicide – On facts, appellant brought another woman to his house – Allegations of mental and physical torture on deceased-wife – After about three months, of second marriage by the appellant, deceased committed suicide – Conviction of appellant by courts below under s.306 not maintainable as from the period of three months which elapsed in between the incidents of the appellant bringing the other woman and deceased committing suicide, it can be inferred that it was not the act of the appellant which instigated or provoked deceased to commit suicide – s.107.

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s.498A – Conviction by courts below – Held: Justified as there was sufficient evidence to prove that cruelty was meted out to the deceased by her husband – Crime against woman.

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Prosecution case was that appellant-husband was married to deceased in 1977. He developed extra marital relationship with a woman. When deceased came to know about such relationship, she objected. The appellant sought permission of deceased to marry the other woman. When she refused, appellant started torturing her both physically and mentally. Three months prior to the date of incident, appellant allegedly married the other woman and brought her to his house. A day prior to incident, deceased was tortured by appellant, the other woman and other

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accused persons. On the fateful day, deceased was found hanging from the ceiling of the house of appellant. A

Trial court framed charges under Section 498A read with Section 34 IPC and Section 306 read with Section 34 IPC against the appellant and seven other accused persons. Trial Court convicted the appellant under Sections 498A and 306 IPC and sentenced him to undergo rigorous imprisonment for three years and for eight years together with a fine of Rs 1000/- respectively. All the other seven accused persons were acquitted. High Court upheld the order of conviction and affirmed the sentence. Hence the present appeal. B C

Partly allowing the appeal, the Court

HELD: 1. 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. In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The conviction in terms of Section 306 IPC is not sustainable 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. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. [Paras 15, 16 and 17] [845-G-H; 846-A-E] D E F G

2.1. A close and careful scrutiny of the oral evidence of the prosecution witnesses showed that the appellant H

A and the deceased enjoyed a happy married life for 5-6
 years from the date of their marriage and that the problems
 between the appellant and the deceased cropped up and
 their matrimonial life got strained only after the appellant
 developed an extra-marital relationship during his stay in
 B Calcutta and the said liaison became known to the
 deceased. It was only when the appellant was denied
 permission by the deceased to marry the other woman that
 he started torturing the deceased both mentally as well as
 physically. The prosecution specifically alleged that the
 C day prior to the date of commission of suicide by the
 deceased, she was tortured by appellant, the other woman
 and the other accused persons present in the house of the
 appellant, as a result of which the deceased committed
 suicide on the next day. The perusal of the record shows
 that both the trial Court as well as the High Court
 D disbelieved the said incident as, according to them, the
 statements of the witnesses to establish the said fact were
 not reliable and trustworthy. Those findings recorded by
 the trial Court and the High Court were not challenged
 before this Court. It was not the case of the prosecution
 that the case in hand fell within the ambit of clause firstly
 E of or Explanation 1 to Section 107 IPC. [Paras 11 and 21]
 [838-A-D; 847-C-F]

Randhir Singh v. State of Punjab (2004) 13 SCC 129;
Kishori Lal v. State of M.P. (2007) 10 SCC 797; *Kishangiri*
 F *Mangalgiri Swami v. State of Gujarat* (2009) 4 SCC 52, relied
 on.

2.2. If the deceased was so perturbed by the act of the
 appellant in marrying the other woman and in bringing her
 to his house that she felt impelled to commit suicide then
 she could have done so on the very day when the other
 G woman came to stay with the appellant in his house as
 naturally at that point of time her annoyance or dismay with
 life would have been at its pinnacle. From the period of
 three months which elapsed in between the incidents of
 the appellant bringing the other woman to his house and
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the deceased committing suicide, it can be clearly inferred that it was not the act of the appellant which instigated or provoked the deceased to commit suicide. [Para 23] [848-B-D]

2.3. It is nowhere the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide by the deceased for denying to accept the other woman as the wife of the appellant. The second wife of the appellant was brought by the appellant to his house about three months prior to the date of the incident of suicide by the deceased and therefore, bringing of the second wife to the house by the appellant cannot be said to have either incited or facilitated the commission of suicide by the deceased. The contention is far fetched and is not established by the facts of the present case. [Para 24] [848-E-G]

Girdhar Shankar Tawade v. State of Maharashtra (2002) 5 SCC 177, relied on.

3. The prosecution witnesses in their testimonies stated that the deceased was tortured both physically and mentally by the appellant for the first time after his marriage with the deceased when he was refused permission for second marriage. The appellant again, after few days requested the deceased to accede to his request for second marriage which request was again refused by the deceased. Consequent to the said position and due to the adamant position taken by the deceased, cruelty was meted out to her by the accused which fact was sufficiently proved from the evidence on record. Therefore, there is no reason to take a different view than what has been taken by the trial Court and the High Court as far as Section 498A IPC is concerned. [Para 26] [850-C-E]

Case Law Reference :

(2004) 13 SCC 129	relied on	Para 13
(2007) 10 SCC 797	relied on	Para 14

- A **(2009) 4 SCC 52** relied on **Para 14**
 (2002) 5 SCC 177 relied on **Para 25**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2091 of 2009.

- B From the Judgment & Order dated 24.07.2008 of the High
Court at Calcutta in Cr. A. No. 359 of 1997.

Pradip K. Ghosh, Soumya Chakraborty, Dharam Bir Raj
Vohra, for the Appellant.

- C Tara Chandra Sharma, Neelam Sharma, Ajay Sharma for
the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

- D 2. In the present appeal, the appellant has challenged the
legality of the judgment and order dated 24.07.2008 passed by
the Calcutta High Court. The appellant is aggrieved by the
aforesaid judgment and order as by the said judgment, the High
Court has upheld the order of conviction and sentence passed
E by the trial Court whereby the appellant was sentenced to
undergo rigorous imprisonment for three years for the offence
punishable under Section 498-A of the Indian Penal Code (in
short "the IPC") and for eight years together with a fine of Rs
1000/- for the offence punishable under Section 306 of the IPC
F with a default stipulation. The sentences awarded to the
appellant were directed to run concurrently.

- G 3. The facts necessary for the disposal of the present
appeal and as presented by the prosecution may be set out at
this stage. The appellant – Amalendu Pal @ Jhantu and the
deceased – Dipika were married in the year 1977. Out of the
said wedlock, two sons were born. The appellant was residing
in Calcutta in connection with his work and earning. During his
stay in Calcutta, the appellant developed an extra-marital
relationship with one Jyotsna @ Anita. The relationship between
the appellant and said Anita became known to the deceased and

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BENGAL [DR. MUKUNDAKAM SHARMA, J.]

the deceased objected to such illegal relationship. The appellant sought permission of the deceased to marry said Anita, which was also refused by the deceased. Consequently, the appellant started torturing the deceased both physically and mentally.

4. After a few days, the appellant again tried to take the consent of the deceased for marrying said Anita and on refusal of the deceased, physical and mental torture was perpetrated on the deceased. It was alleged that the deceased was provoked by the appellant to end her life by consuming poison or by hanging herself. It was also the case that three months prior to the date of death of the deceased, the appellant brought said Anita to his house. Anita was sporting a vermilion mark on her forehead and was wearing conch bangles on her wrist to indicate that she is married to the accused. It was also stated that in the evening prior to the date of the death of the deceased, the deceased was assaulted by Anita, the appellant and his family members. On the morning of 27.09.1991, the deceased was found hanging from the ceiling of the house of the appellant.

5. Ashoka Kumar Maity (PW-7) intimated Supriyo Das, brother of the deceased (PW-2) about the death of the deceased. Upon receipt of the aforesaid information, PW-2 arrived at the house of the appellant where he learnt about the entire incident from the villagers who had assembled at the scene of occurrence. Thereafter, PW-2 proceeded to the Contai Police Station and got a complaint registered. On the strength of the complaint, First Information Report (in short "the FIR") under Sections 498-A and 306 IPC was lodged on 28.09.1991 at 20.30 hrs.

6. After completion of the investigation, the police filed a charge sheet against the appellant and seven other accused persons. On the basis of the aforesaid charge sheet, the trial Court framed charges under Section 498A read with Section 34 IPC and Section 306 read with Section 34 IPC against the appellant and seven other accused persons to which all of them pleaded not guilty and claimed to be tried.

7. During the trial, a number of prosecution witnesses were examined. The defence produced two witnesses in support of

A its case. On conclusion of the trial, the trial Court by its judgment
 and order dated 25.11.1997 convicted the appellant under
 Sections 498A and 306 IPC and sentenced the appellant to
 undergo rigorous imprisonment for three years and for eight
 years together with a fine of Rs 1000/- respectively. All the other
 B seven accused persons were acquitted of the above stated
 charges framed against them.

8. Aggrieved by the aforesaid order of conviction and
 sentence passed by the trial Court, the appellant herein preferred
 an appeal before the High Court. The State, however, did not
 C prefer any appeal before the High Court against the order of
 acquittal recorded by the trial Court with regard to the seven
 accused persons who were also charged with the appellant for
 the aforesaid offences. The High Court entertained the said
 appeal and heard the counsel appearing for the parties. On
 D conclusion of the arguments, the High Court passed a judgment
 and order upholding the order of conviction and affirming the
 sentence awarded to the appellant by the trial Court. The said
 order of conviction upheld by the High Court is under challenge
 in this appeal.

9. Mr. Pradip K. Ghosh, learned senior counsel appearing
 E on behalf of the appellant, very painstakingly argued the appeal
 before us. He submitted that in the absence of cogent and reliable
 evidence to establish abetment of suicide by the appellant, the
 conviction of the appellant under Section 306 could not be
 sustained and was bad in law. He further submitted that the High
 F Court erred in convicting the appellant under Section 306 IPC
 as the High Court failed to properly appreciate the evidence on
 record. He further strenuously submitted before us that there was
 no evidence of infliction of torture upon the deceased by the
 appellant immediately prior to the incident of suicide by the
 deceased and as such it could not be said that the appellant had
 G incited the deceased to commit suicide.

10. On the other hand, the learned counsel appearing on
 behalf of the respondent State supported the judgments of the
 courts below.

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11. We have carefully considered the submissions made before us by the learned counsel appearing for the parties and perused the evidence available on record before us. On a close and careful scrutiny of the oral evidence of the prosecution witnesses namely, PW-2, PW-4, PW-6, PW-7 and PW-9, we find that the appellant and the deceased had got married in the year 1977 and they had enjoyed a happy married life for 5-6 years from the date of their marriage. The aforesaid prosecution witnesses have also categorically stated in their testimony before the trial Court that the problems between the appellant and the deceased cropped up and their matrimonial life got strained only after the appellant developed an extra-marital relationship with one Jyotsna @ Anita during his stay in Calcutta and the said liaison between the appellant and the said Anita became known to the deceased. It was only when the appellant was denied permission by the deceased to marry said Anita that the appellant started torturing the deceased both mentally as well as physically.

12. At the outset, we intend to address the issue regarding the applicability of Section 306 IPC in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows:

“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.

107. *Abetment of a thing.*—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

A *Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

B *Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

* * *

C *Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

D 13. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of *Randhir Singh vs. State of Punjab* (2004) 13 SCC 129 as follows in paras 12 and 13:

E “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.

F 13. In *State of W.B. vs. Orilal Jaiswal* 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

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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.” A

14. Further in the case of *Kishori Lal vs. State of M.P.* (2007) 10 SCC 797, this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6: B

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

[See also *Kishangiri Mangalgiri Swami v. State of Gujarat* (2009) 4 SCC 52] F

15. 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 G H

A 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
B sustainable.

16. In order to bring a case within the purview of Section
306 of IPC there must be a case of suicide and in the commission
of the said offence, the person who is said to have abetted the
commission of suicide must have played an active role by an act
C of instigation or by doing certain act to facilitate the commission
of suicide. Therefore, the act of abetment by the person charged
with the said offence must be proved and established by the
prosecution before he could be convicted under Section 306 IPC.

17. The expression 'abetment' has been defined under
D Section 107 IPC which we have already extracted above. A
person is said to abet the commission of suicide when a person
instigates any person to do that thing as stated in clause firstly
or to do anything as stated in clauses secondly or thirdly of
Section 107 IPC. Section 109 IPC provides that if the act abetted
is committed pursuant to and in consequence of abetment then
E the offender is to be punished with the punishment provided for
the original offence.

18. Learned counsel for the respondent-State, however,
clearly stated before us that it would be a case where clause
F 'thirdly' of Section 107 IPC only would be attracted. According
to him, a case of abetment of suicide is made out as provided
for under Section 107 IPC.

19. In view of the aforesaid situation and position, we have
examined the provision of clause thirdly which provides that a
G person would be held to have abetted the doing of a thing when
he intentionally does or omits to do anything in order to aid the
commission of that thing. The Act further gives an idea as to who
would be intentionally aiding by any act of doing of that thing when
in Explanation 2 it is provided as follows:

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Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

20. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC.

21. We have already considered a number of decisions of this Court on the aforesaid aspect and having done so we revert back to the factual position of the present case. The prosecution has specifically alleged that on 26.09.1991, the day prior to the date of commission of suicide by the deceased, the deceased was tortured by the appellant, Anita and the other accused persons present in the house of the appellant, as a result of which the deceased committed suicide on the next day. On a perusal of the record of the present case, we find that both the trial Court as well as the High Court have disbelieved the said incident as, according to them, the statement of the witnesses to establish the said fact are not reliable and trustworthy. Those findings recorded by the trial Court and the High Court have not been challenged before us. It is not the case of the prosecution that the case in hand would fall within the ambit of clause firstly of or Explanation 1 to Section 107 IPC.

22. The prosecution, however, heavily relies on the clause thirdly of Section 107 IPC because, according to the prosecution, the appellant by way of harassment and torturing the deceased at various point of time and by marrying said Anita for the second time without the permission and against the will of the deceased, intentionally aided the commission of suicide by the deceased.

23. In support of the aforesaid contention, learned counsel for the prosecution relied upon Explanation 2 to Section 107. He submitted that prior to the commission of suicide by the

A deceased, the appellant had, by bringing said Anita as his
second wife to his house facilitated the commission of suicide
by the deceased and thus, the appellant intentionally aided the
commission of suicide by the deceased. The evidence on record,
however, does not support such a case. It is pertinent to note that
B the appellant had brought Anita to stay with him at his house three
months prior to the date of the death of the deceased. If the
deceased had been so perturbed by the act of the appellant in
marrying the said Anita and in bringing her to his house that she
felt impelled to commit suicide then she could have done so on
C the very day when Anita had come to stay with the appellant in
his house as naturally at that point of time her annoyance or
dismay with life would have been at its pinnacle. From the period
of three months which elapsed in between the incidents of the
appellant bringing Anita to his house and the deceased
committing suicide, it can be clearly inferred that it was not the
D act of the appellant which instigated or provoked the deceased
to commit suicide.

24. The perpetration of physical torture on the deceased on
the day prior to the date of the incident which led the deceased
to commit suicide is the prosecution case all throughout. It is
E nowhere the case of the prosecution that the appellant had played
any active role either in instigating or aiding the commission of
suicide by the deceased for denying to accept Anita as the wife
of the appellant. Anita, the second wife of the appellant was
brought by the appellant to his house about three months prior
to the date of the incident of suicide by the deceased and
F therefore, bringing of the second wife to the house by the
appellant cannot be said to have either incited or facilitated the
commission of suicide by the deceased. It is also not the case
of the prosecution as disclosed from the evidence led which we
have scrutinised very minutely. The aforesaid contention, in our
G considered opinion, is far fetched and is not established by the
facts of the present case. After carefully assessing the evidence
on record we find that there is no direct evidence to show that
the appellant had by his acts instigated or provoked the
deceased to commit suicide and has not done any act which
could be said to have facilitated the commission of suicide by
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the deceased.

25. We now intend to proceed to find out whether a case under Section 498A IPC is made out against the appellant or not. In the case of *Girdhar Shankar Tawade vs. State of Maharashtra* (2002) 5 SCC 177, this Court gave a succinct enumeration of the object and ingredients of Section 498A IPC, when it observed as follows in paras 3 and 17:

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

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17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon — the

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A documentary evidence (namely, those three letters), in our
view, falls short of the requirement of the statute: even on
an assumption of the fact that there is no contradiction in
the oral testimony available on record, the cousin goes to
the unfortunate girl's in-laws' place and requests the
B husband to treat her well — at best some torture and a
request to treat her well. This by itself would not bring home
the charge under Section 498-A. Demand for dowry has not
seen the light of day."

26. From the evidence of record available before us, we find
C that the prosecution witnesses have in their testimonies stated
that the deceased was tortured both physically and mentally by
the appellant for the first time after his marriage with the
deceased when he was refused permission for marriage with
said Anita by the deceased. On having been refused the
D permission for his second marriage with Anita, the appellant
again, after a few days requested the deceased to accede to
his request for marriage with Anita, which request was again
refused by the deceased. Consequent to the said position and
due to the adamant position taken by the deceased, cruelty was
E meted out to her by the accused which fact is sufficiently proved
from the evidence on record. Therefore, we find no reason to
take a different view than what has been taken by the trial Court
and the High Court as far as Section 498A IPC is concerned.

27. Accordingly, the present appeal is hereby partly allowed.
We hereby set aside the conviction of the appellant under
F Section 306 but uphold the conviction of the appellant under
section 498A. As the appellant is on bail, his bail bonds stand
cancelled. The appellant is directed to surrender himself before
the jail authorities within 15 days from today to serve out the
remaining sentence under Section 498A, failing which the
G concerned authority shall proceed against the appellant in
accordance with law.

D.G.

Appeal partly allowed.