

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PENAL CODE

Judgment reserved on :07.02.2013

Judgment delivered on: 07.03.2013

CrI. A. 327/2000

SUBHASH CHANDRA

...Appellant

Through: Mr. Dinesh C. Mathur, Sr. Adv. with Mr.Badar Mahmood,
Mr.Pankaj Verma, Mr.Devinder Dedha and Mr.Anish Dabbas, Advs.

Versus

STATE

...Respondent

Through: Ms. Fizani Hussain, APP along
with Inspector Ajay Tomar, AHS, Crime.

Mr. Sanjay Ghose, Mohd. Farrukh, Ms.Gayatri Sharma, Adv. for R-1.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The appellant Subhash Chandra had been convicted on 10.05.2000 for the offence under Section 306 of the Indian Penal Code (hereinafter referred to as the IPC) and had been sentenced to undergo RI for seven years and to pay a fine of Rs.1 lac; in default of payment of fine SI for six months; half of the fine so deposited was to be paid to the parents of the victim.

2. This is an unfortunate incident where the life of a newly married lady-Shashi Bala @ Kanchan was lost. The victim was married to the appellant on 04.05.1978 as per Hindu rites in Delhi. Within less than one year of her marriage i.e. on 17.03.1979 she was found dead; she had received 100% burns in her matrimonial home and on being taken to the All India Institute of Medical Sciences (AIIMS), she was reported dead; she was pregnant by 24-26 weeks.

3. The FIR No.443/1979 was registered on 17.3.1979 for the offence under Sections 302/34 of the IPC on the complaint of her mother Smt. Satya Rani Chadda (PW1). Since there was delay in the progress of the investigation a private complaint (Ex.PW1/D) was lodged before the learned ACMM alleging that a few days before the marriage, the accused persons i.e. the appellant and his parents had made a demand for a scooter, refrigerator and television but since the complainant could not afford to fulfill their demands, her daughter was continuously taunted by her in-laws and husband on this count. Even after she became pregnant, the appellant continued to raise his demand for a scooter and threatened them that in case the said demand is not fulfilled Kanchan would face dire consequences. This demand was last repeated on 15.03.1979 i.e. 2 days before the fateful incident.

4. Chargesheet was initially filed under Section 302 of the IPC; the appellant and his mother were however summoned under Sections 306/34 of the IPC.

5. Relevant would it be to state that this offence is of the year 1979 when at that time the provisions of Sections 498A, 304B of the IPC and the presumptions contained in Section 113A and 113B of the Indian Evidence Act were not available. These amendments had come into the IPC and the Indian Evidence Act post this incident, vide Amendment Act 46 of 1983.

6. Prosecution had examined eleven witnesses at the pre-summoning stage on the complaint case. PW1 was the complainant herself, her husband i.e. the father of the victim, Suraj Prakash, was examined as PW7. PW9-S.S. Kohli was the brother of the victim. PW11-Piara Lal was a neighbour. All of them were corroborative on their version that the appellant and his mother had harassed victim; her death was the result of their acts. Thereafter in the course of the trial five witnesses were examined of whom the complainant i.e. the mother of the victim being the primary witness was examined as PW1. She had reiterated her averments made in her complaint (Ex.PW1/D) and her testimony is largely to the effect that cruelty was inflicted upon her daughter by the appellant and his mother; the appellant living in Mathura was not willing to take his wife with him to Mathura; he would only come on stray weekends to Delhi and even then there was no privacy available for the newly married couple at their Gandhi Nagar residence; this was in spite of the fact that Kanchan was ready to live even in the one room accommodation in Mathura and always expressed her desire to do so; the

appellant continued to deprive his newly wedded wife of his company and contact which willful conduct on his part amounted to a “cruelty”. The doctor who had conducted the post-mortem of the victim was examined as PW2; he had noted 100% burns on the victim; she was also pregnant and carrying a foetus of 6-1/2 months. Death had occurred at 9.00 PM. The Investigating Officer was examined as PW5-SI Bachan Singh. PW3–Ramesh Lal and PW4-Jiwan Kumar were residents of the same area being neighbours; the learned Single Judge had however not relied upon their testimony.

7. In his statement under Section 313 of the Cr.P.C., the appellant has set up the plea of alibi; to support his submission, he has produced four witnesses in defence; his submission being that he was a resident of Mathura and it was only on weekends that he used to come to Delhi; on the fateful day, he was in Mathura; he had been telephonically informed by his younger brother-Naresh about the incident; he was not present at the matrimonial home at the time of the incident. He had also relied upon the letters purported to have been written by Kanchan (X1 to X9) which were put to PW1 in her cross-examination. Defence sought to be set up by the accused was that his wife was happy in the matrimonial home and she had no grievance either against the appellant or his parents.

8. On behalf of the appellant, vehement arguments have been addressed by the learned counsel for the appellant. Submission being that this was a case where there is admittedly no suicide note; there is no document to show that there were any earlier complaints made by the parents of the victim or the victim herself; it is also not a case where it has been brought on record that the couple used to have frequent quarrels with one and another. The plea of dowry demand has been set at rest by the fact that the case filed by the parents of the victim under the Dowry Prohibition Act, 1961 had collapsed and the so called demand of a scooter alleged to have been made by the appellant before marriage and repeated two days before the date of the incident did not amount to a consideration of marriage which order of the learned MM has been upheld upto the Apex Court. Submission of the learned counsel for the appellant being that the so called “cruelty” in no manner be related to a dowry demand. Attention has been drawn to the definition of “cruelty” as contained in Section 498A of the IPC and the explanation appended thereto. Submission being that at best Clause ‘a’ of the explanation can be attracted and not clause ‘b’ in view of the fact the case under the Dowry Prohibition Act has failed. Even under Clause ‘a’

there is no evidence to show that there was any “willful conduct” on the part of the appellant to have driven his wife to commit suicide; the so called cruelty as detailed in the version of PW1 does not fit within the said parameters; there was no “abetment” on the part of the appellant. Further submission being that on the same set of facts and evidence when his mother stands acquitted, the appellant cannot be convicted.

9. To substantiate his argument, learned counsel for the appellant has placed reliance upon *Gangula Mohan Reddy vs. State of Andhra Pradesh* reported as 2010(1) UJ SC 0142. Submission being that the allegation of “abetment” involves a mental process of instigating a person or intentionally aiding a person in doing of a thing; without a positive act on the part of the accused to instigate or aid in committing suicide the conviction cannot be sustained. Submission being that where there is no intention to establish that the husband either aided or instigated the deceased to commit suicide, the conviction of the husband under Section 306 of the IPC was improper. Reliance has also been placed upon *Hansraj vs. State of Haryana* (2004) 12 SCC 257 to support the argument that the 11 witnesses who had been examined at the pre-summoning stage and their testimony has to be essentially read. Attention has been drawn to the statement of Kunan Devi (PW6- at the pre-summoning stage). She was the maternal grandmother of the victim. Submission being that PW6 had categorically stated that the appellant was not present at the scene of occurrence and for which purpose, attention has also been drawn to the cross-examination of the PW5 (SI Bachan Singh) where also in a part of his cross-examination, he has admitted that the appellant-Subhash Chandra had come to the spot after 10.30 PM and had informed him that he has come from Mathura after he had been intimated by his brother Naresh about the incident. Submission of the learned counsel for the appellant being vehement on this count that the appellant was not even in Delhi on the date of the incident and as such the question of his abetting the suicide of the deceased did not arise.

10. Reliance has also been placed upon *Sharad Kumar Aggarwal vs. State* 2012 (3) JCC 2196 to substantiate his argument that the counsel for the complainant has no locus standi to be granted a hearing. In the case of *Sharad Kumar Aggarwal* (supra) it was a third party intervention at the stage of an application for anticipatory bail where the question of a hearing to be granted to such a third party arose. Present case is a complaint case on which complaint the accused had been summoned. Para 13 of the judgment the court has in fact noted that with the passing of time the concept of locus has

been relaxed in cognizable offences and in given cases the counsel for the complainant may be granted permission to assist the State counsel. Permission is accordingly accorded to the counsel for the complainant to assist the Public Prosecutor. It is also admitted by the parties that the evidence both oral and documentary recorded at the pre-summoning stage be read as evidence to decide the fate of the case.

11. On behalf of the prosecution (with the assistance of the learned counsel for the complainant), it has been argued that in all such like cases there cannot be any direct evidence, it can only be a case of circumstantial evidence. It has been emphasized that admittedly the victim had died within less than one year of her marriage i.e. when she was almost 6-1/2 months pregnant and carrying another life; that by itself reflects upon the fact that unless there was a strong instigation or a provocation to commit the act, the victim would not have resorted to this extreme step of taking her own life. Submission being that each case has to be decided in the light of its own facts. In the instant case, the matrimonial home at Gandhi Nagar had only two rooms in which four adults were living i.e. the mother-in-law, brother-in-law, sister-in-law and the victim herself; apart from the appellant whenever he chose to join the family from Mathura. This accommodation was not sufficient for the newly married couple to enjoy any privacy. Submission being that between 07.02.1979 to 02.3.1979 there appears to be a sudden spurt of letters purported to have been written by the appellant to her mother-in-law wherein the appellant has appeared to explain her happy marital status which letters/handwriting had been denied by the mother of the victim; these letters are fabricated as there was no occasion on the part of the appellant to have preserved these letters which are of the year 1979 and to have produced them in the cross-examination of PW1 which was recorded almost two decades later i.e. in the year 1995. Submission being that PW1 has been categorical in her statement that on 15.09.1979 the victim and the appellant had visited the house of PW1 where the demand of a scooter had again been repeated. PW1 was unable to fulfill this demand; submission being that this demand was a continuation of the earlier demand which had been raised prior to the marriage and even presuming that the case under the said Act had failed; the fresh demand which was made on 15.03.1979 would still constitute a cruelty within the meaning of Clause 'b' of the Explanation appended to Section 498A. Submission being that it was not this stray incident alone but the continuous course of conduct adopted by the appellant in the marital span of ten months that had weighed heavily upon the mind of the victim which had unfortunately led to the suicide. To

support this submission reliance has been placed upon Gurbachan Singh vs. Satpal Singh AIR 1990 SC 209, Thanu Ram vs. State of M.P. (2010) 10 SCC 353, Ranbir Singh vs. State of Punjab (2004) 13 SCC 129, Hira Lal vs. State AIR 2003 SC 2865 and Alister Anthony Pareira vs. State of Maharashtra (2012) 2 SCC 648. Submission being that in Thanu Ram (supra), the Apex Court had noted that ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty; it is only in extreme circumstances that a woman may decide to take her life and that of her unborn child and that is when she reaches a point of no return which itself would prove the allegation of instigation.

12. In rejoinder, it has been submitted that once it is proved that the appellant was not in Delhi on the date of the incident, it would be impossible for the prosecution to connect the accused with the act of abetment on the part for the victim to have ended her life.

13. Record shows that the parties had been married on 04.05.1978. Admittedly, they belong to the middle economic strata of the society. Their matrimonial home was at House No.719/36/A1, Guru Nanak Gali, Dharampura, Gandhi Nagar. It was a two room house. Apart from the married couple, the sister, brother and the mother of the appellant also resided in that house. The appellant at that time was working as a Manager at the Bata Shoe Store in Mathura.

14. This case was set into motion by the complaint of PW1. FIR No.443/1979 was lodged on 17.3.1979 under Sections 302/34 of the IPC against the appellant and his mother. There was no progress in the investigation; in fact at one stage a cancellation report was filed by the police. However, since the mother of the victim had already in the meanwhile filed a private complaint (September 1980) cognizance was taken on this complaint. The relevant extract of the complaint filed by PW-1 dated September, 1980 reads herein as under:

“IN THE COURT OF SHRI G.D. DHANUKA, ADDL.CHIEF JUDICIAL
MAGISTRATE, SHAHDRARA, DELHI
Complaint Case No. of 1980

In Re:-

Satya Rani Chadha
W/o Shri Suraj Parkash Chaddha,
r/o 142/Old Gupta Colony,

Delhi

.....Complainant

Versus

1.Subhash Chand
2.Naresh – Son of Shri Kasturi Lal
3.Krishna Wanti, w/o Kasturi Lal
4.Chanchal
5.Aruna-D/o Kasturi Lal
All resident of 719/36-A/I Gugu Nanak Gali,
Dharampura, Gandhi Nagar,

Delhi

.....Accused Persons

P.S.:-Gandhi Nagar,
Offence U/S : 302/34 IPC
F.I.R. No.443/1979 Dt. 17.3.1979

Complaint u/s 200 Cr.P.C.

For registration and trial

of the case, for offences U/S 302

Read with Sec. 34 IPC.

Sir,

The complainant humbly begs to submit as under:-

1. That the complainant is the mother of Smt.Kanchan Rani alias Shashi Bala, who gave her daughter in marriage to the accused No.1, a few days before the marriage the accused persons made a demand of a Fridge, a Scooter and a television set as dowry, but the complainant could only afford to give a Fridge and Rs.500/- for the Television. The Accused No.1 and the other family members being accused No.2 to 5 resorted to harassing tormenting and taunting the daughter of the complainant.
2. The accused No.1 after the pregnancy of the daughter of the complainant insisted that the demand of the Scooter which had not been met and which had been put forward at the time marriage be fulfilled. He threatened the complainant with dire consequences of the same was not met. That the accused No.1 made the demand again on the 15th March 1979, when he visited the complainant along with the complainant's daughter.
3. That the complainant received information on or about 9.30 p.m. on 17.3.1979 that her daughter had been burnt by the accused persons who had entered into a conspiracy with the common intention to kill the

complainant's daughter. As a result of the burns the daughter of the complainant succumbed to the injuries.

4. The complainant soon thereafter lodged a report with the Gandhi Nagar Police Station about the alleged murder. The accused persons were arrested and were released on bail subsequently.

5. That the complainant has approached the police authorities several times to enquire why no case has been filed till today. The police authorities have put her off on one pretext or the other.

6. The complainant submits that two witnesses Jiwan Lal of Rani Bagh and Ramesh Lal of Gandhinagar have deposed that they had seen the accused No.1 and the other accused at the scene of offence when the Offence is alleged to have been committed. That if these witnesses are to be believed then the alibi of accused No.1 that he was not present at the time when the offence is alleged to have been committed is false.”

“4/10/80

Present: Complainant with Miss Rani Jethmalani, Advocate.

Complaint filed today be regd.

Ld. P.O. of this court has been proceeded earned leave.

Put up on 3.1.1981 for evidence of the complainant.

MM

4/10/80”

15. A perusal of this complaint shows that although FIR No. 443/1979 under Sections 302/34 of the IPC had been registered at Gandhi Nagar on 17.03.1979 yet the complainant was not satisfied with the progress being made therein and she was constrained to file the said complaint. Accused persons were however summoned not for the offence under Section 302 of the IPC but for the offence under Section 306 of the IPC. This was vide a detailed order dated 10.01.1985 which order not being the subject matter of challenge by either party has since attained a finality.

16. The allegations on the FIR and the complaint are categorical and corroborative of one another. PW1 has stated that even two days prior to the incident i.e. on 15.03.1979 the appellant had made a demand for a scooter which had been made on an earlier occasion as well. He had made this demand when he visited PW1 along with the deceased. This was in spite of the fact that his wife was pregnant. On 17.03.1979, PW-1 had been informed that her daughter had died by burn injuries. Further grievance

being that on the date of the incident, the appellant was in Delhi and the plea of alibi sought to be set up by the appellant that he was not in Delhi is a lie.

17. On this complaint statement of 11 persons were recorded. PW6 was the grandmother of the victim. Her statement has been relied upon by the learned counsel for the appellant to substantiate his submission that she has made a clear statement that when she reached the spot the husband of the victim was not present there.

18. This court will first answer the contrary stands taken by the respective parties as to whether on the date of the incident i.e. on 17.03.1979, the appellant was present in Delhi or not.

19. Apart from the statement of PW6 [Kunan Devi as noted (supra)], PW5-SI Bachan Singh (part investigating officer) in his cross-examination has admitted that the appellant-Subhash Chandra reached the spot late at night i.e. after 10.30 PM and informed him that he had received information about the death of his wife and he is coming from Mathura. This is also the version of the appellant in his statement under Section 313 of the Cr.P.C. To substantiate his plea of alibi, DW2-Partap

Singh who was also a part investigating officer has deposed in favour of the appellant on this point. He has on oath stated that during the course of the investigation, he had found that Naresh, brother of the appellant had telephoned Subhash at Mathura from the telephone of Keemti Lal about the death of his wife-Shashi and after leaving the keys of the shop with Mr. Sharma, Subhash had come to Delhi; DW2 had checked the cash memos where Subhash was working as a Manager and found that he was present in the shop on 17.03.1979 throughout the day as he had signed them; he had also verified from the telephone record at Connaught Place and found that Naresh had made a trunk call to Subhash from the telephone of Keemti Lal. He had initialed the record of the Bata Shoe Company at Mathura. In his cross-examination, although he has admitted that he has not taken into custody any record of the Company yet at the same time, he volunteered that he had directed the salesman to preserve the record as this was a police case. DW3-Devdutt Sharma was working as a salesman at the Bata Shoe Company on the relevant day i.e. 17.03.1979. He has also corroborated this version admitting that the bill books and attendance register of 17.03.1979 had been signed by the appellant whose signatures he had identified. Although the learned Public Prosecutor has drawn the attention of this Court to a further part of his cross-examination wherein he has stated that after five

years every document of the Company is as per practice destroyed; yet in this case there was volunteered information that this document was not destroyed as this record had been directed to be preserved being a police case. Against all these versions there is a version of PW1 that the appellant was present at the spot when she reached there. In part of her cross-examination, PW1 has admitted that she had reached the spot after 10.30 PM and her mother (PW6-Kunan Devi) had reached there prior in time, meaning thereby that when PW6 had reached the spot which was prior in time to 10.30 PM the appellant was not present ; as per PW-1 he was present after 10.30 PM i.e. by the time she had reached. The post-mortem has recorded the time of death as 9.00 PM. The appellant having been seen at the spot for the first time by PW-1 after about 10.30 PM, it could be that the appellant had reached Delhi from Mathura in this intervening period. Both these versions thus can be reconciled. Testimony of DW3 is also relevant on this count. He has admitted that as per the record the appellant was on leave on 15.03.1979 and 16.03.1979. 17.03.1979 was a Saturday. The weekly off of the appellant at Mathura was Tuesday. Thus the submission of the appellant that on 17.03.1979 it being a working day, the appellant was at his office at Mathura appears prima facie to be correct. The fact that the appellant was on leave on the subsequent two days i.e. 18.03.1979 and 19.03.1979 does not really help the version of the prosecution as obviously if his wife had died on 17.03.1979 the natural corollary would be that the appellant would have absented himself from his office for the following two days.

20. Benefit of doubt on this score is accordingly given to the appellant keeping in view the overall evidence which has been adduced. This Court shall now proceed on the basis that the appellant was not present in Delhi at the time when the unfortunate incident occurred.

21. This incident is of the year 1979. The accused has been charged for the offence under Section 306 of the IPC which is 'abetment of suicide' and which reads herein 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.

22. The definition of 'abetment' is contained in Section 107 of the IPC and reads as under:-

“107. Abetment of a thing.- A person abets the doing of a thing, who-

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

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

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

Explanation 1.- A person who, by 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.”

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

23. The amendment in the Indian Evidence Act i.e. insertion of Section 113A was introduced by the Amendment 46 of 1983. In view of the judgment of the Apex Court State of Punjab vs. Iqbal Singh, 1991(20) SCC (CrL.) 513, the provisions of Section 113A have to be read in retrospective operation.

24. Section 113A of the Indian Evidence Act reads as under:-

“113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a women 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 has 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 498-A of the Indian Penal Code (45 of 1860).”

25. Explanation of 113 A shows that the definition of cruelty shall have the same meaning as contained in Section 498A of the IPC.

26. Section 498A of the IPC. reads as under:-

“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.”

27. For raising the presumption under Section 113A, it must first be shown that the woman has committed suicide. This act must have been committed within a period of seven years from the date of her marriage. The husband or such relative of her husband had subjected her to cruelty. If all these ingredients are fulfilled, 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.

28. The first two ingredients are admitted. This is a case of suicide which had occurred within less than one year of marriage of the parties. The question which has to be answered is whether the acts of the appellant fall within the definition of ‘cruelty’ as contained in Section 498A of the I.P.C.

This definition is contained in two parts. Both parts are in the alternate. In the first category, there must be a willful conduct on the part of the accused which is of such a nature to drive the victim to commit suicide. In the second alternate, it must be harassment by the appellant upon the victim of such a kind which is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security.

29. Submission of the learned counsel for the appellant is that the second alternate cannot come into play as the case under the Dowry Prohibition Act had fallen flat and which had been adjudicated upon right up to the Apex Court is a submission without force. PW1 has been consistent in her approach. Her case from the inception is that the demand of the scooter which had been repeated by the appellant both before the marriage and again on 15.03.1979 which was just two days before the date of the incident and at that time when the victim was in her advanced staged of pregnancy; it being

a reiteration of a demand which was made on earlier dates; merely because the Court at that time did not consider the said demands of a scooter, fridge and television made prior to the marriage to come within the rigors of the Dowry Prohibition Act, would not affect the subsequent demand which was made on 15.03.1979, it was an unlawful demand for a scooter. It was this continuous course of conduct adopted by the appellant which had traumatized the victim. The mental pressure and torments were continuing upon her throughout their less than 10 month old marriage. It was not a case of one single incident which is alone relevant. As noted supra and at the cost of repetition, the appellant was living in Mathura; this was right from the inception of their marriage as he was working as Manager in Bata Shoe Store. He would come to Delhi on stray weekends. Marital home of the parties was a two room apartment in which four adults members were already living; whenever the appellant chose to join his wife in Delhi, they would admittedly not be able to enjoy any moment of privacy. The letters produced by the appellant in the course of the cross-examination of PW1 are telling circumstances. As early as September 1978 (Ex. P5), victim had written to her mother informing her that her husband also has sisters and he should not harass anyone; she was indirectly telling her mother that her husband was harassing her; at the same time she tried to pacify her mother not to worry about her. Ex. P4 written on 28.09.1978 to Mandirwali Mataji is also on the same lines; the victim was trying to reassure herself that everything would be alright and she must learn to trust her husband; it was a reassurance and re-conciliation with her circumstances. Ex.PW3 written on 10.10.1978 reflects the tension that the married couple was facing; this was a letter written by the appellant to his mother-in-law stating that she should advise her daughter (victim) not to live each day like a year; the appellant was aware of the traumatic mental state that his wife was undergoing. Thereafter there appears to be a spurt of letters dated 07.02.1979, 14.02.1979 and 02.03.1979; all these letters were written within less than a span of one month purported to be in the handwriting of the victim, written to her mother-in-law and grandmother-in-law posing a rosy picture about her marital status; these letters were vehemently denied by PW1 who had stated that they were not in the handwriting of her daughter. Even otherwise as rightly noted by the trial judge it would be impossible to imagine that these letters had been preserved by the appellant for almost 20 years to be produced in the cross-examination of PW1 which had occurred in the year 1995 and the letters are of the year 1979. These letters were clearly fabricated; no reliance was rightly placed upon them; the role of the judge being to sift the grain from the chaff.

30. The victim was admittedly not living with her husband in the marital home; they were only sharing patches of togetherness. The letter Ex. PW3 produced by the appellant himself reflects the tension prevailing in their marital life. Testimony of PW1 has in fact remained un-rebutted and untarnished. It is also relevant to note that no suggestion has been given to PW1 or to any witness of the prosecution that the state of mind of the victim was not healthy; it is not the defence of the appellant that the victim was either petulant, oversensitive or overreacting to the normal situation. In a part of the judgment, the trial court has been constrained to note that the investigation appears to be tainted and unfair. This is evident from the fact that a cancellation report had in fact been filed but no orders were passed on the said report as meanwhile the mother of the victim who had not allowed the matter to rest had filed a private complaint on which cognizance was taken and accused persons were sent for trial.

31. The post-mortem report is also a crucial piece of evidence. The post-mortem had been conducted by PW2-Dr. L.T. Ramani. He had noted 100% burns on the body surface of the victim. Although the clothes worn by the victim were burnt but there was no smell of kerosene on them. It is common knowledge that if a person commits suicide, he/she would have poured kerosene not only over the head but the kerosene would have dripped over his/her clothes. Kerosene was however not detected on the clothes of the victim but only on her hair. The finding on this count is better left unanswered as noted supra, appellant had been summoned only for the offence under Section 306 of the IPC and at this stage, there would be no scope to consider the aspect of Section 302 of the IPC although initially the FIR had been registered for murder.

32. The word 'suicide' has not been defined in the Indian Penal Code; however its meaning is well known; 'sui' means self; 'cide' means killing; implying the act of self-killing. Why would a woman who is on the verge of motherhood kill herself. The answer lies in the following facts which have emerged; the picture painted on the canvas pursuant to the cumulative oral and documentary evidence collected is as follows:-

(i) The appellant and the victim in their 10 month old marriage did not live together in their matrimonial home. Appellant was working in Mathura and would only on stray occasions come to Delhi. He was not keen to take his wife to join him at Mathura; she continued to live with her mother-in-law, sister-in-law and brother-in-law in Delhi. This was a two room house.

Whenever on rare occasions when the appellant came to Delhi he shared this two room house which did not enable the married couple to enjoy any moments of privacy. The deceased was keen to join her husband in Mathura and for some time i.e. between September to November 1978, she stayed in Mathura but was again sent back to Delhi.

(ii) The mental trauma of the victim was continuous; even before the marriage the demands for scooter, fridge and television were poured upon her mother which she could not fulfill; even though these demands did not fall within the rigors of the Dowry Prohibition Act, the demand for a scooter was again repeated on 15.03.1979 which was just two days prior to the day of the incident and at a time when the deceased was in her advanced stage of pregnancy and carrying the 6-1/2 old unborn child of her husband, her trauma did not appear to end.

(iii) The incident is of 17.03.1979. On 15.03.1979, the appellant had accompanied the victim to his mother-in-law's house. On 16.03.1979, he was on leave and in Delhi. Even presuming that he was not in Delhi on 17.03.1979, it would make little difference. He was the instigator and the inciter for the act of the victim of taking her own life. As noted by the Apex Court in Thanu Ram (supra), ordinarily, a woman in her advanced stage of pregnancy would not commit suicide even when she has been treated with cruelty; it would only be in extreme and extenuating circumstances that a woman may decide to take her life and of her unborn child and that would be when she reaches a point of no return. This by itself would prove the allegation of instigation.

(iv) The definition of 'abetment' (in Section 107 of the IPC) in its first part read with explanation 2 would be relevant. The continuous course of conduct adopted by the appellant was the facilitating factor which had led to the commission of the offence i.e. the act of committing suicide by the victim.

(v) Presumption contained in Section 113A is no doubt a rebuttal presumption. Appellant has failed to rebut it; he has failed to discharge this burden. This presumption thus comes to the aid of the prosecution. This presumption arises when the question to be answered is as to whether the commission of suicide by the woman has been abetted by her husband or any relative of her husband and that her husband or such relative of her husband had subjected her to cruelty.

(vi) Cruelty as noted (supra) has been defined under Section 498 A. Both explanation (a) and explanation (b) appended to Section 498 A are relevant. The acts of the appellant were willful and deliberate acts and as noted supra, it was not one single act which is relevant; it was a continuous course of

acts, both express and implied, which were reflected in the conduct of the appellant which had led the victim to take this extreme step; the mensrea in his conduct is implicit; the intent being to traumatize and pester his wife to a point of no return. The cruelty inflicted upon the victim would thus also be covered in explanation (b) of Section 498A. The word 'harassment' has not been defined in the statute. What is 'harassment'? The acts of the appellant are enough indication of the harassment which the victim had suffered.

(vii) One can also not forget the fact that the victim in this span of 10 month of her married life, belonging to the middle class economic strata, was not wanting even her mother to know her pain; the letters written by her to her mother and to Mandirwali Mataji were almost like reassurances to herself, trying to persuade herself to believe that everything would be fine in her marital life; she must learn to trust her husband; at the same time informing her mother that her husband had sisters and should not harass anyone; this was an indirect mode of informing her mother that she herself was being harassed by her husband;

(viii) The definition of 'cruelty' as contained in Section 498A in fact reflects the anxiety on the part of the legislature to extend protection to the weaker spouse. The mensrea on the part of the appellant to drive his wife to this extreme step has to be read from the course of conduct adopted by him; it is to be read in his conduct. It is only when the life of a woman in the family of the husband becomes so intolerable and so miserable that it drags the woman towards suicide.

(ix) Even presuming that the appellant was absent on 17.03.1979, the date of the incident, would not take him away outside from the rigors of Section 306 of the IPC.

(x) It is also not the case of the appellant that the victim was suffering from ill health either mentally or physically; neither has any suggestion been made to any witness of the prosecution on this count and neither is this the defence sought to be set up by the appellant at any stage; either in the cross-examination of the witnesses of the prosecution; or at the time when he got his statement recorded under Section 313 of the IPC or at the last stage, when he chose to lead his evidence in defence.

(xi) This also appears to be a classic case where the investigation is tainted; the investigating agency which is the police and upon whom every citizen of the county looks for protection did not appear to have performed its obligations. So much so that initially the police had also sought to file a cancellation report but that was not taken up as the mother of the victim who appeared to be running from pillar to post to see that the culprits are brought to book, had meanwhile filed a private complaint on which cognizance was

taken. The trial court has also noted the failure of the investigating agency to perform its duty. Investigation is clearly shoddy and sealed parcels were sent for scientific examination but surprisingly what was picked up for a scientific examination were innocuous articles i.e. wooden blocks containing planks forming a part of the door. The investigating agency had intentionally and deliberately, to shield the accused not picked up the hair, nails or the viscera of the victim. The samples of kerosene, match box, stove or any other article lying at the scene of the incident were also not sent for any forensic analysis. The investigating officer-DW2 who had retired has in fact come to the rescue to the appellant and has deposed as a defence witness. The callous approach adopted by the Investigating Agency deserves to be condemned.

33. In this scenario the conviction of the appellant under Section 306 of the IPC does not warrant any interference.

34. Appeal is without any merit; it is dismissed.

Sd-
INDERMEET KAUR, J.

MARCH 07, 2013