

**Rajiv Narula Vs. State**

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**Court :** Delhi

**Decided On :** Aug-11-2009

**Reported in :** 162(2009)DLT688

**Judge :** Mool Chand Garg, J.

**Acts :** Evidence Act - Sections 4, 32, 113A and 113B; Criminal Law (Second Amendment) Act, 1983; Code of Criminal Procedure (CrPC) - Sections 313 and 428; Indian Penal Code (IPC) - Sections 34, 107, 302, 304B, 306 and 498A; Dowry Prohibition (Amendment) Act, 1986

**Appeal No. :** Crl. App. 364/1997

**Appellant :** Rajiv Narula

**Respondent :** State

**Advocate for Def. :** Arvind K. Gupta, APP

**Advocate for Pet/Ap. :** K.K. Sud, Sr. Adv. and; Atul Sahi, Adv

**Judgement :**

**Mool Chand Garg, J.**

1. This judgment shall dispose of the aforesaid two appeals, filed by Rajiv Narula (hereinafter referred to as the first appellant) and by his mother Smt. Sunita Narula

(hereinafter referred to as the second appellant) mother-in-law of deceased Suman Narula, who was married to the first appellant according to Hindu rites and customs on 22.11.87 and died an unnatural death by committing suicide on 23.8.88.

2. The appellants have assailed the impugned judgment dated 6.9.1997 and the order of sentence dated 9.9.97 whereby the Additional Sessions Judge has convicted both of them under Section 498A/306/34 IPC and sentenced them to undergo R.I. for 5 years besides payment of fine of Rs. 2000/- each and in default of payment of fine to undergo S.I. for 3 months under Section 306/34 IPC. Under Section 498A they have been sentenced to undergo R.I. for 2 years besides payment of fine of Rs. 1,000/- each and in default of payment of fine to further undergo S.I. for 2 months with benefit of Section 428 Cr.P.C. Both the appellants are on bail. According to them they have been falsely implicated in this case by the parents of the deceased as there is no evidence against them.

3. While delivering the Judgment, the appellants and their father Rattan Lal Narula, who was also arrayed as an co-accused in this case, were acquitted under Section 304B IPC which was a charge framed in the alternative. Shri Rattan Lal Narula was also acquitted Under Section 498A IPC. In this regard the trial Court held that the evidence of the prosecution was not sufficient to hold that the deceased was harrassed for demand of dowry soon before her death. The deposition of PW-2 Shri S.D. Malhotra father of the deceased and who is also the complainant in this case, and that of PW-4 Smt. Santosh Malhotra, mother of the deceased, was not believed to that extent. However it was held that the appellants certainly treated the deceased with mental cruelty within the meaning of Section 498A of the Indian Penal Code. By drawing presumption under Section 113A of the Evidence Act inserted in the Statute Book in 1983 presumption was drawn against the appellants that they had abetted the deceased to commit suicide and thus were guilty also under Section 306/34 of the Penal Code. It would be of relevance to note that both the deceased as well as the first appellant were/are Doctors by profession.

4. It is the case of the prosecution, that on 23.08.1988 at about 2.30 p.m police received information on telephone that deceased Suman Narula was brought to the AIIMS in the state of un- consciousness. In this regard DD No. 9A was recorded at PS Saraswati Vihar. SI Jagjit singh was then deputed for investigation who went to the hospital and collected MLC No. 55817 whereby the deceased was declared =brought dead'. The said SI then went to the house of the parents of the deceased in Nanakpura where the deceased had been residing at that time and met PW-2 Shri S.D. Malhotra, who made the following statement to the Police;

that his daughter had married with Rajiv Narula according to Hindu Rites and Customs on 22.11.1987. In her marriage the complainant had given enough dowry in accordance with his status. From the date of the marriage, Rajiv, his father and mother started harassing his daughter saying that her parents had given less dowry. They also started giving beating to her. He further stated that they tortured her to such an extent that her daughter left her in-laws' house within one month of her marriage and came to him. In the meanwhile, his son had come to the house of Rajiv to inquire as to why they were harassing Suman. They have also taunted the parents of Suman as to what they have given in the marriage. They also told the parents of the deceased that they have been humiliated in the society. They also asked the parents of Suman to give fridge, to which the complainant told that he is not in a position to give the same. After that his daughter told him that they asked for the gold jewelleryes. The complainant further stated that Rajiv used to meet Suman in his office and used to demand fridge and gold jewelleryes and used to tell Suman that he would keep her with love in case she brings these items. Suman also complained to her father that Rajiv had obtained a writing from her on the stamp paper by showing knife that she was having relations with one boy and it was because of all this that she was committing suicide. She further told her father that Rajiv used to keep the knife in the seat of the car.

He also stated that on 23.08.1988, when he returned to his house after getting the chapattis from the Tandoor, Suman was not present in the house. He searched Suman here and there in the house but was not traceable. Suman was puzzled for the last 3-4 days and was not eating food. Then he went to the roof of the house and saw her lying there by the side of water tanki. In her left arm, one syringe was

inserted and rubber pipe and needle cover were lying there nearby her. He was accompanied by his wife to the roof. When Suman was lifted, then syringe fell down. He immediately removed Suman to the AIIMS, where the doctor declared her brought dead.

The complainant further stated to the police that after one month of the marriage of his dather-Suman, Rajiv and his parents used to demand costly items of golden jewellery and refrigerator and on her not bringing the same, they used to harass her. The complainant also stated to the police that from the writings of Suman, it is apparent that Rajiv has remarried. He has further stated that on account of harassment and mistreatment by her husband and her in-laws, Suman has committed suicide by taking some poisonous injection. The complainant has also handed over to the police syringe containing some medicine, rubber pipe and needle cover.

5. On the basis of this statement, a case under Section 498A/304B IPC was registered against the appellants and Shri Rattan Law Narula, father of the first appellant. All the three accused persons were arrested and after completion of the investigation, challan was sent to the court of concerned Metropolitan Magistrate, New Delhi, who in turn committed this case to the court of sessions, it being exclusively triable as such. All the accused persons pleaded not guilty to the charges framed against them under Section 498A/304B/34 IPC. Alternative charge under Section 306/34 IPC was also framed against the accused persons to which also they pleaded not guilty and claimed trial.

6. To prove their case, prosecution examined 23 witnesses including PW2 Shri S.D. Malhotra, father of the deceased PW4 Smt. Santosh Malhotra, mother of the deceased, PW-6 A.K. Arora, Senior Scientific Officer CFSL PW-7 Dr. V.G. Dattar besides other witnesses, some of whom are formal, some are doctors and PW-21 Mr. T.R. Nehra, a handwriting expert, who proved the hand writing of the deceased on the suicide note and on various letters and handwriting of the first appellant on some of those documents which were handed over to the police by the father of the deceased. These letters and handwritings explains the reasons as to why the deceased committed suicide besides detailing the cruelty imposed

upon her by the appellants. In view of that, the Additional Sessions Judge convicted the appellants for the offences Under Section 306/498A/34 IPC as aforesaid while acquitting them under Section 304B IPC. As stated above the father of the appellant was also acquitted for the offence under Section 498A IPC.

7. Appellants have raised number of grounds to contend that the Judgment of conviction is liable to be set aside and that they are entitled to acquittal. However during the course of arguments they have confined their case only on the point that there was no evidence to hold that the appellants have abetted or instigated the deceased for committing suicide taking into consideration all the facts and surrounding circumstance of the case and as such, no presumption should have been drawn against them under Section 113A of the Evidence Act. In this regard, Shri K.K. Sud, the learned Senior Counsel appearing for the appellants, has referred to a number of judgments including the judgment delivered in the case of Sharad Birdhi Chand Sarda v. State of Maharashtra : AIR 1984 SC 1622. The other judgments cited by him are:

- (i) Smt. Padmabai v. State of M.P. : 1987 Cri.L.J. 1573.
- (ii) Hansraj v. State of Haryana : 2004(12) SCC 257.
- (iii) Ramesh Kumar v. State of Chattisgarh : 2001(9) SCC 618.
- (iv) State of West Bengal v. Orilal Jaiswal and Anr. : AIR 1994 SC 1418.
- (v) Sanjay Alias Sanjay Singh v. State of M.P. : AIR 2002 SC 1998.
- (vi) Gananath Patnaik v. State of Orissa : 2002(2) SCC 619.
- (vii) E. Balakrishnama Naidu v. State of Punjab : 1992 Suppl. (3) SCC 71.
- (viii) Mehro W/o Tara Singh v. State of Punjab 1992(2) CCC HC 27 (P.H.).
- (ix) Kishori Lal v. State of M.P. 2007(3) JCC 1829.
- (x) Rishi Kumar v. State of Haryana 1988 (1) RCR 115 P&H; DB.

8. It has been argued that Section 113A of the Evidence Act has not diluted the onus of the prosecution to prove the abetment to commit suicide in accordance with the provisions contained under Section 107 IPC. It is submitted that for that purpose the prosecution was obliged to have led evidence to establish those facts beyond reasonable doubt. Additionally, the trial court was also required to have taken into consideration all the facts of the case before returning the findings that the appellants were guilty of Section 107 of the Penal Code, such as, separation of the deceased from the appellants for a period of more than eight months before the commission of suicide and just after one month of the marriage and also the fact that she was a Doctor by profession and had been going to her Job till the day she committed suicide. It has also been urged that there is no evidence available on record to prove abetment as defined under Section 107 IPC against either of the appellants. It has also been contended that the death in this case has taken place naturally or by accident which has been sought to be exploited by the in-laws of the first appellant out of vengeance on account of failure of marriage of a highly sensitive suspicious credulous psychopathic girl who had no exposure to the realities of life.

9. It is also submitted that even otherwise presumption under Section 113A of the Evidence Act cannot substitute the proof. It is stated that frustration in the mind of the deceased who was a Doctor by profession that her husband had contracted second marriage without getting divorce does not prove the ingredients under Section 107 IPC. More so, when there is no clinching evidence about the second Marriage of the first appellant except the presumption raised by the deceased in her mind without any basis.

10. However, with respect to the charge under Section 498-A IPC it was submitted that it is an independent offence. Regarding this, the learned senior counsel has not contested the portion of the judgment convicting the appellants Under Section 498A IPC subject to the condition that his clients are released with punishment already undergone by them. In this regard, he had also submitted that the second appellant is an old lady of 75 years and is suffering from various ailments and that the incident has occurred 20 years earlier. He has also cited the following judgments on the quantum of sentence;

i) Mohd. Hoshan v. State of Andhra Pradesh 2002 SCC (Crl.) 1765

ii) Devi Ram v. State of Haryana : 2002 (10) SCC 76

iii) Hiralal v. State (Delhi Admn.) : 2003 (8) SCC 80.

iv) Satvir Singh v. State of Punjab : 2001 (8) SCC 633

v) Kansraj v. State of Punjab : 2000 (5) SCC 207.

11. Before dealing with the contentions of the appellants and referring to the judgments cited by them, I deem it appropriate to refer to some of the observations made by the learned Trial Court while delivering the impugned judgment on the points raised on behalf of the appellants.

32. Learned Addl. P.P. for the State has submitted that Suman-deceased was married with accused-Rajiv Narula on 22.11.2007 and she has died on 23.8.1988 otherwise than under normal circumstances and within seven years of her marriage. It is further submitted that in the light of suicide note Ex.PW2/B, and the evidence of Sh. S.D. Malhotra, father of deceased, PW2, and Smt. Santosh Malhotra, PW4, the mother of deceased, Suman was harassed by the accused persons soon before her death on account of bringing inadequate dowry. It is further submitted by the learned Addl.P.P. for the State that the harassment on account of inadequate dowry is supported by the evidence of Smt. Kiran, PW1, friend of deceased, Manohar Lal, PW5, brother of the deceased, Smt. Savitri Gambhir, PW10, neighbor of the deceased, Narender Chadha, PW11, brother-in-law (jeeja) of the deceased. Learned Addl. P.P. relies upon the testimony of PW7-Dr. V.G. Dattar to show that the deceased was harassed by accused-Rajiv Narula soon before her death. Learned Addl. P.P. further submits that as per the evidence of Dr. A.K. Tripathi, PW8, who conducted the post mortem on the dead body of Suman-deceased, the cause of death is methyl alcohol poisoning. It is also submitted that the legal presumption of dowry death under Section 113(B) of Evidence Act comes into operation and the same has not been refuted by the accused persons. Therefore, in the light of the evidence on record, offence under Section 304-B/498-A IPC is proved against all the accused persons. Lastly, it has

been submitted by the learned Addl.P.P. that in any case, offence under Section 306/498-A read with Section 34 IPC stands proved against all the accused persons.

34. It has been argued on behalf of the accused persons that no presumption of dowry death under Section 113(B) of the Evidence Act is available to the prosecution as it cannot be said in the facts of the present case that Suman-deceased was subjected to cruelty soon before her death. It is vehemently argued that Suman-deceased was living separately from the accused persons about eight months prior to her death and that there is no evidence on record to show that on account of inadequate dowry, she was subjected to harassment by the accused persons. It is further argued that the evidence of Dr. Sunita Kalra, PW3, friend of the deceased is of no help to the prosecution as letter Mark A, stated to be received by her from accused-Rattan Lal Narula, has not been sent for comparison. Moreover, it is submitted that letter Mark A only bears the initials of accused-Rattan Lal and the prosecution has not been able to prove that the letter Mark A was sent by accused-Rattan Lal to Dr. Sunita Kalra in response to the matrimonial advertisement. Referring to the suicide note Ex. PW2/B, it is contended that even as per the suicide note, the cause of death is not harassment on account of inadequate dowry, but is apprehension in the mind of the deceased regarding second marriage of accused-Rajiv Narula. Thus, it is contended that the prosecution has utterly failed to prove its case beyond reasonable doubt and all the accused persons are entitled to acquittal.

35. After analyzing the entire evidence on record and upon consideration of the arguments advanced by the learned Addl.P.P. for the State and the learned Counsel for the accused persons, I proceed to decide this case as under:

#### DEATH OF SUMAN WITHIN SEVEN YEARS OF HER MARRIAGE:

36. It is not in dispute that Suman-deceased was married to accused-Rajiv Narula on 22.11.1987 and she died on 23.8.1988....

#### DOWRY DEATH/ABETMENT OF SUICIDE:

46. Learned Addl. P.P. for the state has drawn my attention to the evidence of PW2-S.D. Malhotra, father of the deceased, to show that the accused persons were not happy with the gifts given in the ring ceremony and had complained to this witness that the accused persons have been dishonoured in the biradari. It has come in the evidence of this witness that accused-Rattan Lal had demanded Rs. 7,000/- for purchase of Sony T.V. which was paid to him, but the witness had told accused- Rattan Lal that it was not in his capacity to give money for purchasing the clinic for the fridge. According to this witness, accused-Sunita had made a demand of 50 garden siffon sarees for the relatives, who had come on the chunni ceremony and five safari suits. Immediately after the marriage, all the accused persons had started maltreating and harassing Suman and taunted that she had come from a poor family and she has brought only a light weight gold set, whereas she should have been three gold sets as she has three brothers. This harassment and taunting continued for a months and Suman was fed up by the constant taunting to her parents' house. On 3.1.1988, Suman had told her father that accused-Rajiv wanted her to bring heavy gold set, otherwise the accused persons would not keep her and when she along with her father went to the market to purchase the gold set, she broke into tears and told her father that her husband had obtained a writing from her that she was committing suicide and there is no need to purchase the gold set. On coming back to the house, Suman showed a draft affidavit on plain papers written in the hand-writing of accused-Rajiv and she further told that accused-Rajiv wanted her to copy this affidavit on stamp paper. The draft affidavit (on three sheet) is ex.PW2/A1, A2 and A3, which has been proved by an Expert to be in the handwriting of accused-Rajiv.

47. It has further come in the evidence of S.D. Malhotra, PW2, that on 5.12.1987, he had his wife had gone to the house of the accused persons and had asked them why they had sent back Suman, and the accused persons stated that they do not want to talk on this matter anymore and accused-Rajiv told them that he would talk about it later on. Again on 17.1.1988, this witness along with his wife went to the accused persons and accused-Rattan Lal and Sunita told them that they have been insulted in their biradari as everybody was taunting them that they have married their only doctor son in a family of poor persons and they would like to have divorce. In February, 1988, this witness again contacted the accused

persons, but they put off the matter. Accused- Rajiv had been meeting Suman at her place of work and had been persisting her that it would be better for her to commit suicide.

51. A bare reading of pages Ex.PW2/E and F from the diary of Suman-deceased shows that she was subjected to mental cruelty by accused-Rajiv and her mother, accused-Sunita. It has come in the evidence that accused-Rajiv had been meeting Suman-deceased upto her death and the writings of the deceased Ex.Pw2/E and F speak volume of mental torture and humiliation, which she suffered at the hands of accused-Rajiv and at behest of accused-Sunita.

52. In the light of overwhelming evidence of mental cruelty suffered by Suman-deceased at the hands of accused-Rajiv and Sunita, I hold that accused-Rajiv Narula and Accused-Sunita Narula have committed offence of cruelty punishable under Section 498A read with Section 34 IPC. As regards accused-Rattan Lal Narula, I find that oral testimony of the parents of the deceased that accused-Rattan Lal Narula had demanded money for purchasing clinic and made demand for fridge and that he returned the sofa-set given by Narender Chadha, relations of the deceased, cannot be accepted on the face of it, because the deceased in her writings Ex.PW2/E and F has nowhere alleged anything against accused-Rattan Lal, which shows that she had no grievance against her father-in-law. Moreover, S.D. Malhotra, PW2 father of the deceased made improvement in his statement before this Court regarding the demand of money for purchase of clinic and demand of fridge and he has been duly confronted with his earlier statement made to the police, where there is no mention of such demand. In taking this view, I am fortified by the decision of Hon'ble Supreme Court of India in case of Sharad Birdi Chand v. State of Maharashtra : AIR 1984 SC 1622 wherein it has been held that in such like cases, near relations of the deceased have tendency to exaggerate and add facts, which may not have been stated to them at all.

As a result, I give benefit of doubt to accused Rattan Lal Narula and acquit him of the charge framed against him under Section 498-A IPC

53. Learned Counsel for the accused persons has forcefully contended that to prove the charge under Section 304B IPC, it is first to be proved that the deceased

was subjected to cruelty or harassment by her husband or his relations in connection with any demand of dowry soon before her death and in the present case, Suman-deceased was subjected to such harassment and cruelty. It is pointed out that deceased-Suman was living at her parents' house at the time of her death. In support of his contention, learned Counsel has relied upon case of Bhagwan Sahai v. Raju @ Rajinder Kumar : 1996 Criminal Law Journal 2290; 1995 (4) Crimes page 42 Misiria v. State of Rajasthan; Inder Singh v. State of Haryana 1992 (2) Cha Cr C 59. Learned Addl. P.P. for the State has not been able to distinguish the proposition laid down in the aforesaid authorities, nor has been able to show that Suman- deceased was subjected to cruelty soon before her death on account of dowry demand. However, Learned Addl. P.P. has drawn my attention to the testimony of Dr. V.G. Dattar, PW7 to show that just one day before the death of Suman, accused Rajiv had met her and Dr. Dattar had overheard accused-Rajiv telling Suman that he was going to remarry and she should commit suicide.

54. Upon perusal of the aforesaid judgments, I find merit in the contentions of the learned Counsel for the accused persons that the prosecution has to first show that the deceased was subjected to cruelty or harassment in connection with dowry demand soon before her death and that there is no evidence on record in the present case to show that Suman-deceased was subjected to cruelty on account of dowry demand soon before her death. Although, it has come on record in the form of evidence of Dr. V.C. Dattar, PW7 that accused- Rajiv had told Suman that she should commit suicide, but by any stretch of imagination, it cannot be said that the suggestion to commit suicide was on account of dowry demand, because as per the evidence of Dr. V.C. Dattar, accused-Rajiv had told that he was going to remarry. This fact also finds corroboration from the suicide note Ex.PW2/B, which is addressed to accused- Rajiv. In this situation, I hold that the prosecution has failed to prove beyond reasonable doubt the essential ingredients that Suman deceased was subjected to cruelty on account of dowry demand soon before her death. Accordingly, I give benefit of doubt to accused- Rajiv Narula, Rattan Lal Nrula and Sunita Narula and acquit them of the charges framed against them under Section 304B/34 IPC.

55. However, there is unimpeachable evidence in the form of suicide note Ex.PW2/B, writings of Suman- deceased, Ex.PW2/E and F, testimony of Dr. V.G. Dattar, PW7, the testimony of the parents and brother of the deceased, draft affidavits in the handwriting of accused- Rajiv Narula, on record to raise a presumption of abetment to suicide under Section 113(A) of the Evidence Act as the prosecution has been able to prove that Suman-deceased had committed suicide within seven years of her marriage and that she was subjected to cruelty by accused-Rajiv and accused-Sunita Narula.

56. To rebut this presumption, no defence evidence has been led. However, in his statement under Section 313 Cr.P.C. accused Rajiv has tendered in evidence greeting cards, letter and photo copies of some documents Ex.DX-1 to DX- 11. Neither in the statement under Section 313 Cr.P.C. nor at the time of arguments, relevance of documents tendered at the time of recording statement under Section 313 Cr.P.C. has been explained. However, on perusal of the documents Ex.DX-1 to DX-11, it appears that the greeting cards sent by Suman-deceased to accused-Rajiv in December 1987 and on birthday of Rajiv and Diwali and New Year's greetings shows that initially the relations between accused-Rajiv Narula and Suman-deceased were cordial. There is one letter of Hardev Malhotra sent from U.K. which is placed on record by the accused, but it is not shown how Hardev Malhotra is related to Suman-deceased.

57. Suicide note Ex.PW2/B is corroborated by the evidence of parents of the deceased, who have stated before this Court that when they went to meet the accused-Rajiv and his parents, they were told that the accused persons have been insulted in their biradari as every body was taunting that the accused have married only doctor son in a poor family and they would like to have a divorce.

58. Dr. Sunita Kalra, PW3, friend of the deceased, has also deposed that in second week of March, 1988, in response to her matrimonial advertisement, she received letter from accused- Rattan Lal, stating that his doctor son was married three months before and marriage was nullified immediately and on the letter, the address of Janak Puri was given which was matching with the address of in-laws of Suman and she concluded that this letter was sent by the in-laws of Suman.

12. Thus, the Additional Sessions Judge held that the deceased was treated with cruelty though the cruelty was not on account of dowry demand soon before her death. Thus, he held the appellants guilty under Section 498A/34 IPC. Relying upon the suicide note Ex.PW2/B, statement made by PW-3 & PW-7 V.G.Dattar and other writings which came on record in the form of the extract from the diary maintained by the deceased i.e. Ex.PW2/E, E1 and F, it was held that in this case presumption under Section 113A of the Evidence Act needs to be drawn and it is on that basis the appellants were held guilty under Section 306/34 IPC. The Additional Sessions Judge has also noted the conduct of the appellants who have not rebutted the allegations made by the deceased in the suicide note and her writings against them. He also observed that the appellants were not even able to rebut the evidence led by PW-3 regarding efforts made by the father of the first appellant to marry his son for the second time despite existence of his marriage with the deceased. Asking the deceased to swear affidavits as per the draft given in his own handwriting by the first appellant also amounts to instigating the deceased to commit suicide. This portion of the evidence has not been rebutted again. The evidence led by PW-3 was not put to the appellants while recording their statements under Section 313 Cr.P.C by the trial court but the same has been put by this Court during the course of hearing of this appeal but no rebuttal has been given to that evidence by the appellants except denying that the letter relied upon by PW-3 Mark A does not bear the signature of Shri Rattan Lal Narula, father of the first appellant. However they have still not examined him in this regard as a defence witness.

13. At this stage, it would be appropriate to take note of the provisions contained under Section 306, 498-A and 107 I.P.C., which reads as under:

306. Abetment of suicide:- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 498A - Husband or relative of husband of a woman subjecting her to cruelty

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, 'cruelty' means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

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 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.

14. Section 113A of the Indian Evidence Act was inserted in the statute book w.e.f. 23.12.1983 i.e before the incident. The said provision 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.

Explanation.-For the purposes of this section,'cruelty' shall have the same meaning as in Section 498A of the Indian Penal Code (45 of 1860)].

15. A combined reading of the aforesaid provisions implies that in a case where the death of a woman takes place within seven years of her marriage in an unnatural manner, and if it is established that she was treated with cruelty on account of Dowry demands than presumptions can be drawn under Section 113B of the Evidence Act against her husband and other members of his family for having committed offences under Section 304B IPC as a case of dowry death provided the harassment for dowry demands was soon before her death. However, if the harassment of the deceased wife was otherwise of the nature covered by the definition of cruelty as defined under Section 498A IPC and the death occurs by way of suicide but within seven years of her marriage, a presumption may be drawn that her husband and other members of his family abetted or instigated her to commit suicide under Section 113A of the Evidence Act but taking into consideration all other circumstances of the case.

16. Now coming to the judgments cited on behalf of the appellants, I would first notice the judgment delivered by the Hon'ble Apex Court in the case of Sharad Birdhi Chand Sarda (supra), where the Apex Court has discussed the psychology of the person who commits suicide. In that case the court was in a dilemma as to whether it was a case of murder or a case of suicide. The Apex Court after discussing the facts of that case came to the conclusion that the said case was not a case of murder but was a case where deceased Manju committed suicide. The said case pertains to the pre-amendment era i.e much before 1983. Some of the observations made in the aforesaid judgment which distinguishes that case with the case in hand are as under:

24. An analysis of the above clearly shows that Manju was a highly secretive woman and wanted to keep her personal matters or secrets to herself except giving a rough idea or a passing glimpse of her feelings only to those who were

very close to her as friends or near relations. The extract shows that perhaps in a spell of heavy emotions she had written a very long letter to her sister whom she regarded as her best friend but on second thought she tore it off lest it may fall in anybody's hands and she was not prepared to take such a risk. This mentality and noble nature would be of great assistance to us in assessing the probative value of the statements made by her to her parents, sister and friend during her last visit to Bleed. The second paragraph which is extracted below, reflects her state of mind and the tension and torture which she was undergoing:

Now in this letter, when (out of) the things coming to my mind which cannot be written, I do not understand what is to be written. The state of mind now is very much the same. Enough. You understand (me). I am undergoing a very difficult test. I am unable to achieve it. Till I could control (myself), well and good. When it becomes impossible, some other way will have to be evolved. Let us see what happens. All right. 25. She has hinted that she was passing through difficult times but was trying to control herself as much as she could. She has further indicated that if things did not improve then she may have to evolve some other method. The exact words used in the Roman script runs thus:

Jab tak sambhal sakti hoon theek hai jab aasambhab ho jayega to phir rasta nikalna padega, dekhenge kya kya hota hai....26. The words .some other way will have to be evolved. clearly gives a clue to her psychotic state of mind and seem to suggest that the other method to get rid of all her troubles was to commit suicide. It is pertinent to note that in the first two paragraphs of her letter extracted above there is no indication nor any hint the conduct of her husband.

27. In the third para of her letter she states her feelings thus:

I though much that since the house of my husband's parents is at Pune, I would do this and that or the people from the house of my husband's parents are free. However, I have gradually come to know that in that house, the worth of a daughter-in-law is no more than that of a labourer. The relevant portion in the Roman script reads thus:

Is ghar mein bahu ki keemat majdoor se jyada nahin hai. 31. The words used by her show her affectionate and secretive nature and the precaution taken by her not to tell anything to her father, who is addressed as 'Bhausab'. The Roman script of the relevant portion runs thus

Dil tu karta tha Bai Bhau Sahab ko sab bataon, magar unko dukh dekar kya phaida. Apne apne naseeb dekhenge, natija kya nikalta hai. Mujhe tumhein sab kuch batana hai, magar bata nahin sakti. 33. Now we shall examine Ext. 32 which is a letter dated 8.6.82 written by Manju to her sister Anju. This was perhaps her last letter to Anju and is very important and relevant for decision of the case. The letter begins with the words 'I am happy here.. In the second paragraph she expresses her feelings as follows: 'Shobhabai's 'Sadi' programme is fixed on 13th. I do not know why there is such a dirty atmosphere in the house? It is felt every moment that something will happen. Everybody is in tension. No work has been started in the house. Let it go. I am out of mind. Still I am used not to pay heed to it. Ala what about your law..

40. Thus, from the recitals in the letters we can safely hold that there was a clear possibility and a tendency on her part to commit suicide due to desperation and frustration. She seems to be tired of her married life, but she still hoped against hope that things might improve. At any rate, the fact that she may have committed suicide cannot be safely excluded or eliminated. It may be that her husband may have murdered her but when two views are reasonably possible the benefit must go to the accused.

In order to buttress our opinion, we would like to cite some passages of an eminent psychiatrist, Robert J. Kastenbaum where in his book 'Death, Society and Human Experience' he analyses the causes, the circumstances, the moods and emotions which may drive a person to commit suicide. The learned author has written that a person who is psychotic in nature and suffers from depression and frustration is more prone to commit suicide than any other person. In support of our view, we extract certain passages from his book:

The fact is that some people who commit suicide can be classified as psychotic or severely disturbed.

If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider. And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness.

Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the junglelike struggle.

The individual does not destroy himself in hope of thereby achieving a noble post-mortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death.

The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress..

People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect.

The victim of suicide may also be the victim of self-expectations that have not been fulfilled. The sense of disappointment and frustration may have much in common with that experienced by the person who seeks revenge through suicide....

However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. If something has to go it may be the person himself, not the perhaps excessively high standards by which the judgment has been made Warren Breed and his colleagues found that a sense of failure is prominent among many people who take their own lives....

41. The above observations are fully applicable to the case of Manju. She solemnly believed that her holy union with her husband would bring health and happiness to her but unfortunately it seems to have ended in a melancholy

marriage which in view of the circumstances detailed above, left her so lonely and created so much of emotional disorder resulting from frustration and pessimism that she was forced to end her life. There can be no doubt that Manju was not only a sensitive and sentimental woman but was extremely impressionable and the letters show that a constant conflict between her mind and body was going on and unfortunately the circumstances which came into existence hastened her end. People with such a psychotic philosophy or bent of mind always dream of an ideal and if the said ideal fails, the failure drives them to end their life, for they feel that no charm is left in their life.

43. Such persons possess a peculiar psychology which instills extreme love and devotion but when they are faced with disappointment or find their environment unhealthy or unhappy, they seem to lose all the charms of life. The authors while describing these sentiments observe thus:

'Hopelessness', 'despair', 'lousy' and 'miserable' draw attention to the relationship of the depressed person to his environment. The articulate depressed person will often also struggle to put into words the fact that not only does there appear to be no way forward and thus no point to life - but that the world actually looks different....48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witness in order to see that the offender is punished. This is human psychology and no one can help it.

17. The learned senior counsel for the appellants has submitted that in the above-mentioned case, suicide was committed by Manju who was much bored and disgusted with her life and entertained a spirit of revenge and told the witness that she was not going to tolerate any further even though a blot may come to her family. This statement undoubtedly contains a clear hint that she had almost made up her mind to end her life, come what may and thereby put to trouble her husband and his family members as being suspect after her death. It has been submitted that in this case also the suicide note left by the deceased goes to show that she was also a lady of sensitive nature and it appears that out of frustration having not been able to live happy married life with the first appellant decided to bring an end to her life and in such a case it cannot be said that the appellants are instigators or abettors for the suicide committed by the deceased and therefore the presumption under Section 113A of the Indian Evidence Act was wrongly drawn.

18. Now talking of other judgments, at the outset, I may refer to the judgment delivered by the Apex Court in the case of Ramesh Kumar v. State of Chhatisgarh : 2001 (9) SCC 618, where the circumstances relevant for drawing presumption under Section 113A have been discussed. Some of the observation made in that judgment are reproduced hereunder:

12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, 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 113-A 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 113-A is defined in Section 4 of the Evidence Act, which says - 'Whenever it is provided by this Act that the 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.'

19. Some other observations made in that Judgment in para 22 and 23 are also relevant, which are reproduced hereunder:

22. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. Evidential value of the two writings contained in diary, Article A is that of dying declarations. On the principle underlying admissibility of dying declaration in evidence that truth sits on the lips of a dying person and the court can convict an accused on the basis of such declaration

where it inspires full confidence, there is no reason why the same principle should not be applied when such a dying declaration speaking of the cause of death exonerates the accused unless there is material available to form an opinion that the deceased while making such statement was trying to conceal the truth either having been persuaded to do so or because of sentiments for her husband. The writing on p. 11 of diary (Article A) clearly states that the cause for committing suicide was her own feeling ashamed of her own faults. She categorically declares - none to be held responsible or harassed for her committing suicide. The writing on p. 12 of diary (Article A) clearly suggests that sometime earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so. On the date of the incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. The dying declaration Ext. P-10 corroborates the inference flowing from the two writings contained in the diary and as stated hereinabove. The conduct of the accused trying to put off the fire and taking his wife to the hospital also improbabilises the theory of his having abetted suicide.

23. In our opinion there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted the commission of suicide by Seema may necessarily be drawn. The totality of the circumstances discussed hereinabove, especially the dying declaration and the suicide notes left by the deceased herself, which fall for consideration within the expression .all the other circumstances of the case. employed in Section 113-A of the Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused-appellant, therefore, deserves to be acquitted of the charge under Section 306 IPC.

20. In this case the presumption was not drawn under Section 113A of the Evidence Act as from the contents of the suicide note left by the deceased (Annexure A) it was found that the husband had been exonerated completely.

21. Reference of this Judgment has also been made in the case of State of Haryana v. Hansraj : (2004) 12 SCC 257 the other judgment also relied

upon by the appellant. However, in that case the decision was rendered taking into consideration the peculiar facts of that case where the appreciation of evidence showed much improvement in the deposition of the witnesses. The relevant discussion was as under:

16. Having regard to the principles aforesaid, we may now advert to the facts of this case. The learned trial Judge took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the trial court, having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good-looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to remarry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW 3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW 3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence, therefore, we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 IPC.

22. In the case of State of West Bengal v. Orilal Jaiswal : AIR 1994 SC 1418 discussion has been made about degree of proof in such matters. It was said:

15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bate v. Bate has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject- matter.

23. Similarly in the case of Sanjay Singh v. State of Madhya Pradesh : AIR 2002 SC 1998 it was held:

14. that there was no legal evidence tendered in the case which could be made the basis for returning a finding with respect to the alleged cruelty of the accused with the deceased. In the absence of any legal evidence produced in the case, we are of the opinion that the prosecution has failed to prove, beyond doubt, that the appellant had committed the offence under Section 498-A of the Indian Penal Code and find that it is a fit case where he is entitled to be given the benefit of doubt....

24. Another judgment cited is the case of E. Balakrishnama Naidu v. State of Andhra Pradesh 1992 Supp (3) SCC 70, where also it was held that it was not a case covered under Section 306 IPC for the following reasons:

11. The High Court for the elaborate discussions made in its judgment has found on the facts of the case that there is no evidence for recording the conviction under Section 306 IPC. The conclusion arrived at by the High Court reads as follows :

Though the appellant harassed the deceased for not begetting the children and caused her mental agony, there is no evidence that just before her death there was harassment by the accused to the deceased. In the absence of such an evidence showing that due to that harassment the deceased committed suicide, it cannot be said that the accused had abetted the death of the deceased.... Therefore, the accused is found guilty under Section 498-A IPC. Therefore, the conviction of A-1 under Section 306 IPC is set aside. 12. For reaching the above conclusion, the High Court has also relied upon a piece of the medical evidence which is to the effect that no definite cause of death could be found as the body of the deceased was in advanced stage of putrefaction and that there is no direct evidence to show that the death was caused by the appellant/accused..

25. The next judgment is the case State of H.P v. Nikku Ram and Ors. : 1995 (6) SCC 219 where it has been held:

15. As to the offence under Section 306 IPC, the trial court has first observed that none of the respondents could really be said to have abetted suicide, as per the definition of 'abetment' in Section 107 IPC. This was the accepted position. The stand of the prosecution rather was that abetment stood established because of what has been provided in Section 113-A of the Evidence Act.

16. This shows that if the woman had been subjected to cruelty, as defined in Section 498A IPC, the Court may presume, having regard to all the circumstances of the case, that the suicide had been abetted by her husband or any of his relative. So, let it be seen whether Roshani was subjected to cruelty. A reference to Explanation (b) of Section 498-A shows that if there be harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security, the same would amount to cruelty. The case of the prosecution being that the accused party had demanded television, electric fan, etc., let us see whether there is reliable evidence to

establish the same. The learned trial court has dealt with this matter in para 25 of the judgment and it has been observed that neither PW 5 nor PW 6 has stated about any of the alleged demands and though PW 1 deposed that Batholi and Kamla had made illegal demands of electric fan and television etc. from PW 4 Sant Ram, the father of Roshani, the latter did not say anything about the same. The court, therefore, rightly disbelieved this part of the prosecution case. There is thus no reliable evidence to hold that Roshani was being harassed within the meaning of Explanation (b) of Section 498-A.

So, here again, it was due to lack of evidence, the presumption was not drawn.

26. In view of the aforesaid and having gone through even the other judgments, I find that all the judgments cited on behalf of the appellants are distinguishable on facts.

27. In the present case, there is clear evidence in the form of statement made by PW-2 Shri S.D. Malhotra, father of the deceased, PW-4 Smt. Sanotsh Malhotra, mother of the deceased, the writings left by the deceased and the statements made by PW7 Dr. V.G. Dattar that the appellants were not only harassing the deceased for having not brought dowry as per the wishes of her in-laws though not soon before her death but the first appellant even instigated the deceased to commit suicide by telling her time and again to do so. The final blow came when the first appellant contracted the second marriage as noted by the deceased in the suicide note Ex.PW2/B which fact is also fortified from the statement made by PW3 that an effort was being made by the father of the first appellant to arrange the second marriage of the first appellant despite the fact that he was already married to the deceased.

28. It is a matter of record that except denying these circumstances in their statement made under Section 313 Cr.P.C no effort has been made on behalf of the first appellant to rebut this evidence either by appearing himself in the witness box or by producing his father as a witness. In fact, the writings left by the deceased leaves no room for doubt that the deceased wanted to have a peaceful married life but the first appellant always kept on taunting her and instigating her to die as is clear from document Ex.PW2/E which is to the following effect:

You wanted to break off completely from my parents and brother (just to show that you are not happy with them) the reason was that I didn't bring much dowry. According to your mummy, I had come from a .Halka Ghar. as if yours is a very heavy ghar. I don't give a damn for money but why did you give me tana very other day saying one thing or the other example .tu sirf ek gold set le kar aai hai aur who bhi halka saa.. You humiliated me and you tried to blackmail me. You wanted my parents to come to you with folded hands with lots and lots of precious things for you and your family....

In the aforesaid letter Ex.PW2/E she also mentions:

After all these things when you saw that my parents are not giving up and not fulfilling you demands then you thought its just useless to keep me at your place. .You sent me to my parents place.. I had to come here alone. Just after 1 month of my marriage. You didn't even drop me here. You didn't even care to knew whether I have kept enough dresses with me or not. You didn't care for my emotions. You deliberately said those sentences again and again which you knew had pricked deep into my heart. You never came to see me. If you thought I was a very bad person, that I couldn't satisfy your demands, then would have gone to the court (instead of humiliating me, hurting my ego) for divorce.

29. Ex. PW2/F mentions about the dilemma which had been caused by the first appellant and also talks about the instances that the deceased was instigated to commit suicide. In this letter, she writes:

Rajiv,

I didn't want to commit suicide. You got those statements written on a piece of paper forcible by me. You exploited me blackmail me. And then you told me very casually the ways to commit suicide you always felt that you can buy anything by money. You employed detectives against me. How can a husband be so cruel to ones wife.

Your mother oh how can a women be so much against another woman. She filled your ears against me. I always wanted to respect you all but what have you given

me in return humiliations and humiliations there's a limit of everything.

Kisi ki khusian cheen kar tum aise rehte hoo jaise ki kuch hua hi nahin.

30. The deceased could have probably lived with harassment but she could not bear the fact that the first appellant contracted second marriage as is apparent from the document Ex.PW2/B i.e. the suicide note, which reads as under:

Dear Rajiv,

Tumeh itni bhi kya jaldi thee dusri shadi karne ki. Mujhse divorce le liya hota ya mere marne ka intzar kar liya hota. Par jo respect maine tumeh kabhi di thee tum uske layak nahin ho. Mummy, jab tak meri lakdiyan na jal jayen, Rajiv ko kuch nahin batana.

Thank you,

Suman

31. In view of the aforesaid evidence on record the judgment delivered in the case of Sharad Birdhi Chand Sarda (supra) also has no application to the facts of this case. In that case the court was confronted with a situation where it was to be decided as to whether the deceased was murdered or committed suicide and has no application to the facts of this case. Here there is no such dilemma as to whether it was the case of murder or the case of suicide as the suicide note left by the deceased (Ex.PW2/B) leaves no room for doubt that it is a case of suicide. The circumstances which led to such an unfortunate decision also find mention in the suicide note. In the present case, there is also no evidence on record which may go to show that the deceased was of any sensitive nature. She was a doctor and had been attending her duties almost every day. Whatever she has stated has been corroborated not only by PW3 but also by PW7 who are independent witnesses. Supplying of drafts of the affidavits in his own handwriting to the deceased and asking her to execute those documents to show that she was going to commit suicide of her own proves that the first appellant instigated the deceased to commit suicide. It is a matter of record that the first appellant has not cared to deny his handwriting on those drafts.

32. Thus in this case there is ample evidence of instigation bit by bit coupled with evidence of treating the deceased with cruelty at least by the first appellant and therefore, the trial judge rightly drew presumption on account of insertion of the provisions contained under Section 113A of the Evidence Act. In fact, the presumption only shifts the burden on them to prove the facts otherwise which the appellants have not bothered to do. Even with respect to the vital fact i.e about the second marriage of the first appellant, neither the first appellant nor anybody on his behalf has come in the witness box to clear the position which could have been easily done, more so when PW-3 also supported the apprehension of the deceased by referring about the communication with the father of the first appellant in this regard. Even the father of the first appellant did not think it proper to clarify the position by appearing as a witness.

33. It is true that the Trial Court has not accepted the statement of PW2 Shri S.D.Malhotra and his wife PW4 with respect to demand of dowry soon before the death of the deceased on account of adding and padding but the allegations which have also been made by the deceased in her suicide note and which have been corroborated even by PW2 and PW4 can be taken into consideration for the purpose of holding that it was a case where the deceased was treated with mental cruelty as is contemplated in explanation (b) of Section 498A IPC. As stated above, there is no rebuttal evidence on behalf of the appellants to the assertions made by the deceased in her writings which are in the nature of dying declarations and are admissible under Section 32 of the Evidence Act. The allegations made in those documents are corroborated by the statement of father and mother of the deceased.

The statement made by her father was at the earliest point of time i.e soon after the incident. It is true that he tried to add and pad later but whatever he stated on the very first day can always be dissected from his statement for the purpose of holding that it was a case where the deceased was treated with cruelty. Since the writings categorically goes to show that the deceased was being instigated by the first appellant to commit suicide because he was not ready to live with the deceased and in fact wanted to contract a second marriage, which is the severest form of cruelty in the presence of the first wife under the Hindus. This probably fell

as the last hammer on the patience of the deceased which compelled her to commit suicide. I believe that such like cases prevailed upon the Parliament to amend Section 498A IPC and to insert Section 113A of the Indian Evidence Act as collecting direct evidence of instigation/abetment in such cases is difficult.

34. Now coming to the standard of proof, I may again make reference to the judgment delivered by the Apex Court in the case of Gurbachan Singh v. Satpal Singh and Anr. : (1990) 1 SCC 445 where it is said:

4. The first thing that is necessary for proving the offence is the fact of suicide. Abetment is a separate and distinct offence provided the thing abetted is an offence.... She was in the house of her in-laws. There is ample and sufficient evidence that she had complained that she was taunted for bringing meagre dowry and that even insinuated that she was carrying 'an illegitimate child'. The aforesaid facts stand established by cogent and reliable evidence. These are grave and serious provocation enough for an ordinary woman in the Indian set up, to do what the deceased is alleged to have done. There is also evidence that the persons in the house of her in-laws including the mother-in-law- mother of the accused Satpal Singh, made no attempt to save her from the burn injuries. The absence of any burn injury in the hands of the people around, indicates and establishes that there was no attempt to save the deceased though she was seen being burnt. The evidence of attitude and conduct of the in-laws-the father- in-law, mother-in-law and the husband after Ravinder Kaur, the deceased, got burns in not informing the parents and not taking prompt steps to take her to hospital for giving medical assistance corroborate the inference that these accused connived and abetted the crime. Criminal charges must be brought home and proved beyond all reasonable doubt. While civil case may be proved by mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt.... It is true even today, as much as it was before that there must not be any 'reasonable doubt' about the guilt of the accused in respect of the particular offence charged. The courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting of some guilty persons. Even after the introduction of Section 498A of the I.P.C. and Section 113A of the Indian Evidence

Act, the proof must be beyond any shadow of reasonable doubt. There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases.... The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

5. The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated.

35. Taking note of the amendment brought in the statute book and extracting those presumptions even in a case which occurred before the coming into force of the amended provision such as 113A of the Evidence Act, the Apex Court in the case of State of Punjab v. Iqbal Singh reported in : 1991 3 SCC page 1 has discussed the changes which were brought in the law and observed;

7. The law underwent a further change with the introduction of Section 304B in the Penal Code and Section 113B in the Evidence Act by the Dowry Prohibition (Amendment) Act, 1986. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry death under Section 304B for which the punishment extends to imprisonment for life but not less than imprisonment for seven years. By Section 113B, Evidence Act, the court has to raise a presumption of dowry death if the same has taken place within seven years of marriage and there is evidence of the woman having been subjected to cruelty and/or harassment.

8. The legislative intent is clear: to curb the menace of dowry deaths, etc., with a firm hand, we must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498A, I.P.C. would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304B, I.P.C. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract Section 302, I.P.C. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, I.P.C. In such a case the conduct of the person would tantamount to inciting provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.

It was also observed that , " The facts of the present case the facts clearly reveal from the divorce deed Exh. D-2 that the relations between the husband and the wife were strained even in 1977. There is intrinsic evidence in that document that the wife apprehended blood shed and harm to her children. Before the execution of this document she had sought police protection by her application/letter dated

12th October, 1977. Then in April, 1983 her efforts to secure a transfer from the school where she was harassed by the Head Master were frustrated by her husband. Her husband had kept up the pressure for extra-dowry since her marriage and had stepped it up after the demise of her father on learning that her mother had received the G.P. Fund, Gratuity, etc., due to her father. Since she and her mother and brother were not able to meet this demand she was subjected to considerable torture. Added to that was the anxiety caused by her husband's conduct at trying to frustrate her efforts to seek a transfer from the school where she was serving. The last straw on the camel's back fell when she was severely beaten on the previous day, i.e. 6th June, 1983 as is evident from her letter of 7th June, 1983. An atmosphere of terror was created to push her into taking the extreme step. It would seem it was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more miserable after she is dead and gone. In this fact/situation can it be said that the husband had not been responsible in creating circumstances which would provoke or force her into taking the only alternative left open to her, namely suicide? Can it be said that the husband did not realise where he was leading her by his wilful conduct? We think in the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under Section 306 I.P.C. We think that the High Court committed an error in reversing the conviction. We, therefore, allow this appeal, set aside the High Court's order and restore the order of conviction and sentence passed by the trial court..

36. Applying the ratio of the Judgments discussed above to the facts of this case and taking into consideration all the circumstances of the case, I find that the decision given by the Trial Court i.e. the Addl. Sessions Judge to draw presumption under Section 113A of the Evidence Act does not call for any interference insofar as the first appellant is concerned. Accordingly, the first appellant is held guilty for an offence under Section 306 IPC. However, the second appellant is acquitted of charges under Section 306 IPC.

37. Insofar as conviction of both the appellants under Section 498-A/34 IPC is concerned, as discussed above, there is ample evidence and therefore, that conviction under Section 498-A/34 IPC is upheld.

38. Now, coming to the sentence awarded to the appellants, I find that in the case of Mohd. Hoshan v. State of A.P. (supra), the Apex Court deemed it appropriate to modify the sentence of imprisonment to the period already undergone having regard to the fact that both the appellants were in imprisonment for about two months. The incident in that case had taken place on 09.03.1983; appellant No. 2 is the mother of appellant No. 1 and was aged about 60 years. In these circumstances, it was held that since both the appellants are on bail it may not be appropriate to send them to jail. This was a case where the appellants were convicted under Section 306 read with Section 498-A IPC.

39. Similarly in the case of Devi Ram v. State of Haryana (supra) wherein the incident in question relates to the year 1987 and the appellant had already served a part of his sentence, after observing that the appellant was an aged person after upholding his conviction, the sentence was reduced to the period already undergone. However a condition was imposed on appellant to deposit the fine of Rs. 10,000/- and in default to serve out remaining part of his sentence. This was also a case under Section 306 and 498-A IPC.

40. Further, in the case of Satvir Singh v. State of Punjab (supra), the Apex Court did not interfere with the conviction under Section 498-A IPC. In this case both the appellants were aged and had crossed the age of 70 years and therefore, the Apex Court decided to modify the sentence by reducing it to the period already undergone. However, the fine part of the sentence was enhanced to rupees one lakh.

41. In the case of Kansraj v. State of Punjab (supra) the conviction under Section 304-B and 306 IPC was upheld but the sentences awarded was reduced to five years besides payment of fine as imposed by the trial Court.

42. Insofar as appellant Sunita Narula is concerned, I find that she is aged about 75 years and is suffering from various illness for which documents have also been filed by the appellant on record. She is on bail. In view of what has been laid down in the above-cited judgments I find that after twenty years no useful purpose would be served in sending the appellant Sunita Narula to jail and as such, the sentence awarded to her is reduced to the period already undergone while maintaining her

conviction under Section 498A only.

43. However, as far as the case of the first appellant Rajiv Narula the husband of the deceased is concerned, his conviction is maintained both Under Section 498A/34 and under Section 306 IPC. Regarding the sentence awarded to him, taking into consideration that he has already undergone imprisonment for a period of more than one year and incident has taken place 20 years ago, I do not find it would be appropriate to send him to jail again provided he deposits Rupees two lakhs as compensation with the trial court within a period of two weeks. In that case, the sentence awarded to him will stand reduced to the period already undergone. Half of the compensation so deposited with the trial court shall be released to the parents of the deceased while the other half will go to the State towards the cost of litigation. However, if the aforesaid amount is not deposited within time then the said appellant would have to serve the remaining part of his sentence. Thus, his bail bond shall remain in operation and would be discharged only on deposit of compensation or when he surrenders before the Court. However, the bail bond of appellant Sunita Narula stands discharged as it is informed that she has already paid the fine.

44. With these observations the appeals are partly allowed. TCR be sent back forthwith along with a copy of this judgment to the trial court.