

Samir Samanta and anr. Vs. State

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Court : Kolkata

Decided On : Jun-15-1991

Reported in : 1993CriLJ134,II(1992)DMC233

Judge : Mukul Gopal Mukerjee and ;Gitesh Ranjan Bhattacharjee, JJ.

Acts : [Evidence Act, 1872](#) - Section 113A; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A

Appeal No. : Crl. A. No. 33 of 1988

Appellant : Samir Samanta and anr.

Respondent : State

Judgement :

Mukul Gopal Mukerjee, J.

1. This appeal is directed against the judge- ment and Order dated December 4, 1987 passed by the Assistant Sessions Judge, Kalna in Sessions Trial No. 13 of 1987 (Sessions Case No. 108 of 1987) thereby convicting both the appellants/accused Under Sections 306 and 498A of the Indian Penal Code and sentencing them to rigorous imprisonment for 8 years 6 months and also to a fine of Rs. 2,000/- each, in default to rigorous imprisonment for 6 months more.

2. The appellant No. 1 Samir Samanta is the son of the appellant No. 2 Sreemati Sabitri Bala Samanta. He married Shantana sometime in Jaistha 1388 B.S. While she was in her matrimonial home, Shantana sustained severe burn injury on November 3, 1985 at about 2-30 p.m. inside the kitchen the door of which was found closed from inside at that time and had therefore to be broken open by P.W.I Dilip Pal (who is a tenant of that house) in a bid to rescue her. The fire was extinguished with effort by Dilip and the injured Shantana was rushed to Kalna hospital where she expired at about 7-00 p.m. in that very evening. It is the prosecution case that both the accused subjected the deceased to cruelty and also to harassment over outstanding demand of dowry as a result which she committed suicide by setting fire to her body. Charge was accordingly framed against both the appellants/accused Under Sections 306 and 498A of the Indian Penal Code and the Learned Assistant Sessions Judge convicted both the appellants under both heads of the charge and sentenced them as stated above.

3. P.W.I Dilip Pal is a tenant under the appellants and resides in the same premises. The tenanted portion under his occupation is situated by the side of the kitchen of the appellants. On the date of the occurrence, his wife reported to him about some groaning sound coming from the kitchen of the appellants and he also smelt that something was burning in that kitchen. After coming out of his room he however found that the appellant Samir was strolling on the Varandah and on being asked by him Samir pointed at the kitchen. As it was bolted from inside, Dilip had to break open the door of the kitchen and he found that entire body of the wife of Samir was ablaze. He then brought some beddings, as he says, and wrapped the body of the victim and extinguished the fire. According to the evidence of Dilip the victim was yet alive but unconscious. Being attracted by the alarms raised by Dilip and his wife, the neighbouring people came there and with their help Dilip removed the victim Shantana to Kalna hospital where she died at about 7-00 p.m. in that very evening. According to him the burn incident took place at about 2/2-30 p.m. The First Information Report was lodged by Dilip at about 8.05 p.m. In the F.I.R. it is stated by Dilip that almost every day domestic troubles used to take place between the victim and the appellants/accused and occasionally the appellants even used to assault her. In his evidence he however says that as a tenant he came to know that the victim Shantana subjected to ill treatment by the

two accused and she was not allowed to speak with others and was also subjected to physical torture. As regards the source of his knowledge he says that his wife reported to him all about such tortures. His evidence about perpetration of cruelty or torture upon the victim by the accused persons thus seems to be hearsay. P.W. 2 Shyamali Paul, the wife of P.W.I Dilip Paul says that both the accused subjected the victim to tortures. She further says that the victim Shantana was not allowed to talk with others and she was denied meals. She also says that the female accused prevailed over accused Samir in respect of his marital obligation and the victim was practically denied conjugal life. She says that out of sorrow the victim disclosed everything to her. It is the defence suggestion that these two witnesses are deposing falsely out of grudge as they, being tenants under the appellants, has dispute or quarrel with the appellants over arrear of rents, which however is denied by the witnesses. From the evidence of the I.O. (P.W.14) we get that P.W. 2 Shyamali did not make any statement to the I.O. regarding denial of marital obligation by the accused. Samir at the instance of his mother. It may be noted here that P.W.I and P.W.2 speak about general torture on the victim, but they do not speak anything about dowry demand.

4. Now we look to the evidence of P.W. 8, P.W. 9 and P.W. 10 relating to torture, particularly over demand of dowry. P.W. 8 Narayan Chandra Mukherjee is a local man. He wants to say that about 11/2 month before the date of occurrence the victim's brother came to his house along with Asit Roy, Krishnendu Chatterjee, Kalyan Basu and Rabindranath Nath and it was reported to him that the accused persons were creating trouble and harassing the victim wife and her brothers when she came back from her father's house over outstanding items of dowry. According to his evidence, he then went to the house of the accused and asked the female accused to explain the matter but she gave no reply. He further says that then from Para people he came to know that the accused pressed the brother of the victim for balance amount of cash i.e., Rs. 100/-. However he says that on request he advanced Rs. 100/- to Baldeb (brother of the victim) who paid it to the female accused in their presence; and the 'dispute and/or trouble was settled'. From his cross- examination it however appears that he did not tell the I.O. that he advanced Rs 100/-to Baldeb Rakshit, etc., and that it is for the first time he states in his deposition that Baldeb borrowed Rs. 100/- from him and then paid the same

to the female accused. He further admits that it is for the first time he states in his deposition that Asit Roy, Krishnendu Chatterjee, Kalyan Basu and Rabindranath Nath along with Baldeb Rakshit came to him for settlement of the dispute or trouble of the victim. He however categorically says in his examination-in-chief that he is not aware of any other incident or trouble of the victim, although P.W. 1 and P.W. 2 want to say that they reported to him about the tortures meted out to the victim as deposed by them. As regards the alleged incident of payment of Rs. 100/- to the female accused towards the outstanding demand of dowry P.W. 9 Asit Kr. Roy says that Narayan Mukherjee, Krishnendu Chatterjee and he himself along with others once defected that the mother of the victim and two male persons were standing in front of the house of Nemai Mondal in helpless condition and on being pressed those persons at last disclosed that the accused had refused to allow the victim to enter inside the house on account of the outstanding items of dowry, namely, one radio set, one bell-metal glass and cash of Rs. 100/-. P.W. 9 however says that the mother of the victim and others presented the radio and the glass on that date but failed to pay the cash and on his request Narayan Mukherjee (P.O. 8), advanced Rs. 100/- which was paid to the female accused in their presence. These things were however not stated by him to the I.O. Asit Roy (P.W. 9) says in his examination-in-chief that the victim was subjected to tortures by the female accused who very often asked the victim to go out of the residence uttering that she would not want to see her face again. In his cross-examination he however says that he saw the incident of tortures by the female accused once. And he then refers to the incident relating to the payment of Rs. 100/- by Narayan Mukherjee. It is therefore evident by way of a corollary to his own testimony that he has no personal knowledge about any other occasion of alleged torture. Consequently his deposition that very often the female accused asked the victim to go out of the residence, etc. must be hearsay and is therefore inadmissible in evidence. Moreover he did not make any such statement to the I.O. P.W. 10 Krishnendu Chatterjee is another witness who comes forward to testify about the alleged incident relating to the payment of Rs. 100/-. What he wants to say is that once he along with others saw that the victim, her mother and others were waiting outside the house of the accused and on enquiry he came to know that the female accused refused to accept the victim as daughter-in-law on account of

outstanding items of dowry to which they intervened. He further says that Narayan Mukherjee (P.W.8) advanced Rs. 100/- for amicable settlement which was paid to the female accused by Baideb Rakshit and the matter was settled thus. To the I.O. however he did not state that he along with others intervened with regard to the outstanding items of dowry and arranged the entry of the victim into the house of the accused.

5. Claiming derivative knowledge, P.W. 11 Ganesh Chandra Saha says that the victim had no peaceful married life. He claims to have acquired such knowledge from the discussion amongst the inmates (of their house). In his cross-examination he candidly admits that he had no personal knowledge about torture upon the victim. His evidence on the point being heard is clearly inadmissible in evidence.

6. As regards the incident of burn sustained by the victim, P.W. 11 Ganesh Chandra Saha says that on coming to know that Samir's wife sustained burn he rushed to the place of occurrence and saw the victim in burnt condition and he immediately went to the P.S. and informed the police. The information was recorded in the G.D. book by P.W. 14 Arun Mukherjee, S.I. of Police who then rushed to the P.O. with force for enquiry and in course of enquiry he received a written complaint from P.W. 1 Dilip Paul at about 7-30 p.m. and the same was transmitted to the P.S. treating it as F.I.R. and a case was started Under Sections 306 and 498A I.P.C. P.W.4 Dipendu Chatterjee, P.W.6 Smt. Santi Roy, P.W.7 Kiriti Roy, P.W. 8 Narayan Chandra Mukherjee and P.W.9 Asit Kr. Roy all came to the house of the accused persons contemporaneously with the occurrence and they speak of burn sustained by the victim and her removal to hospital.

7. From P.W.7 Kiriti Roy we get that the accused Samir has deformity in his arms and he cannot move freely. He further says that the accused Samir is devoid of sense of proportion. From P.W.2. Smt. Shyamali Paul we get that the victim had no issue. P.W.6 Smt. Santi Roy also says that the accused Samir was devoid of sense of proportion.

8. A very significant aspect of this case is that the P.W.3 Baldeb Rakshit who is the brother of the victim does not support the prosecution case of torture on his

sister by the accused persons. He was declared hostile by the prosecution. He says that just one month before the incident he took his sister to the house of the accused and at that time he got no information from her regarding torture by the accused. In his cross-examination by the defence he says that his sister went to their house from time to time and he also came to the house of the accused on many occasions, but neither her sister nor the neighbouring people ever reported to him about any torture of her sister by the accused persons. He rather asserts that his sister lived happily with the accused. The other witnesses who were also declared hostile by the prosecution are P.W.4 Dipendu Chatterjee, P.W.5 Nemaï Mondal, P.W.6 Smt. Santi Roy and P.W.7 Kiriti Roy. It may be noted here that P.W.5 Nemaï Modal who is a teacher of a High School says that there were quarrels between the female accused and the P.W.I Dilip Paul prior to the incident and on one occasion he intervened to settle the dispute. This, according to the appellants, supports the defence plea that the P.W.1 and his wife P.W.2 came to depose against the accused persons out of grudge. In this connection it may be noted that the P.W.1 instead of straightway denying the defence suggestion rather gives an evasive answer by stating that he cannot recollect whether there was any Salish over dispute between him and the accused landlord. He also cannot say whether this accused Samir is an abnormal fellow. This is also somewhat surprising. Samir is not only his landlord but is also a very close neighbour. As atenant he claims to have knowledge about torture made by Samir on the victim, but he does not know whether Samir is an abnormal fellow. We have the evidence of other witnesses (namely, P.W.6 and P.W.7) to the effect that Samir has some abnormality, both physical and mental, in the shape of deformity of arms, inability to move freely and lack of sense of proportion. On the basis of his own knowledge and assessment about the physical and mental states of Samir who was his landlord and close neighbour and whom he must have had ample opportunity to watch thoroughly, it is only expected, the P.W.I Dilip Paul should give a specific answer, be it positive or negative, instead of being evasive by stating that he does not know whether Samir is an abnormal fellow. The instances discussed above perhaps indicate that the P.W.I probably exercises some discretion in the matter of dispersal of knowledge and information.

9. Since P.W.3 Baldeb Rakshit did not support, while in the witnesses box, the allegation of torture upon his sister, the victim by the accused persons the prosecution took the stand that he had been gained over by the accused persons. In support of such stand the prosecution relied on a Post Card (ext. 5) purporting to have been written sometime in September/October, 1987 by Baldev Rakshit to P.W.8 Naryan Chandra Mukherjee. The said Post Card (exb.5) contains a recital that Samir's maternal uncle and another approached the writer of the letter Baldev Rakshit for amicable settlement concerning Santana, but he advised them to go to the addressee Narayan Chandra. In the letter Narayan Chandra was requested to do as he thought fit in that regard. The letter was produced by P.W.8 Narayan Chandra, while he was examined in Court. P.W.3 Baldev Rakshit could have been recalled by the prosecution and confronted with this letter for offering his comments thereon so that the Court could have an opportunity of getting Baldev's version in the matter, but that was not done. At any rate there is of course nothing in this letter to show that the deceased Santana was subjected to cruelty or torture by the accused persons. Mere eagerness on the part of some relatives of the accused persons, to effect an amicable settlement is not necessarily indicative of guilt of the accused persons.

10. Now we embark upon an enquiry on the basis of the evidence on record as to whether the prosecution have been able to establish the charge of cruelty Under Section 498A I.P.C. Leaving aside, for the time being, the evidence relating to dowry demand, we find, as already discussed, that P.W.1 Dilip Paul, P.W.2 Smt. Shyamali Paul, P.W.9 Asit Kumar Roy and P.W.11 Ganesh Chandra Saha depose about cruelty. From the discussions already made, it would appear however that the evidence of both P.W. 9 and P.W.11 on the point is hearsay and is therefore inadmissible. The evidence of P.W.1 Dilip Paul regarding cruelty is also based upon what he heard from his wife P.W.2 Smt. Shyamali Paul. Therefore the only evidence which deserves serious consideration in connection with the question of cruelty to the deceased is the evidence of P.W.2 Shyamali. She says that both the accused subjected the victim to tortures. She then specifies the nature of such torture. She speaks of three kinds of torture, namely that (1) the victim was not allowed to talk with others, (2) she was denied meals, and (3) she was denied conjugal life by the accused Samir at the instance of his mother. The witness

however does not claim to have any personal knowledge about any of these matters. She claims to have heard about the same from the victim herself. She says that out of sorrow the victim disclosed everything to her. She however does not say with whom the victim was not allowed to talk and on what occasion or occasions and with respect to what matters she was not allowed to talk. Unless sufficient particulars in these regards are furnished to the Court,, it may be difficult for the Court to make its own assessment as to whether the victim was really subjected to cruelty by being debarred from talking with others. It also does not appear that the victim was subjected to any general restraint in the matter of talking with others, and on the contrary it appears that the victim had rather liberal opportunities to talk to P.W. 2 and open her mind freely. P.W.2 says that from time to time during four years the victim reported to her about her sorrows and sufferings. Such a state of affair where the victim had a sustained and liberal access, both physical and mental, to P.W.2 does not lend credence to any culpable aspect of the allegation that the victim was not allowed by her husband and mother-in-law to talk with others. The next item of allegation relating to cruelty which is projected by the evidence of P.W.2 is that the victim was denied meals. Now this allegation also has not been supported or illustrated by any specific instance. It is really very difficult to base any finding of cruelty on such a broad and generalised allegation that the victim was denied meals. The allegation can not be true obviously in its literal sense, else the victim would have starved to death. The third item of allegation relating to cruelty as deposed by P.W.2 is that the victim was denied conjugal life by the accused Samir at the instance of his mother. Here also the allegation is rather omnibus. Conjugal life has many facets and is a bilateral aggregation of many 'gives and takes' and many adjustments. Stress and strain, frictions and rubs upto a limit are not uncommon even to a healthy conjugal life. In order to arrive at a finding of cruelty by reason of denial or deprivation of the conjugal life where the husband and the wife were living together the Court must have sufficient particulars before it as to which facet or facets of the conjugal life were subjected to violation or violence and what was the precise nature of such violation or violence. In our present case no such particulars are forthcoming. The mere fact that the couple did not have any issue inspite of a married life for four years does not necessarily indicate denial of conjugal life. In the absence of

necessary particulars regarding the alleged denial of conjugal life it will not be proper to record a finding of cruelty on ground of such denial on the ipse dixit of P.W.2.

11. In this connection, it has to be noted that the term 'cruelty' has been given a defined meaning in Section 498A I.P.C. under two heads. Under the said section 'cruelty' means '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'. Therefore, under Clause (a), in order to constitute cruelty it is not enough that the conduct of the accused is wilful and is offensively unjust to the woman, but it is further necessary that the degree of intensity of such unjust conduct on the part of the accused is such as is likely to drive the woman to commit suicide or such conduct is likely to cause grave injury or danger to her life or limb or to her mental or physical health. From the discussion of evidence already made by us it is indeed difficult to record any finding of cruelty under Clause (a) of Section 498A I.P.C. on any objective assessment of the materials on record which are either inadmissible in evidence or are too generalised, exaggerated or vague to sustain such a finding, unless the deficiency is filled up by stretching a liberal amount of surmise and conjecture, which we are afraid, cannot be done. But then the materials on record, we find warrant a finding of cruelty under Clause (b) of Section 498A I.P.C, P.Ws. 8, 9 and 10 speak about a specific instance of harassment of the victim about 11/2 months before the occurrence over outstanding items of dowry demand including an amount of Rs. 100/- which we have already discussed and we find no sufficient ground to discard their evidence on this point. We, therefore, find the accused-appellants guilty of cruelty under Clause (b) of Section 498A I.P.C.

12. Now let us come to the question as to how far the prosecution have been able to prove the charge of abetment to commit suicide punishable Under Section 306 I.P.C. The learned Assistant Sessions Judge has found the appellants guilty of the charge framed Under Section 306 I.P.C. He has observed thus :

'P.W. 8x to 10 have thrown sufficient light that the victim wife was subjected to illtreatment and harassment on account of the outstanding dowry which comes within the purview of the term 'mental cruelty'. Instances are not rare when mental cruelty is found to be of greater impact upon a married lady in comparison of physical torture (which has not been specifically proved). From the above evidence I am satisfied that the prosecution has been successful to establish the case of mental cruelty for which the deceased/ wife lost charm of conjugal life and it ultimately led her to commit suicide by burning'.

He has also made further observations which are quoted below :-

Admittedly the incident occurred within seven years from the date of marriage and as such the prosecution is entitled to benefit of Section 113A of the Evidence Act. Thus there should be a presumption as to the abetment of suicide by these two accused who not only failed to provide the deceased wife with congenial atmosphere in their house but on the contrary subjected her to tortures or harassment and humiliation for non-fulfilment of outstanding items of dowry. There is no other earthly reason behind her (deceased) committing suicide.'

The gist of the observations of the learned Assistant Sessions Judge is that the accused persons subjected the deceased wife to mental cruelty on account of outstanding items of dowry for which the deceased lost the charm of conjugal life and that was the reason, there being no other earthly reason, for her to commit suicide and in the circumstances the benefit of Section 113A of the Evidence Act is available to the prosecution for establishing a charge of abetment of suicide. The learned Assistant Sessions Judge, it seems, mechanically resorted to a strait-jacket approach in applying the provisions of Section 113A of the Evidence Act for raising a presumption of abetment of suicide. It may not be a correct approach in all circumstances that as 'no other earthly reason' for commission of suicide was forthcoming before the Court (in the absence of any probe at all into that aspect), therefore, by reason of cruelty a presumption of abetment of suicide should be drawn against the husband and the in-laws. The Court in having recourse to the presumption under Section 113A of the Evidence Act must be circumspect. The legislative mandate of that Section is that where a woman commits suicide within

seven years of marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as the term has been defined in Section 498A I.P.C. the Court may presume, having regard to all the other circumstances of the case that such suicide had been abetted by such person. It is evident that the legislature was extremely careful in drafting the provisions of Section 113A of the Evidence Act. Had it been the intention of the legislature that the Court should in all cases jump upon a conclusion as a rule that there has been abetment of suicide simply because suicide has been committed by the woman within seven years of marriage and she was subjected to cruelty, the legislature would not have used such flexible expression as 'the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband '. The expression used is 'may presume' and not that rigid as 'shall presume'. In view of Section 4 of the Evidence Act, the import of the expression 'may presume' is that the Court may either regard the fact in question as proved, unless and until it is disproved, or may call for proof of it. In section 113A of the Evidence Act, the legislature in its wisdom did not leave it at that by using the expression 'may presume' alone, but has supplemented the same by using the further expression 'having regard to all the other circumstances of the case' which casts a positive responsibility on the Court to take into consideration all the other circumstances of the case also, namely the circumstances which may be there besides the two basic circumstances mentioned in the section itself which are suicide within seven years of marriage and proof of cruelty, in deciding whether the presumption of abetment of suicide should be drawn in a particular case from the proof of cruelty which itself is separately punishable Under Section 498A I.P.C. In the present case, the outstanding demand of dowry as we get from the evidence of P.Ws. 8, 9 and 10 were a radio, a bell-metal glass and a sum of Rs. 100/- and this demand was met in toto in presence of those witnesses about 11/2 month before the occurrence. We also get it from those witnesses that the dispute and the trouble over the outstanding demand of dowry were settled thus. That being so, this is a circumstance which also must be taken into consideration in deciding whether the presumption of Section 113A of the Evidence Act should be drawn in this case. In connection with the question of admissibility of the statements of the deceased Under Section 32(1) of the Evidence Act, Fazal Ali, J.

in *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 dealt with the test of proximity and observed, inter alia, that 'where death is a logical culmination of a continuous drama long in process and is, as it were, a final of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context'. In the light of the above observation, the proximity test was also applied by a Division Bench of this Court consisting of A.C. Sengupta and J.N. Hore, J.J, in the case of *Niharbala v. State* (1988 (II) C.H.N. 398). That was a case where the trial Court recorded a conviction Under Section 306 I.P.C. against the husband and the mother-in-law in view of suicide committed by the wife about 3 years after the marriage. There was history of ill-treatment and cruelty towards the wife. She was driven away from her matrimonial home and was not even allowed to take the suckling baby with her. She had to take recourse to law for taking out a search warrant for the recovery of the child. After recovery of the child there was an amicable settlement between the husband and the wife on 5th May, 1983 and the wife went back to her matrimonial home and lived there till she committed suicide on the 15th June, 1983. The question arose whether certain statements made by the deceased wife to some of the witnesses concerning the acts of torture and ill-treatment meted out to her were relevant and admissible. In that connection, J.N. Hore, J. observed thus:-

'Turning to the facts of the present case, it appears that the element of continuity is lacking. As seen earlier, the dispute over the custody of the child was amicably settled between Sikha and Tapan on 5.5.83 and Sikha went back to her matrimonial home and lived there till her death on 15.6.83. It appears that Sikha forgot and forgave her previous ill-treatment and returned to her matrimonial home to live with her husband and child with a renewed hope for a happy future. We are however, kept entirely in the dark about what happened during the vital period between 5.5.83 and 15.6.83. Though there was a back-ground of ill-treatment and cruelty, in the absence of any evidence whatsoever it would be a mere conjecture to hold that there were renewed acts of cruelty which ultimately drove Sikha to commit suicide. There might have been altogether new transactions of a different nature having proximate relation to her death. It cannot therefore, be said with any amount of assurance that the distant transactions as sought to be proved by the

prosecution-constitute one organic whole or that 'death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story'. In our opinion the statements of Sikha have no proximate relation to her death and are, therefore, inadmissible under Section 32(1) of the Evidence Act.'

13. Now, if in any particular set of facts and circumstances-previous ill-treatment or cruelty loss the potentiality of a probable cause of suicide by dint of proximity test, the same should not ordinarily be invoked to raise a presumption of abetment of suicide. Proximity test also serves as a legitimacy test in determining whether it would be legitimate in the particular facts and circumstances of a case to draw a presumption of abetment of suicide Under Section 113A of the Evidence Act by reason of by gone cruelty. The importance of proximity test in the matters of presumption can also be appreciated by referring to the provisions of Section 113B of the Evidence Act which runs thus:-

'When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had ben subjected by such person to cruelely or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation : For the purposes of this section, 'powry death' shall have the same meaning as in Section 304B of the 'Indian Penal Code'. It may be mentioned here that both the said Section 113-B of the Evidence Act and Section 304-B of the Indian Penal Code have been inserted in the respective statute books in 1986 and these provisions having no retrospective operation for reasons for which Section 113-A of the Evidence Act has been held in Hiharbala v. State (supra) to have no retrospective operation, are not applicable to the present case in which the occurrence took place in November 1985. It is, however, to.be noticed that although the legislature has used the expression'shall presume' in Section 113-B of the Evidence Act instead of 'may presume, having regard to, all the other circumstances of the case' as in Section 113A of the Act, yet even in. Section 113-B the proximity test has been assigned a definite role for determining whether it is a fit case for invoking the compelling presumption or what is called the presumption of law as envisaged in that Section The expression 'and it is shown

that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry', as used in Section 113-B is pregnant with the idea of proximity test. The cruelty or harassment must have been committed soon before her death. This, reflects the insignia of proximity test. The question as to what length of time will answer the requiremen of the words, 'soon before', may of course depend upon the facts and circumstances of a case. But the legislative intent is clear that even the compelling presumption of Section 113-B of the Evidence Act is confined only to cases where proximity of time by itself lends a safe assurance about the existence of a proximate relation between torture over dowry demand and unnatural death as cause and effect. There is no reason to suppose that Section 113-A, the language of which is rather all-embracing excludes proximity test even when such test is projected by the facts and circums tances of the case.

14. From the discussions made above it is evident that in deciding whether the permissive presumption or the presumption of fact as envisaged in Section 113-A of the Evidence Act should be invoked in any particular case the Court will have to be circumspect and will have to consider all the attending facts and circumstances of the case. In our present case the allegation of cruelty has not been established by any cogent evidence except one incident regarding outstanding items of dowry demand that took place about 11/2 month before the occurrence. The brother of the deceased does not make any allegation of cruelty in his deposition. The mother of the deceased also does not come to the witness-box to voice any allegation of cruelty. There is also no evidence or indication that they have been silenced by any threat or intimidation. It is also improbable that these near and dear relatives of the deceased could be gained over by illegal gratification. And if they could be, why not also those of the witnesses whose depositions go against the accused persons. It is however possible that near relatives may mellow down on appraach where the grievance is emotional or nominal rather than substantial. Then we have it in evidence that the dispute or trouble over the outstanding items of dowry demand, namely demand for radio, bell-metal glass and a sum of Rs. 100/- was settled in presence of witnesses by meeting the demand in toto about 11/2 month before the wife committed suicide. Now if the outstanding dowry demand was met and the matter was settled as the witnesses say, but the wife

committed suicide about 11/2 month thereafter and there is absolutely no evidence that during this 11/2 month any fresh or further dowry demand was made or any torture was perpetrated, the result of the proximity test which is floated by the facts and circumstances of the case, we are afraid, turns negative. The reasoning offered by the learned Assistant Sessions Judge in invoking the presumption of Section 113-A of the Evidence Act that the wife committed suicide as she lost charm of life on account of mental cruelty perpetrated on her due to non-fulfilment of the demand for outstanding items of dowry loses its legitimacy in view of the fact that the demand for outstanding items of dowry was fulfilled and the dispute or trouble over the matter was settled about 11/2 month before the wife committed suicide. It is difficult to presume that she would have been prompted by a settled matter to commit suicide after a considerable length of time. In order to attract presumption of abetment of suicide under Section 113-A the facts and circumstances should be such as can reasonably sustain a presumption about the existence of a nexus of cause and effect between the alleged cruelty and suicide. Where the probability of existence of that nexus suffers set back due to pronounced withdrawal of the causal syndrome, it will be unsafe and therefore unjust to yet invoke a presumption of guilt against the accused Under the said Section There however, cannot be any cut-and-dried formula as to where the presumption Under Section 113-A of the Evidence Act should or should not be drawn and it all depends upon the totality of the facts and circumstances of each case. Having regard to the facts and circumstances of the present case and the state of evidence, as discussed elaborately, we do not think it to be a fit case for invoking the presumption of abetment of suicide Under Section 113-A of the Evidence Act. That being so, the conviction of the appellants Under Section 306 I.P.C. as recorded by the learned Assistant Sessions Judge on the basis of such presumption cannot be sustained. At least the appellants are entitled to benefit of doubt in respect of the charge Under Section 306 I.P.C.

15. In the result, the conviction of the appellants under Section 423-A I.P.C. is upheld but the conviction Under Section 306 .P.C. is set aside. Unfortunately the learned Assistant Sessions Judge passed a composite sentence for conviction under both the Sections which he should not have done. He has passed substantive sentence of rigorous imprisonment for eight years and a half alongwith

a fine of rupees two thousand each, in default, to imprisonment for six months more. Since the conviction under Section 306 I.P.C. has been set aside and since the maximum sentence is imprisonment for three years and a fine for an offence punishable under Section 498-A I.P.C. under which they stand convicted and since the accused appellants have already undergone imprisonment for more than three years five months since their conviction by the trial Court, we hereby reduce the sentence of rigorous imprisonment to three years but maintain the fine of rupees two thousand on each of the accused-appellants, in default, to suffer rigorous imprisonment for six months more for their conviction Under Section 498-A I.P.C. the orders of conviction and sentence passed by the learned Assistant Sessions Judge stand modified accordingly and the appeal thus stands allowed in part only.

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