

**Vineet Suri Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1171074](http://sooperkanoon.com/1171074)

**Court :** Delhi

**Decided On :** Aug-01-2014

**Judge :** Hima Kohli

**Appellant :** Vineet Suri

**Respondent :** State

**Advocate for Def. :** Mr. Rajat Katyal

**Advocate for Pet/Ap. :** Mr. Suman Kapoor, Ms. Isha Shah, Mr. Tarun Sharma

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.27/2007 Reserved on:

15. 05.2014 Date of decision:

01. 08.2014 IN THE MATTER OF: VINEET SURI ..... Appellant Through: Mr. Suman Kapoor, Advocate with Ms. Isha Shah and Mr. Tarun Sharma, Advocates with appellant in person. versus STATE .....Respondent Through: Mr. Rajat Katyal, APP for the State CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

1. The appellant has assailed the judgment dated 23.12.2006 and the order on sentence dated 02.01.2007 passed by the learned ASJ in SC No.38/2006, holding him guilty for the offences punishable under Sections 498A and 306 IPC, while

acquitting him of the offences under Sections 302 & 304B read with Section 34 IPC. sentence, the appellant has been By the impugned order on sentenced to undergo rigorous imprisonment for a period of three years and pay a fine of `5,000/-, in default of payment of fine, undergo rigorous imprisonment for six months for the offence under Section 498A IPC and to undergo rigorous imprisonment for five years with a fine of `15,000/-, in default of payment of fine, undergo rigorous imprisonment for a period of nine months for the offence under Section 306 IPC.

2. Before proceeding to deal with the arguments advanced by the counsels for the parties, it is necessary to refer to the factual matrix of the present case, as culled out from the narrative in the impugned judgment. The deceased, Madhu Bala and the appellant were both divorcees and had an arranged marriage on 17.11.1993. The family of the appellant comprised of his mother, Smt. Darshana Suri, brother, Shri Sumeet Suri and sister-in-law, Smt. Aarti Suri. As per the prosecution case, the deceased was found dead at her matrimonial home on 19.07.1996, which was within seven years of her marriage and her death had taken place under unnatural circumstances. The present case came to be registered on the statement made by Shri Hari Chand Chhabra (father of the deceased) on 19.07.1996 itself. Initially, charge for the offence under Section 498A read with Section 34 IPC was framed against the appellant herein, his mother, brother and sister-in-law and charge for the offence under Section 304B read with Section 34 IPC and Section 201 IPC was framed against the appellant and his mother. Aggrieved by the aforesaid order, the deceaseds mother had filed a revision petition in the High Court. Vide order dated 09.12.1999, the revision petition was allowed and it was directed that charge for the offence under Section 302/34 IPC should also be framed against the accused. Resultantly, vide order dated 11.09.2000, charge for the offence under Section 304B read with Section 34 IPC and in the alternative, charge for the offence under Section 302 IPC read with Section 34 IPC was framed against all the four accused persons. After they had pleaded not guilty and claimed trial, the prosecution had examined twenty two witnesses to prove its case. The material witnesses included Praveen Kumar Chhabra and Dalip Kumar Chhabra, both brothers of the deceased (PW-2 and PW-5), Smt. Anita Chhabra, sister (PW-4), Smt. Sushila Devi, mother of the deceased (PW9), Shri S.N. Sethi and Shri Ajay

Sethi, neighbours of the accused (PW-7 and PW-10), Dr.Harpreet Singh Cheema (PW-15), who was called to the appellants house on 19.7.1996 and on examination, had declared Madhu Bala dead, Dr. Ashok Jaiswal and Dr.Rajesh Gupta (PW-12 and PW-17), who had conducted the autopsy of the dead body and SI Dal Chand (PW21).

3. In his testimony, Praveen Kumar Chhabra (PW-2), brother of the deceased had deposed that his sister used to complain that the appellant herein and the other co-accused used to harass her for bringing insufficient dowry and on one occasion, she had been sent back to her parental home on account of insufficient dowry. He had also deposed that about a month before the demise of Madhu Bala, in the month of May 1996, the accused had shifted their residence to premises No.G-17, Vikas Puri and at that time, all of them had made demands of new furniture and a colour television from the deceased. PW-2 had stated that fifteen days prior to the demise of Madhu Bala, his parents had supplied a new double bed as demanded by the accused but had failed to provide a mattress, due to which, his sister was tortured by them.

4. Dalip Kumar Chhabra (PW-5), the other brother of Madhu Bala had deposed that the appellant had demanded a catering van to enable him to settle down in his life. He stated that within a month of the marriage, the accused persons had started demanding a colour television and other articles from the deceased and once, when Madhu Bala and the appellant had visited her parental house, their mother had paid a sum of `25,000/to the appellant in the presence of Sh. Harish Chand Chhabra (father of the deceased). He had deposed that the appellants mother used to ask Madhu Balas family members to arrange money for her son so as to settle him in life as he wanted to start his own business and two days prior to her death, their sister (PW-4) had received a telephonic call from the appellant that he had purchased a shop and had paid the earnest money but needed money to pay the balance amount of the sale price.

5. In her testimony, Smt. Anita Choudhary (PW-4), Madhu Balas sister had stated that when the accused had shifted to their house at Vikas Puri, her father had given him a sum of `10,000/- and provided a double bed on the demand of the

appellants mother. She had also deposed about the visit of Madhu Bala and the appellant to her parental home and the fact that at that time, a demand of `25,000/- was raised and their mother had paid the said amount to the appellant. She stated that two days prior to her death, the deceased had telephonically informed her that the appellant had purchased a shop in Vikas Puri for a sum of `7 lacs and paid only a sum of `10,000/- towards the earnest money and further, that the appellant had asked her to bring the balance amount from her parents. As per PW-4, at the time of Madhu Balas marriage, they were told that the appellant and his brother were carrying on joint business but after their marriage, the co-accused, Sumeet Suri had separated from the appellant in business and thereafter the appellant had started demanding money from his in-laws to establish his own business. PW-4 had stated that the appellant had told Madhu Bala that she should bring money from her parents to purchase a catering van for him and such a demand was also raised before her parents, but they were not in a position to fulfill it.

6. Smt. Darshana Suri, mother of the deceased (PW-9) had testified that prior to her deposing in the Court, her statement had been recorded before Shri K.K. Dahiya, SDM (PW-13), who had visited the spot on 20.07.1996. The very same SDM had conducted the inquest proceedings on the dead body, recorded the statement of the parents of the deceased, got the case registered and had the dead body of the deceased subjected to an autopsy. The statement of Smt. Darshana Suri made before the SDM marked as Ex.PW-9/DA, was duly proved on record by PW-13. In her statement made before the SDM, PW-9 had stated that at the time of Madhu Balas marriage, there was no demand of dowry made by the accused, but later on they used to harass her and taunt her for bringing very little dowry.

7. In her testimony recorded in the Court after six years, PW-9 had reiterated that all the accused persons used to make demands of dowry on her daughter after her marriage. She claimed that the accused had demanded a colour television set but they were not in a position to fulfill the said demand and one and a half month prior to her daughters death, a sum of `10,000/- and a double bed were delivered at the new residence of the accused at Vikas Puri. She had also deposed that the

accused had demanded furniture for their new house and when the appellant and Madhu Bala had visited her parental house, he had demanded a sum of `25,000/- from his in-laws for business purposes, and she and her husband had paid the said amount to the appellant.

8. Shri S.N. Sethi and Shri Ajay Sethi (PW-7 and PW-10, uncle and nephew respectively) were produced by the prosecution, being next door neighbours of the appellant. PW-7 who had telephonically informed the police at 100 number and the parents of Madhu Bala about her death, had deposed that the accused persons who had shifted in the neighbourhood about two months earlier, did not have a telephone connection at their house and they used to visit his house to make or to attend to telephone calls. He had stated that he had never seen the deceased coming to his house to attend to telephone calls either from her parents, or from any other family member. He stated that as Dr. Cheema (PW-4) had observed ligature marks on the neck of the deceased, he along with Mr. Anand, President of the RWA of the area, had gone to the bathroom of the appellants house, on the ground floor, but they did not find any rope or anything else there. In his cross-examination, he had stated that the other co-accused, Sumeet Suri and his wife, Aarti Suri (brother and sister-in-law of the deceased) were residing on the first floor of premises bearing No.G-17, Vikas Puri, whereas the mother, Smt.Darshana Suri was living separately on the second floor. The appellant and the deceased used to reside on the ground floor. The testimony of Shri Ajay Sethi (PW-10) was also on the same lines.

9. Dr. Harpreet Singh Cheema (PW-15) had testified that in the year 1996, on being informed that the deceased was serious and it was an emergency case, he had accompanied a gentleman to the appellants residence and on reaching the bedroom situated on the ground floor of their residence, he had found a lady lying on the bed and on examining her, he had declared that she had already expired. He also deposed that there were minor injuries all over the body of the deceased, in addition to bruises on both her hands and neck.

10. Dr. Ashok Jaiswal (PW-12), C.M.O., Mortuary, Subzimandi, was produced by the prosecution to establish the medical evidence. The said witness alongwith Dr.

Rajesh Gupta (PW-17), C.M.O., Mortuary, Civil Hospital, Delhi, had performed the post mortem on the body of the deceased and they had proved the autopsy report of the deceased (Ex.PW-12/A).

11. SI Dal Chand (PW-21) had deposed about the recovery of a rope (Ex.P1) from the bathroom on the ground floor of the residential premises of the appellant as also the seizure memo, Ex.PW-21/C. He had testified that he had visited Police Station: Vikas Puri on 19.07.1996, the date on which DD No.2A was received and alongwith another constable, had reached the spot to find the dead body of Madhu Bala lying on the bed in a room on the ground floor of the said house. He had observed a ligature mark on the neck of Madhu Bala. Shri Harish Chand Chhabra, father of the deceased had made a statement on the spot (Ex.PW-3/B) and alongwith the said statement duly endorsed by him, PW-21 had sent a Rukka to the Police Station, whereafter, senior police officers had reached the spot. PW-21 had called for the photographer to take photographs of the dead body and the place of occurrence, informed the SDM, Punjabi Bagh about the occurrence and got all the accused, who were arrested, medically examined. He deposed that during investigation, he had seized a rope from the bathroom of the residential premises of the house, where the dead body was found, vide recovery memo (Ex.PW-21/C) that bears his signatures and the said rope was enclosed in a parcel and duly sealed. In the course of his deposition, the said article was produced, seal opened and a rope taken out, which was identified by the witness as Ex.P1.

12. After conclusion of the prosecution evidence, the accused persons were examined under Section 313 Cr.PC. While admitting the factum of the marriage of Madhu Bala with the appellant herein, they had denied all the other incriminating evidence that had emerged in the course of the evidence produced by the prosecution. On their part, the accused had examined five witnesses, including DW-1, Praveen Singh, a clerk from Canara Bank, who had deposed that two FDRs of `75,000/- each were issued on 25.06.1996 in the names of the appellants mother, Smt. Sudarshana Suri and the other son, Sumeet Suri (Ex.DW-1/A and B). DW2, Shri Ashok Kumar Kapoor, father of Smt. Aarti Suri and father-in-law of Shri Sumeet Suri (co-accused), had deposed that at the time of the marriage of his daughter, Aarti with Sumeet Suri, when he had asked the parents of Sumeet Suri if

they had any demand of dowry, they had stated that they did not need anything and he had not given any dowry articles. He had also stated that even after his daughters marriage, no demand of dowry was made by Sumeet Suri or his family members. He had further stated that the father of the deceased had never complained to him about the conduct of the appellant or the other co-accused or made a grievance that any dowry had been demanded by them.

13. DW-3, Mr. Inderjit Kumar Singh from Citibank, had proved the joint savings account of the appellant and his mother, Ex.DW-3/A. DW-4, Mr.Madan Lal, Manager of Canara Bank, had deposed about the encashment of an FDR dated 05.07.1996 of `75,000/- in the name of the appellant and his mother vide receipt Ex.DW-4/B and another FDR dated 05.07.1996 for `75,000/- encashed vide receipt, marked as Ex.DW-4/D.

14. The appellant had stepped into the witness box as his own witness as DW-6. The relevant extract of his testimony is reproduced hereinbelow for ready reference:

4-5 days prior to 18.07.96, my relations with my wife were not cordial because I was not devoting sufficient time. On 18.07.96, in the morning, I promised her to return home well in time either to a theatre or a restaurant but I could not fulfill the promise because of damage to the property at my office, I could reach my home at 11 p.m. as a result, my wife started quarrelling with me. She started abusing in the loud voice. I requested her not to shout but in vain. I tried to pacify her putting forth that I was suffering from headache because she was shouting but in vain. Ultimately, I slapped her, dragged her and gave her punches, as a result whereof, she suffered minor injuries. It so happened in between 12 and 1 am. Thereafter, I pacified her and we dined together. We slept at about 3 a.m. In the following morning, at about 10:15 a.m., my mother knocked at the door and enquired from me as if I was not to go to my office. I apprised my mother of my late arrival during the previous night. I got up and found Madhu missing. I then entered the bathroom of my portion and found that her dead body was hanging there. I cried and also called my mother, brother Sumit and sister-in-law Aarti. I removed the dead body from the bathroom. Then I asked my brother Sumit Suri to bring a doctor. I also

asked my sister-in-law to go to the house of Mr. Sethi, our neighbor to inform the police and my in-laws. Sh. Sethi and Dr. Cheema came to our house. My in-laws also reached there. Police also reached my house. All of us were arrested at the instance of my in-laws and taken to police station.

15. At the time of his examination under Section 313 Cr.PC, the appellant herein had stated as below:

After the marriage I and my wife went to Shimla for honeymoon and we were living very happy marriage life. I was serving in a Distillery store. I use to visit my office at about 10 am and come back at about 10/10:30 p.m. Because of busy schedule of my job I could not spare my time for my wife. I never raised any demand of dowry. On 18.07.96 I promised my wife in the morning that we shall go together either to a restaurant or cinema at night. However, I could reach my house at about 11/11:30 p.m. because of some damage of articles in the godown where I was serving as Godown Incharge. My wife felt it and got angry which led to verbal wrangle and ultimately beating by each other. In that process my wife suffered some injuries at my hands on account fist and kick blows. I made her to understand to maintain peace as we have recently shifted to G-17. I ultimately succeeded in prevailing upon her and at about 1.30 night we dined together and slept at about 3 a.m. My mother knocked at the door at about 10/10:30 a.m. and enquired from me as to whether I was not to go to office. At that time, I found that my wife was missing from the room. On reaching the bathroom, I found that she had hanged herself there. I raised noise attracting other members of the family. Prior to this incident, we were having a factory in an area of 650 sq. yards in Mayapuri. We sold that factory for a sum of Rs.72 lacs in February 1996 after the death of my father. With that money we purchased this house for Rs.48 lacs. We spent Rs.4/5 lacs for its renovation. There are three floors in this house. I was putting up on the ground floor with my wife. Sumit, my brother and his wife was putting up at 1st floor and my mother was living on the second floor. All the floors were fully furnished having all luxurious articles like TV AC Refrigerators. My mother had got issued FDR in my name and of my brother for a sum of Rs.75,000/- each. My mother got issued FDR in her own name also for Rs.1.50 lacs. I have one Fiat car and a scooter. My brother Sumit Suri was having one

Volvo car. He has sold it. He was also having a scooter.

16. After taking into consideration the arguments advanced by the counsels for the parties and examining the ocular and documentary evidence produced by both sides, the Sessions court had arrived at the conclusion that the prosecution had failed to substantiate the allegations of demand of dowry by any of the accused prior to the marriage, at the time of marriage, after the marriage or soon before the death of Madhu Bala that could amount to cruelty or harassment to her, and therefore, charge for the offence under Section 304B read with Section 34 IPC could not be established against the accused. As for the prosecution case that the deceased had been murdered, the court held that from the material available on the record, the prosecution had failed to establish the presence of the co-accused, Darshana Suri (mother), Sumeet Suri (brother) and Aarti Suri (sister-in-law) or attribute any role to them on the date of the incident that had taken place on the night intervening 18/19.07.1996, on the ground floor portion of the house, where the appellant and the deceased were residing together. Further, the Sessions court came to the conclusion that the prosecution was cogent and CRL.A. 27/2007 unable to lead murdered his wife, but was of the opinion that the role played by him in the night intervening 18/19.07.1996 falls within part (a) of the explanation appended to Section 498A IPC as he had treated his wife with cruelty and abetted the commission of suicide by her. Consequently, the appellant was held guilty for the offence punishable under Sections 498A and 306 IPC. At the same time, the other co-accused were acquitted of all the charges framed against them. Aggrieved by the aforesaid judgment and order of conviction, the appellant has preferred the present appeal.

17. The main thrust of the argument advanced by Mr. Suman Kapoor, learned counsel for the appellant was that the Sessions court had committed a grave error in holding the appellant guilty of the offence under Sections 498A and 306 IPC for the reason that for arriving at the said conclusion, it had solely relied upon the statement of the appellant, as recorded under Section 313 Cr.PC and reproduced in para 104 of the impugned judgment. He urged that in order to invoke the provision of the Explanation (a) appended to Section 498A, the act of the appellant ought to have been a willful conduct of such a nature as was likely to have driven

the deceased to commit suicide, and in the facts of the present case, it could not be said that his conduct of causing injuries on the body of the deceased, would fall under Explanation (a). counsel Learned had sought to explain that whatever had happened between the appellant and Madhu Bala on the fateful night was a spontaneous act that had taken place at the spur of the moment and in the altercation between husband and wife, the appellant had caused simple injuries to the deceased. He therefore urged that it could not be said that the said injuries were caused to drive Madhu Bala to commit suicide. He further argued that there is no evidence on the record or any finding returned by the trial court that could establish that prior to the date of the incident, the appellant had treated the deceased with cruelty and resultantly, he could not have been convicted under Section 498A IPC solely on the basis of his own statement as recorded under Section 313 Cr.PC.

18. As regards the conviction of the appellant under Section 306 IPC, learned counsel for the appellant had argued that no opportunity was afforded to the appellant to discharge the burden of proving that he was not guilty of the said offence, particularly since neither was the charge amended to include the offence under Section 306 IPC, nor was the appellant confronted with the ingredients of the said offence when his statement was being recorded under Section 313 Cr.PC, thus causing grave prejudice to his defence before the Sessions court. It was canvassed that even otherwise, there was no evidence brought on record to attribute any mens rea to the appellant or to establish that he had instigated/abetted the deceased to commit suicide. To drive home the said arguments, learned counsel had relied upon the following decisions:- 19. (i) Changala Jaya Sankara Rao vs. State of A.P.; 1996 (1) ALT (Cri.) 560 (ii) Indrasing M. Raol vs. State of Gujarat; (1999) 3 GLR654(iii) Sanju alias Sanjay Singh Sengar vs.State of M.P.; 2002 SCC (Cri.) 1141 (iv) Neeraj Gupta vs. State; 2006 (3) JCC1221(v) Amalendu Pal alias Jhantu vs. State of West Bengal; (2010) 1 SCC707(vi) Narender Singh Arora vs. State; 173 (2010) DLT244Per contra, Mr. Rajat Katyal, learned APP for the State strenuously defended the impugned judgment and the order of conviction and rebutted the arguments advanced by the learned counsel for the appellant. He had submitted that contrary to the stand taken by the other side that only a single incident of provocation could not be

treated as a ground to indict the appellant, in the present case, there was a history of dowry demands made by the appellant and his family members on the deceased and the last straw was the incident that had occurred on the night intervening 18/19.07.1996, when the appellant had seriously assaulted the deceased and as per the autopsy report(Ex.PW-12/A), it had resulted in causing seventeen injuries, including one ligature mark on her body. He had argued that the circumstances reveal that it was after suffering such severe beatings at the hands of the appellant, the deceased was provoked into committing suicide. He argued that nothing has emerged from the evidence to rebut the presumption that the deceased was provoked into committing suicide upon the appellant causing sixteen injuries on her body and under Section 113A of the Indian Evidence Act, the onus to shake off the said presumption had remained on the appellant, which he had failed to discharge except for making a bald and a very implausible statement that he had no knowledge of the injuries suffered by the deceased.

20. Learned APP had further contended that a perusal of the appellants statement recorded under Section 313 Cr.PC would demonstrate that his claim that after he and Madhu Bala had a fight, they had sat down to dinner and then gone to sleep at 3:00 AM, could not be corroborated by the medical evidence that reveals that the rectum of the deceased was found empty at the time of her post mortem. In support of the said submission, learned APP had referred to the deposition of Dr. Ashok Jaiswal(PW-12). He had argued that the evidence produced by the prosecution clearly reveals that repeated dowry demands had been made by the appellant and his family members on Madhu Bala, which would be borne out from the testimony of Smt.Darshana Suri (PW-9) and merely because she had not narrated specific instances of the demands made by the accused when her statement was recorded before the SDM (Ex.PW9/DA), could not be a ground to ignore her entire deposition. Learned APP urged that the Sessions court ought to have been mindful of the fact that PW-9s statement was being recorded before the SDM one day after her daughter was found dead at her matrimonial home under unnatural circumstances and as a mother, she would have been overcome with grief. Therefore, she could not be expected to have provided details of the date, time etc. of the dowry demands made by the appellant and his family members on earlier occasions.

21. Learned APP had also pointed out that the subject FIR was got registered at the instance of Madhu Balas father, who had unfortunately expired during the pendency of the trial and could not enter the witness box, but in his statement, he too had referred to the dowry demands made by the appellant on Madhu Bala and her family members. The attention of the Court was particularly drawn to those parts of the testimony of the other family members of the deceased that referred to the appellant and the deceased having shifted to their new house at Vikas Puri one and a half month prior to the date of the unfortunate incident, to urge that specific dowry demands had been made by the accused at that point in time. It was thus contended by the learned APP that although the Sessions Court had convicted the appellant under Explanation (a) of Section 498A IPC, the evidence on record would establish that Explanation (b) is also attracted to the facts of the present case. To rebut the argument of the counsel for the appellant that one incident of cruelty was in itself insufficient to have indicted the appellant for the offence under Sections 306 and 498A IPC, learned APP had referred to a decision of the Supreme Court in the case of Vajresh Venkatray Anvekar vs. State of Karnataka reported as (2013) 3 SCC462 22. In his rebuttal arguments, learned counsel for the appellant had disputed the submission made by the learned APP that the appellant had falsely deposed that after he and the deceased had a serious altercation on the fatal night, they had sat down to dinner and then gone to sleep. He sought to explain the findings returned in the autopsy report to the effect that autopsy of the body of Madhu Bala had revealed that her rectum was empty, by submitting that when the evidence on this aspect is correlated with the sequence of events on the fateful night, it would reveal that her death had taken place on 19.07.1996 at about 8:30 AM, whereas the post mortem on her dead body was conducted on the following day at 2:30 PM. Thus there was a gap of about 30 hours between the two events and keeping a margin of two hours on either side, at best, her death could have occurred between 6:30 AM and 10:30 AM. He stated that if calculated backwards, it would emerge that the appellant and the deceased had gone to sleep at about 3 AM and ordinarily, after food is consumed, it takes 3-4 hours for it to get digested and hence there was nothing unusual in the observation made in the post mortem report that the rectum of the deceased was empty at the time of the autopsy.

23. Learned counsel for the appellant had stressed that for the aforesaid reason, the appellants statement as recorded under Section 313 Cr.PC about he and the deceased having taken dinner before going to sleep at 3:00 AM, could not be discarded merely because the medical evidence indicated that Madhu Balas rectum was empty. It was further argued on behalf of the appellant that even the prosecution witnesses had deposed that the relationship between the appellant and his family and the deceased was cordial and therefore, the fact that the appellant had given beatings to the deceased on the fateful night ought to have been treated as an isolated incident and could not be taken as a ground for holding him guilty of having abetted Madhu Bala to have committed suicide under Section 306 IPC.

24. The Court has perused the impugned judgment, examined the trial court record and carefully considered the arguments advanced by learned counsels for the parties.

25. The first argument advanced on behalf of the appellant was that the trial court had gravely erred in convicting the appellant under Section 306 IPC as he had not been charged for the said offence and nor was he confronted with the ingredients of the said offence before the Sessions court. The said issue is no longer res integra and has been dealt with extensively by the Supreme Court in the case of Dalbir Singh vs. State of UP reported as AIR 2004 SC1990 In the aforesaid case, the question that had engaged the Court was whether in a given case, it is possible to convict the accused under Section 306 IPC, if a charge for the said offence had not been framed against him. In brief, the relevant facts of the said case were that the accused therein had been charged under Section 302 IPC for having committed the murder of his wife and two daughters. He was further charged under Section 304B IPC for causing the death of his wife and under Section 498-A IPC, for subjecting her to cruelty. After the trial, the Sessions court had convicted the accused under Section 498A IPC, but it had acquitted him under Section 304B IPC. In the appeal preferred by the appellant, the High Court came to the conclusion that the charge under Section 302 IPC was not established and it had acquitted the accused for the said offence. However, after concluding that the accused was guilty under Section 306 IPC, for having abetted commission of

suicide by his wife, the court was of the opinion that the accused could not be convicted for the said offence, in view of the fact that no charge had been framed against him under Section 306 IPC. For arriving at the said conclusion, the High Court had relied upon an earlier decision of the Supreme Court in the case of Sangarabonia Sreenu vs. State of A.P. reported as 1997 (5) SCC348 26. In appeal, the question that arose before the Supreme Court was that if the accused had been charged under Section 302 IPC and the said charge had not been established by evidence, having regard to Section 222 of the Cr.PC, would it be possible to convict him under Section 306 IPC. The observations made by the Supreme Court on this aspect are apposite and are reproduced hereinbelow:

14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section(1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub- section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of

justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In *Lakhjit Singh Vs. State of Punjab* reported as 1994 Supp (1) SCC173 though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In *Sangaraboina Sreenu (supra)* the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside.

27. In the case of *Dalbir Singh (supra)*, reference was also made to an earlier decision of the Supreme Court in the case of *Willie Slaney vs. State of Madhya Pradesh* reported as AIR 1956 SC116 where a Constitution Bench had examined the question of absence of charge. After analysing the provisions of Sections 225, 232, 535, 537 of the Criminal Procedure Code, 1908 that correspond to Sections 215, 464(2), 464 and 465 of the 1973 Code, it was observed that courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. It was further observed that every reasonable presumption must be made in favour of an accused person and he must be given the benefit of every reasonable doubt and that the same broad principles of justice and fair play must be kept in mind while determining a matter of prejudice, as in adjudging guilt. So the Courts primary concern must be to satisfy itself as to whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Taking a cue from the aforesaid decisions, in the case of *Dalbir Singh (supra)*, the Supreme Court concluded as below:

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was

framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangarabonia Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

28. Ors. In the case of K.Prema S.Rao and Anr. Vs. Yadla Srinivasa Rao and reported as AIR 2003 SC11 the Supreme Court made the following pertinent observations :

22. Mere omission or defect in framing charge does not disable the Criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal procedure has ample provisions to meet a situation like the one before us. From the Statement of Charge framed under Section 304B and in the alternative Section 498A, IPC (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306, IPC existed in the case. The mere omission on the part of the trial Judge to mention of Section 306, IPC with 498A, IPC does not preclude the Court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498A of IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 of Cr.P.C. take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence. Section 221 of Cr.P.C. needs reproduction:221. Where it is doubtful what offence has been committed.-. (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with

having committed some one of the said offences. (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

23. The provision of Sub-section (2) of Section 221 read with Sub-section (1) of the said Section can be taken aid of in convicting and sentencing the accused No.1 of offence of abetment of suicide under Section 306 of IPC along with or instead of Section 498A of IPC.

24. Section 215 allows criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. See Section 215 of Cr.P.C. which reads:215. Effect of errors - No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

25. As provided in Section 215 of Cr.P.C. omission to frame charge under Section 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306, IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306, IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304B which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A, IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity

to meet the charge under Section 498A, IPC.

26. It may be mentioned that against confirmation of his conviction by the High Court under Section 498A, IPC, the accused No.1 has not preferred any special leave to appeal to this Court. The facts found proved for his conviction and sentence under Section 498A, IPC, cannot now be questioned by the accused. Our conclusion, therefore, is that same facts and evidence on which accused No.1 was charged under Section 498A and Section 304B, the accused can be convicted and sentenced under Section 306, IPC. We find no legal or procedural impediment in doing so.

(emphasis added) 29. In the instant case, records reveal that the appellant was duly confronted with the offence for which he was charged and was given ample opportunity of a fair trial. He was well aware of what he was being tried for. The offences for which he was charged were grave in nature, namely, Section 302 IPC and 304B IPC. Section 302 prescribes the punishment of death or imprisonment for life, for the commission of the offence of murder and Section 304B IPC that deals with the offence of dowry death, prescribes the minimum punishment of seven years that may extend to imprisonment for life. As against the aforesaid offences of a higher degree, Section 306 IPC prescribes the punishment of imprisonment that may extend to ten years with fine for an offence of abetment to suicide and is therefore an offence of a relatively lesser degree. The appellant was made aware of the basic ingredients of the offence for which he was being tried; he was also aware of the facts of the case sought to be established against him by the prosecution. He had been given a fair chance to defend himself and in that context, his own deposition as DW-6 and his statement recorded under Section 313 Cr.PC gain significance. Therefore, it cannot be urged that any prejudice had been caused to the appellant merely because an irregularity had crept in at the time of framing of the charge. Nor is it a case where failure of justice has been occasioned, in validating the conviction of the appellant under Section 306 IPC.

30. Coming to the offence of Section 306 IPC, for which the appellant has been inculpated, the said Section prescribes that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The

ingredients of abetment are set out in Section 107 IPC, which reads as under:

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 Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1 - A person who, by willful misrepresentation, or by willful 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. 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.

31. In the present case, the Sessions Court has relied on Section 113A of the Evidence Act to conclude that the appellant had willfully abetted Madhu Bala into committing suicide. Section 113A of the Evidence Act reads as under:

113A. Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

32. The aforesaid provision was introduced by the Criminal Law (Second Amendment) Act, 1983 on 26.12.1983 to meet the demand faced by our society for overcoming the difficulty of finding any proof in cases, where helpless married women were being forced to commit suicide by their husband or in-laws and the incriminating evidence that could only be available within the four walls of the matrimonial home, remained beyond public gaze and shrouded in secrecy. In such cases, direct and independent evidence is inevitably hard to come by. For

attracting the provision of Section 113A of the Evidence Act, it must be demonstrated that (i) the woman has committed suicide, (ii) the suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged, had subjected her to cruelty. Only on the existence and availability of the aforesaid circumstances, may the Court presume that such a suicide has been abetted by her husband or such relatives of her husband. The following observations made by the Supreme Court in the case of Ramesh Kumar vs. State of Chhattisgarh reported as 2001(9)SCC618 may be usefully extracted hereinbelow:

12. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to all the other circumstances of the case. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - The other circumstances of the case used in Section 113A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase May presume used in Section 113A is defined in Section 4 of the Evidence Act, which says- whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

(emphasis added) 33. Here, the deceased had died in abnormal circumstances in her matrimonial home and her death had taken place within seven years of her marriage. Therefore, the presumption under Section 113A of the Evidence Act springs into action and the present case has to be decided with reference to the first clause of Section 107 IPC, i.e., whether the appellant had abetted Madhu Bala to commit suicide by instigating her to do so. For coming to any conclusion in this regard, the events that had occurred on the fatal day are very material. The trial court record reveals that there was enough material available on the record to demonstrate the conduct of the appellant in abetting the suicide of Madhu Bala by instigating her and the said evidence is that of the appellant himself, who had stepped into the witness box as his own witness as DW-6 and had deposed that a quarrel had taken place between him and Madhu Bala on the night of 18.07.1996 and when she had shouted at him, he had slapped her, dragged her and had given her punches that had resulted in her suffering injuries that he chose to describe as minor. In the morning of 19.7.1996, Madhu Bala was found dead at her matrimonial home, in unnatural circumstance.

34. This is followed by the appellants statement recorded by the Sessions Court under Section 313 Cr.PC. The appellants version remained the same, that on 18.07.1996, he had promised his wife in the morning that they would go out in the evening, but he could not reach his residence till late in the night due to some pre-occupation at work and when he had reached his home at 11:00/11:30 PM, she was angry and that had led to a verbal duel between the parties and he had physically assaulted her by giving her punches, fist and kick blows. The appellant went on to state that thereafter he was able make peace with his wife and they had dined together at 1:30 AM in the night, whereafter they had gone to sleep at 3 AM.

35. Apart from the aforesaid deposition and statement of the appellant recorded under Section 313 Cr.PC that have been taken into consideration in the impugned judgment for holding him guilty for the offence under Section 306 IPC by drawing a presumption that he had willfully abetted the commission of suicide by Madhu Bala, the other evidence produced by the prosecution is the medical evidence that is important to establish the cause and effect relationship as suggested in Section

113A of the Evidence Act. As noted above, Section 113A refers to all other circumstances of the case that the Court shall have regard to for strengthening such a presumption against the accused. It may be noted from the autopsy report (Ex.PW-12/A) that Dr. Ashok Jaiswal (PW-12) and Dr. Rajesh Gupta (PW-17) who had performed the post mortem, had found the following injuries on the body of the deceased :

1. Abrasion x , x on back and outer aspect of left elbow joint with dried up blood.
2. Bruise x on left forearm back and outer aspect. 1 below elbow joint light blueish in colour.
3. Irregular defused bruise pinkish blueish of size 1 x 1 on medial (inner) side of left arm middle portion.
4. Linear scratch obliquely placed on left forearm ventral aspect, 3 cm long, seen on lower third portion of forearm.
5. Tiny abrasions three in number with sizes 2 to 3 mm on back of right wrist.
6. Three bruises light blue in colour placed below left knee, over upper and middle third of anterior aspect of left leg, having defused border of sizes 1 x , x and x .
7. Abrasion with dried up blood on back and outer aspect of left feet x .
8. Light blueish bruises two in number on anterior aspect of right thigh lower third with difused border of sizes 1 cm x 5cm, 1.5 cm x 1 cm.
9. Blueish bruise on Medial size of right knee x .
10. Blueish bruise on right leg anteriorly 1.5 cm x 1 cm placed below knee joint.
11. Blueish bruise 2 cm x 1.5 cm on posterior aspect of middle of right leg.
12. Abrasion with dried up blood on right foot x .
13. Abrasion 3 mm x 3 mm on left Mandibular region just above its middle part with dried up blood.

14. Crescentic abrasions placed 2 cm below lower lip left side of 3 mm and 6 mm (two in number).

15. Light blue bruise 1 x on outer aspect of left eye.

16. Two pin point abrasion behind left ear with abrasion left ear lobule 3 mm to 4 mm.

17. There was a ligature presence abrasion mark seen in front of neck over thyroid prominence in midline with width of 1.5 cm brown in colour from hair to definite layers of ligature pressure abrasion marks were seen on either side of neck with slight grooving in raised margins. Of the two ligature pressure abrasion marks on left side one leaf of it was seen going obliquely upward placed 5 cm below angle of mandible to anterior end of posterior hairline. It is light brown in colour width 0.5 cm. The second lower leaf was found running horizontally 7 cm below angle of mandible to back of neck below hairline. It is light brown in colour with a width 0.5 cm. No bruising of margin seen. On right side neck upper limb of ligature abrasion mark was light brown and was seen running obliquely upward placed 5 cm below angle of mandible to side of anterior end of posterior hairline. The lower second layer were seen almost horizontally placed 6 cm below angle of mandible to back of neck meeting with the horizontal loop from the left side. The skin at the junction of two limbs on left side anteriorly was abraded. No ligature material found around neck nor on the body. No other external injury seen on the body.

36. The doctors had opined that all the injuries were antemortem in nature and injuries No.1 to 16 had been caused due to blunt object/force/friction against hard rough surface and were fresh in nature. In their opinion, the probable duration of injuries No.1 to 16 was less than twenty four hours prior to the death and they were non fatal in nature. As for the injury mentioned at Sr. No.17 of the autopsy report, the doctors had opined that the said injury was caused by some hard ligature material and the death of Madhu Bala was caused due to hanging. They had also observed that having regard to the presence of injuries on the body of the deceased, which could not have been self-inflicted, homicidal hanging could not be ruled out.

37. From the aforesaid autopsy report, it is apparent that Madhu Bala was severely and quite brutally beaten up before her death. The said medical evidence substantiates the appellants version to the extent that on the fateful night, he had thrashed his wife by giving her kicks, blows and punches. However, there is no independent witness produced by the defence to corroborate the story set up by the appellant, who is himself an accused, that after such a violent assault of his wife, they had partaken dinner and gone to bed. Nor does the medical evidence establish the said fact, since the rectum of the deceased was found empty during the autopsy of the dead body. The stand of the learned counsel for the appellant that the rectum was found empty, as the food that was consumed, had got digested, is based on the uncorroborated version of the appellant with respect to the sequence of events that had transpired on the night intervening 18/19.7.1996. It cannot be ruled out that after receiving such a severe beating at the hands of the appellant, Madhu Bala did not eat a morsel, which appears to be a more plausible version than the one canvassed on behalf of the appellant.

38. This Court is therefore quite skeptical about the stand taken by the appellant that after he had subjected the deceased to such severe illtreatment by thrashing her, giving her kicks, punches and fist blows, they both had sat down to have dinner as if it was a routine day and then they had gone to sleep. Such a conduct is not in keeping with normal human behavior and quite untenable. When admittedly, so much heat had been generated between the parties that a verbal wrangle had exploded into a physical assault of the deceased by the appellant, resulting in his inflicting as many as sixteen injuries on her body, the version put forth by the appellant that after such a serious and hostile showdown, he had made peace with the deceased and both had sat down to dinner and they went to sleep at 3 AM, is quite absurd and does not appeal to a logical mind.

39. The word instigation has various connotations. It takes in its folds, an attempt to goad, provoke, encourage, incite, urge forward to do an act. It is well settled that to meet the requirement of instigation, it is not necessary that actual words should have been spoken by the appellant to provoke the deceased or the ingredients of instigation must be suggestive of the consequences that would follow. Rather, a reasonable certainty to incite the consequence must be capable of being made

out.

40. The consistent view taken in the judicial pronouncements of the Supreme Court and the High Courts is that for holding an accused guilty of an offence under Section 306 IPC, the facts and circumstances of the case must be examined carefully and the evidence adduced must be assessed to find out as to whether the cruelty and harassment to which the victim was subjected had left her with no option but to extinguish her life. Further, in cases of abetment to suicide, there must be proof of direct or indirect act of incitement to the commission of suicide and the person, who is said to have abetted commission of suicide, ought to have played an active role by either instigating the victim or by such willful act that would be provocative enough for commission of suicide. As was observed in the case of Amalendu Pal (supra), any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide, would sustain a conviction in terms of Section 306 IPC.

41. On a cumulative reading and assessment of the material available on the record, the picture that emerges is that on the night intervening 18/19.07.1996, the appellant had a fight with Madhu Bala and had severely beaten her, that had resulted in her suffering sixteen injuries. For the learned counsel for the appellant to contend that it was a spontaneous act and it took place on the spur of the moment and the appellant had caused only simple injuries to the deceased, which by themselves could not have incited Madhu Bala to such an extent that she had committed suicide, is found to be quite untenable. It may be emphasized that the effect of an assault on a woman, would depend on the facts of a given case and there cannot be any generalization. This Court is of the opinion that by his willful conduct, the appellant had created such circumstances that he knew would have impelled the deceased to commit suicide and therefore, the inevitable conclusion is that Madhu Bala had been driven by the appellant to commit suicide. The facts and circumstances referred to hereinabove, are found to be sufficient to indict the appellant under Section 306 IPC, more so when he has failed to discharge the onus cast on him to rebut the presumption referred to in Section 113A of the Evidence Act.

42. The judicial pronouncements referred to and relied upon by the counsel for the appellant to claim that the presence of mens rea is a necessary ingredient for instigation which was missing in this case, would not be of any assistance in the given facts and circumstances of the case.

43. To support the above plea, learned counsel for the appellant had relied on the decisions in the cases of Neeraj Gupta (supra) and Sanju alias Sanjay Singh Sengar (supra). In the case of Neeraj Gupta (supra), a suicide note was recovered from the body of the victim that indicated that he was upset with the petitioner/accused therein on account of a commercial transaction between the parties going sour. After examining the evidence on record, the Court observed that there was no active engagement on the part of the petitioner/accused to encourage or incite the deceased to commit suicide and merely because the deceased had extended a loan to the petitioner for setting up a hotel, which he was unable to pay, could not be treated as an act of having incited the deceased to commit suicide, the crucial element of mens rea having not been alleged against the petitioner.

44. In the present case, it cannot be urged that no element of mens rea was attributable to the appellant or that the prosecution had not levelled the allegations or adduced evidence against the appellant of subjecting the deceased to cruelty and harassment, enough to incite her to commit suicide. The allegations of mens reas are well brought out from the charge framed against the appellant and the other accused as below:

AMENDED CHARGE That on 9.7.96 at house No.G-17, Vikas Puri within the jurisdiction of P.S. Vikas Puri, Smt. Madhu Bala was found dead and her death occurred otherwise than in normal circumstances within 7 years of her marriage and soon before her death, you all in furtherance of your common intention subjected Smt. Madhu Bala to cruelty and harassment and in connection with demand of dowry and you all thereby committed an offence punishable under Section 304B r/w Section 34 IPC and within the cognizance of this Court of Sessions. ALTERNATIVE CHARGE That on 9.7.96, at House No.G-17, Vikas Puri within the jurisdiction of P.S. Vikas Puri, you all in furtherance of your common

intention committed the murder of Smt.Madhu Bala and you all thereby committed an offence punishable u/S302r/w Section 34 IPC and within this Court of Sessions.

45. In the case of Sanju alias Sanjay Singh Sengar (supra), the prosecution story was that the relationship between the deceased and his wife were strained and she was residing with her brother; when the deceased went to fetch his wife back to the matrimonial home, a quarrel had taken place between him and the accused/appellant, brother-in-law of the deceased and after two days, the deceased was found dead as a result of hanging. The suicide note of the deceased showed his disturbed state of mind and the evidence produced by the prosecution included the statement of the deceaseds brother to the effect that the appellant/accused had threatened and abused him with filthy words. In the aforesaid case, the Court observed that there was a gap of two days between the incident of the alleged abusive words said to have been addressed to the deceased during the quarrel and the date when he was found hanging and therefore, it could not be said that the said abusive language used by the appellant, drove the deceased to commit suicide.

46. In the present case, it is apparent from the facts and circumstances brought out in the evidence that there was complete proximation between the physical assault of Madhu Bala by the appellant and her death in unnatural circumstances. Even as per the appellants own version, the gap between the two incidents was not more than 3-4 hours, which can be treated to be sufficient to constitute the ingredients of instigation. The said active engagement of the appellant had resulted in a drastic action being taken by the deceased, which was a direct result of the quarrel and the thrashing given by the appellant. Therefore, it can hardly be said that the ingredients of abetment were absent in the instant case for making out the offence under Section 306 IPC or that there was no connection between the quarrel that had taken place between the appellant and the deceased on the night intervening 18/19.07.1996 and what had ensued within a couple of hours therefrom.

47. In the case of Amalendu Pal (supra), after discussing the legal position with regard to Section 306 IPC and its applicability in the light of Section 107 IPC, the

Supreme Court had concluded that having regard to the evidence on record, there was no direct evidence to show that the appellant/accused therein had by his acts instigated or provoked the deceased to commit suicide or done any act that could be said to have facilitated the commission of suicide by her. In the aforesaid case, the appellant/accused was married to the deceased. Five-six years prior to her committing suicide, he had developed extramarital relationship with a lady and the said liaison had become known to the deceased. Subsequently, the appellant/accused had brought the lady to his matrimonial home and had tried to take the consent of the deceased for marrying her. It was the case of the prosecution that on her refusal, physical and mental torture was perpetrated by the appellant that drove her to end her life. For concluding that there was no evidence to show that the appellant/accused therein had instigated or provoked the deceased to commit suicide, it was noted by the Court that the accused had brought the second lady to stay at the matrimonial home three months prior to the date, on which the deceased had committed suicide and it was observed that if she was so perplexed by his act of marrying the said lady that she felt impelled to commit suicide, then she could have done so on the very day when the appellant had brought the lady to his house. In view of the lapse of a period of three months in between the two incidents, it could not be inferred as to whether the act of the appellant was such that would have instigated or provoked the deceased to commit suicide.

48. Unlike the facts of the aforesaid case, in the instant case, the evidence adduced clearly brings out that the appellant had severely beaten Madhu Bala on the night intervening 18/19.07.1996 and within a few hours of the said incident, she had committed suicide. Learned counsel for the appellant cannot equate the facts of the aforesaid case with the case in hand. Similarly, the facts of Narender Singh Aroras case (supra) relied upon by the counsel for the appellant are entirely different from the present case as in the cited case, the High Court had concurred with the findings of the trial court that the letters written by the deceased, who had committed suicide by hanging herself in her matrimonial home within seven years of getting married, did not reveal that she was harassed on account of dowry or any dowry demand made by her husband and her in-laws or any kind of ill-treatment was meted out to her at their hands.

49. As for the contention of the counsel for the appellant that a solitary incident of beating cannot be considered to be harassment or cruelty as defined under Section 498A IPC, it may be noted that there can be no hard and fast rule in this regard. Each case has to be examined on its own facts. Much depends on the threshold of tolerance, the inherent nature of the victim and the severity/intensity of the cruelty compelling the victim to commit suicide. The facts in the case of Indrasing M. Raol (supra) relied upon by learned counsel for the appellant reveal that the solitary incident of the appellant/accused beating his wife had taken place 15 days prior to her committing suicide and it was therefore concluded that Section 498A IPC would not be attracted. The High Court had observed that persistent cruelty alongwith the intention of forcing the victim to commit suicide were absent. On the contrary, in the present case, the Court cannot make light of the violent physical assault made by the appellant on the victim on the date of the incident that had resulted in her suffering sixteen injuries. The severity of the assault on a woman and the effect thereof is borne out from the fact that within a few hours of the said incident occurring, Madhu Bala had committed suicide. This Court is therefore of the opinion that none of the judgments cited by the counsel for the appellant support his argument that there was no evidence on the record to establish that the appellant had instigated/abetted the deceased to commit suicide. All the cases relied upon are clearly distinguishable on facts.

50. Before proceeding further, the Court may pause to clarify that an offence under Section 306 IPC is entirely different from the one envisaged under Section 498A IPC and both are independent of each other. It depends on the facts and circumstances of a case as to whether subjecting a woman to cruelty may amount to an offence under Section 498A IPC alone. If the conduct amounting to cruelty is established, leaving no other option for the woman except to commit suicide, it may also amount to abetment to commit suicide [Ref. Ramesh Kumar (supra)]. At the same time, merely because an accused has been held guilty under Section 498A IPC, does not mean that as a sequitur thereto, based on the very same evidence, he must be held guilty for having abetted the commission of suicide by the victim. But, in the facts of the instant case, this Court is inclined to concur with the findings of the Sessions court that the appellant is liable to be punished under Section 306 IPC and the procedural irregularity in not framing a charge against

him under Section 306 IPC would not amount to failure of justice as the appellant has undergone a fair trial, where he knew what he was being tried for and was given a full and fair chance to defend himself.

51. Coming to the argument advanced by the learned APP that there was an error in the conclusion of the Sessions court that the role played by the appellant on the night intervening 18/19.07.1996 falls solely within the ambit of Explanation (a) appended to Section 498A IPC, while excluding Explanation (b), it may be noted that Section 498A IPC provides that if a husband or the relatives of the husband of a woman subjects her to cruelty, he/they shall be punished with imprisonment for a term that may extend to three years and shall be liable to pay fine. The explanation appended to Section 498A IPC, that defines the meaning of the word cruelty for the purpose of the said Section, has two limbs, i.e., Explanation (a) and (b) as set out hereinbelow:

Section 498A xxx xxx xxx Explanation - For the purpose of this section, cruelty means - 52. (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

As discussed hereinabove, the role of the appellant that has been brought out from the evidence adduced reveals that he is guilty of the offence under Section 306 IPC and given the presumption under Section 113A of the Evidence Act, Section 498A Explanation (a) has a definite application to the facts of the case. However, on carefully perusing the evidence, this Court finds merit in the submission made by the learned APP that apart from the application of Explanation (a) to the facts of the case, cruelty is also established against the appellant under Explanation (b) of Section 498A IPC, for the reasons elaborated hereinafter.

53. On a perusal of the impugned judgment, it appears that for arriving at the conclusion that the prosecution had failed to substantiate the allegation of demand

of dowry by the appellant, or that he had harassed Madhu Bala in connection with dowry, the learned Sessions Judge had considered the testimonies of Madhu Balas family members but he had gone on to reject them on the ground that there were material discrepancies and improvements made by the said witnesses on the aspect of dowry demands made by the accused. The impugned judgment takes note of PW-9, Sushila Devis statement recorded before the learned SDM, the day after Madhu Balas death, but concludes that she had not mentioned the fact that any such demand of dowry was raised on her and her family members.

54. For drawing the above conclusion, the Sessions court has also relied on the testimony of Ashok Kumar Kapoor, DW-2 (father-in-law of the coaccused, Sumit Suri) which was to the effect that neither had the deceased or her relatives ever complained to him about the conduct of the appellant or the other co-accused in connection with any dowry demand and observed that no such mention having been made to him, would itself be a ground to disbelieve the prosecution version. The said conclusion appears to be erroneous. The Sessions court overlooked the fact that DW-2 was not residing in the same city and was a permanent resident of Srinagar, Kashmir and even as per him, he had met the father of Madhu Bala only on a couple of occasions. Having had very little and infrequent interaction with the family members of Madhu Bala, he could have hardly thrown any light on the aspect of dowry demands made by the appellant on his wife and his in-laws. Further, if the Sessions Judge was of the opinion that Madhu Balas family members were interested parties, then so was DW-2, whose daughter and son were the co-accused in the case, along with the appellant and his mother.

55. The court below has also relied upon the deposition of two witnesses from the neighbourhood produced by the prosecution, i.e., PW7 and PW-10 to conclude that nothing had emerged from their statements to substantiate the prosecution version and they had ever found any of the accused quarrelling with Madhu Bala or ill-treating her. In the opinion of this Court, too much weightage has been given to the statement of the neighbours and that too in a case where the appellant and his family had shifted to their newly purchased home only a couple of months earlier. Further, it is a matter of common knowledge that witnesses like PW-7 and PW-10, or other similarly placed witnesses as for example, the domestic staff,

would not wish to get embroiled in court cases and prefer to keep a safe distance.

56. It would be equally a travesty of justice to discard the entire evidence of the family members of the deceased on the singular ground that Smt. Sushila Devi (PW-9) had failed to give greater details of the dowry demands made by the appellant and his family members and that there was a time lag between the date of the incident and the date when the testimonies of the remaining family members of Madhu Bala were recorded.

57. PW-9 had candidly stated before the SDM that though at the time of her marriage, Madhu Balas in-laws had not demanded any dowry, but after her marriage, she had told her parents that her in-laws used to demand dowry and they had raised a grievance that they had not got enough dowry at the time of the marriage. She had also stated that Madhu Balas in-laws used to beat her up in her matrimonial home and she did not get enough to eat. Rather, she was told to work and earn money to maintain herself. It was specifically stated by the mother that they had paid a sum of `10,000/- in cash and purchased a double bed for the appellant about a month prior to the fateful day.

58. Having regard to the categorical stand taken by PW-9 in her statement recorded before the SDM on the very next day after the occurrence of the unfortunate incident when she had lost her daughter and the consistency in her deposition on material aspects including the specific items demanded by the appellant from his in-laws, this Court finds no justification for discarding the testimony of Madhu Balas family members in entirety on the ground that they were interested witnesses.

59. Now, let us examine the testimony of the other prosecution witnesses for testing the application of Explanation (b) of Section 498A IPC to the facts of this case. Praveen Kumar Chhabra(PW-2), brother of Madhu Bala had stated that his sister used to complain against the appellant and his family members for harassing her on account of bringing insufficient dowry and that she had been sent back to her home for the said reason. He had elaborated that at that time, the appellants father was alive and they were living at their earlier place of residence at Mayapuri and after about 15-20 days of sending Madhu Bala back to her

parental home, the appellant had come to fetch her and had confessed to his mistake. He had also specifically stated that after the appellant had shifted with the deceased and the other family members to their new home at Vikas Puri, Madhu Bala had told him that she was being harassed and tortured by the appellant and his family and they had been demanding new furniture and a colour television for the new house. He had deposed that the deceased had shared with him the fact that when she had refused to convey their demands to her family, the appellant had been beating her. He had stated that fifteen days prior to her death, his parents had given the appellant a new double bed as demanded by them and because the mattresses were not provided with the bed, the deceased was taunted.

60. Dalip Kumar Chhabra, (PW-5) the other brother of Madhu Bala had stated that there was no demand of dowry before the marriage of Madhu Bala but after her marriage, the accused persons had started demanding a colour television and other articles. They had also demanded cash amounts to enable the appellant to settle down in his business. The fact of a new double bed being purchased and presented to the appellant two weeks before the death of Madhu Bala and payment of cash amount of `10,000/- to the appellant was repeated by the said witness. The only improvement noticed in the statement of PW-5 is on the aspect of the demand a colour television and a catering van by the accused, which was not a part of his statement as recorded during the investigation (Ex.PW5/DA).

61. Similarly, Amita Chhabra (PW-4), sister of the deceased had deposed that after the marriage of Madhu Bala, the accused persons had started demanding dowry and they used to abuse her for bringing less dowry and not fulfilling their demands. She had stated that at the time of the marriage, the appellant and his brother, Sumeet Suri were doing business jointly but after the marriage, Sumeet Suri had separated from the appellant and the appellant started demanding money for starting his own business. He had also started to press the deceased to join some service to meet the household expenses, whereafter the deceased had joined service with a beauty parlour at Janakpuri. The said witness repeated the fact of her father having paid a cash sum of `10,000/- and having presented a new double bed to the accused after they had shifted from Mayapuri to the new house

at Vikas Puri. She had stated that the accused had demanded a catering van from her parents, but they could not afford to purchase one. She had also stated in her testimony that two days prior to her death, Madhu Bala had telephoned her and informed her that the appellant had purchased a shop in Vikas Puri for a sum of `7 lacs for which he had paid the earnest money of `10,000/- and told her to bring the remaining sale price from her parents but they were not in a position to pay the said amount.

62. It is undoubtedly true that there are chances of interested witnesses making exaggerated claims or embroidering the truth. However, when scrutinizing the evidence, the Court must use its legal acumen to separate the grain from the chaff and only in circumstances, where the exaggerations made by the witness are found to be so improbable or preposterous that would render him wholly untrustworthy, should the Court refuse to rely on him. As has been observed by the Supreme Court in the case of Vajresh Venkatray Anvekar (supra), if the attendant circumstance and evidence on record clearly corroborates the witness, then merely because he is an interested witness, he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable.

63. In the present case, this Court has not found any such preposterous or outrageous statements made by the brothers of the deceased (PW-2 and PW-5), her sister (PW-4) and her mother (PW-9), for completely discarding their evidence. Some delay in recording the statement of a few witnesses produced by the prosecution, namely, PW-4, PW-5, PW-7 and PW-9 would no doubt put the trial court on guard while scrutinizing their statements but that by itself would not be a ground to overlook their entire deposition simply on the ground that they could not specify the details of the date, time and place when demands of dowry had been made by the accused.

64. A perusal of the testimonies of the aforesaid witnesses reveal that except for some exaggerations that can be easily be identified and discerned as improbable, the witnesses were consistent and had fairly withstood the test of cross-examination. The appending circumstances when correlated with the testimony of the aforesaid witnesses clearly brings out the fact that the version of the deceased

as disclosed to her parents, brothers and sister, ought not to have been discarded outright as has been done by the trial court, merely on the ground that at the time of her statement being recorded by the SDM, she did not furnish the details, the timings and the specific occasions when demands of dowry were made by the accused on them or on the deceased and consequently, all that she had stated in her testimony that was recorded in the year 2002, ought to be disregarded.

65. The Sessions court ought to have been mindful of the fact that a helpless and grieving mother had lost a daughter only a day prior to her statement being recorded by the SDM and in such a stressful condition, she could hardly be expected to be lucid and capable of recalling each and every detail of the demands of dowry made on her including the specific dates, occasions and other particulars of the dowry demands made by the accused. Nor could it be expected that independent witnesses would be available and step forward to depose on the dowry demands raised by the accused or the torture suffered by the deceased on failure to satisfy their greed. It has been observed time and again that in cases, where a woman is ill-treated, assaulted, physically or mentally tortured within the four walls of her matrimonial home, such ill-treatment cannot be witnessed by an outsider but only by those, who commit such a crime and obviously, they would not come forward to depose about it.

66. When examined in the light of the aforesaid sequence of events, the repeated threats of demands of dowry made by the accused on the deceased appears to be the common and live link that runs through the testimony of the prosecution witnesses, apart from that of physical threats that were extended to her by the appellant. It has also been brought out that due to failure on her part to meet the dowry demands, on one occasion, the appellant had left Madhu Bala at her parental home and had returned after a couple of weeks to take her back. So things were brewing in the matrimonial home for some time. The final straw on the camels back, was the severe beatings that the appellant had given to Madhu Bala on the night of 18.07.1996, that was by itself sufficient to have provoked her into taking the extreme step of committing suicide. The court may hasten to clarify here that the cruelty to which deceased was subjected by the appellant, who had made demands of dowry on her and her family members would however not be a

circumstance for invoking the provisions of Section 306 IPC against him. The circumstances for establishing the offence of Section 306 IPC against the appellant are different and have been dealt with above, separately.

67. Given the above background, there is no doubt that Explanation (b) of Section 498A IPC is also attracted to the facts of the present case. The trial court had in fact misdirected itself by laying too much emphasis on what according to it, was missing from the statement of Madhu Balas mother (PW-9) as recorded before the SDM on 20.7.1996, while overlooking what she had actually stated before the SDM, apart from the corroborative testimonies of the other witnesses produced by the prosecution. There was sufficient evidence on the record to indict the appellant for the offence under Section 498A IPC, under both the explanations appended to the said provision.

68. This Court is therefore of the opinion that the prosecution was not only successful in making out a case against the appellant to the effect that by his willful conduct, he had driven his wife to commit suicide under the provisions of Section 306 IPC, it was also able to establish that unlawful demands of dowry were made by him on the deceased and her family members that would amount to cruelty. As a result, both the limbs of the explanation clause appended to Section 498A IPC are attracted. By invoking the provisions of Section 386(b)(ii) of the Cr.PC that empowers the appellate court to alter the findings while maintaining the sentence in an appeal from conviction, this Court deems it fit to alter the findings returned to the contrary by the trial court on the aforesaid aspect, while maintaining the sentence imposed on the appellant under Section 498A IPC.

69. In view of the aforesaid facts and circumstances, the present appeal is dismissed as being devoid of merits. The impugned judgment dated 23.12.2006, inculpating the appellant for the offences punishable under Sections 498A and 306 IPC is upheld with a caveat that both the explanations appended to Section 498A IPC are attracted to the facts of the case. Resultantly, the conviction of the appellant in terms of the order on sentence dated 02.01.2007 is confirmed. AUGUST01 2014 rkb/mk/sk CRL.A. 27/2007 (HIMA KOHLI)