**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 726 of 2003****FOR APPROVAL AND SIGNATURE :****HONOURABLE MS. JUSTICE GITA GOPI Sd/-**

---

---

Approved for Reporting	Yes	No
		✓

---

---

DILIPBHAI MANGLABHAI VARLI  
Versus  
STATE OF GUJARAT

---

---

**Appearance:**

MR DHAVAL VYAS, SENIOR COUNSEL with MS YUKTA PANDEY & MR DA SANKHESARA(5955) for the Appellant(s) No. 1  
MS JYOTI BHATT, ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

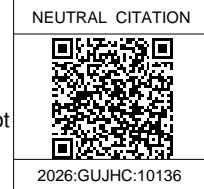
---

---

**CORAM:HONOURABLE MS. JUSTICE GITA GOPI**

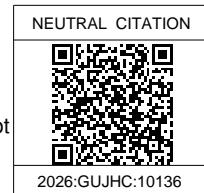
**Date : 05/02/2026**  
**ORAL JUDGMENT**

1. The appellant herein came to be convicted under Section 498A of Indian Penal Code (IPC) with a sentence of one year rigorous imprisonment and fine of Rs.100/- and in case of default of fine, to further undergo 7 days simple imprisonment. The conviction was also under Section 306 of IPC with sentencing of the appellant-accused for 7 years rigorous imprisonment and a fine of Rs.500/- and in



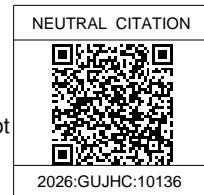
the event of default in payment of fine, to undergo further one month imprisonment. The benefit of set-off under Section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as 'Cr.P.C.') was granted. The judgment and order of conviction and sentence was passed on 20.05.2003 by the learned District Judge, Valsad in Sessions Case No.90 of 2002 (Old Sessions Case No.128 of 1996).

2. The appellant accused is the husband of the deceased-Premila. The charge against the accused was in relation to the death of his wife on 11.05.1996. The span of marriage was of one year prior to the incident. After marriage, the deceased-Premila was staying with the appellant-husband at Sarigam Pahadpada. It was alleged that during the matrimonial life, the accused used to mentally and physically harass the deceased and the deceased was subjected to cruelty which was likely to drive the woman to commit suicide and thus, the accused came to be charged under Section 498A of IPC. Further, as per the charge, that the accused used to beat the



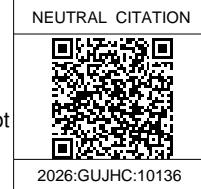
deceased and had subjected her to mental and physical cruelty, thereby had induced the deceased to commit suicide. For that reason, between 20.00 hours of 10.05.1996 to 15.00 hours of 11.05.1996, at Saregam Pahadpada in the field of accused by hanging herself with a nylon rope on the tree, she had committed suicide. Thus, the charge under Section 306 of IPC was drawn against the accused.

3. Learned Senior Counsel Mr. Dhaval Vyas appearing with learned advocate Ms. Yukta Pandey and learned advocate Mr. D.A. Sankhesara contended that the learned trial Court Judge has not examined the evidence on record as per the well established principles of criminal jurisprudence. The learned trial Court Judge has committed an error in observing that the accused had abetted the commission of suicide within the meaning of Section 107 of IPC. The learned trial Court Judge has failed to properly evaluate the entire evidence on record and more particularly, the evidence of the father and the family members of the deceased. Learned Senior



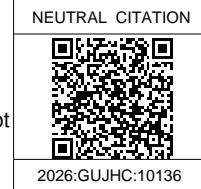
Counsel Mr. Dhaval Vyas submitted that the ingredients to constitute the offence of abetment cannot be said to be proved. The allegations are general, as of harassment at the hands of the accused and the incidents which are quoted cannot be considered as a harassment which would fall under the definition of 'cruelty' as explained under Section 498A of IPC. It is further submitted that it is a settled law that the conviction under Section 306 of IPC could not be merely on the allegations of harassment to the deceased. Learned Senior Counsel Mr. Vyas submitted that the word "instigate" as used under Section 306 of IPC would require the presence of mens rea. At the minimum, proximate cause has not been proved to show any connection with the suicide to the conduct of the accused.

4. Referring to the testimony of the father-Naginbhai Devjibhai, learned Senior Counsel Mr. Dhaval Vyas submitted that the allegations qua the accused is that the accused used to quarrel with the deceased and beat her. Further from the record, it has been proved that



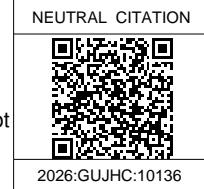
accused was having a job in GIDC and was having a passion to play 'banjo' and during the night time, used to perform at musical parties. He used to play to earn extra income, since he was playing during night hours so was not liked by the wife and therefore, quarrels used to occur. Such quarrels cannot be considered as a major ground to constitute the offence as cruelty and it can be termed as a minor quarrel between a husband and wife for a trivial reason.

5. Learned Senior Counsel Mr. Dhaval Vyas submitted that it is a not a case of demand of dowry or any demand for cash or valuables. It is a case of stray emotional crisis, and submitted that Sections 306 and 498A of IPC are independent to constitute different offences considering the facts and circumstances of the individual case and further, submitted that the allegations which were made against the accused was a case of domestic quarrel between husband and wife which does not fall within the definition of cruelty for offence under Section 498A no case of any abetment for the commission of suicide has been proved. In support of his submissions, learned



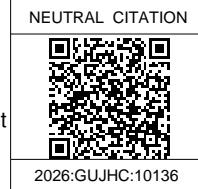
Senior Counsel Mr. Dharmesh Vyas has relied on the judgment of this Court dated 19.01.2026 in Criminal Appeal No.1148 of 2003 (**Niranjankumar Chhaganlal Mehta v. State of Gujarat**) as well as the decisions of the Hon'ble Apex Court in the case of **R. Kumar v. State of Chattisgarh** reported in **2001 (2) SCC 618** and **Gurcharan Singh & Ors. Vs. State (Delhi Administration)** reported in **(1978) 1 SCC 118**.

6. Countering the above arguments, learned Additional Public Prosecutor Ms. Jyoti Bhatt submitted that the conduct of the accused, after the deceased was found missing was required to be examined to consider the case of cruelty against the accused. The accused used to beat his wife. The mother of the deceased had herself seen the accused beating the deceased. Learned APP Ms. Jyoti Bhatt submitted that the accused on seeing the brother of the deceased, who had come to the village for distributing the marriage invitation card to some other relative had informed the brother that his wife was missing and had asked the brother of the deceased to

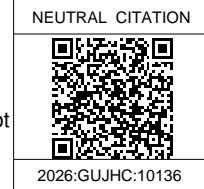


take away all the articles which were given during the marriage. It is further submitted that though the accused was searching for his wife, instead of visiting the house of the complainant, he visited the neighbour to enquire about the deceased, which itself proves that the relation between the husband and the deceased-wife were not cordial.

7. Learned APP Ms. Jyoti Bhatt also submitted that the learned trial Court Judge has convincingly analysed the evidence on record and came to the conclusion to convict the accused for the offences, and that the sentences ordered were just and proper considering the gravity of the offence and therefore, submitted that the present Appeal deserves to be dismissed.
  
8. Having heard learned Senior Counsel Mr. Dhaval Vyas for the appellant, learned APP Ms. Jyoti Bhatt and having perused the record and proceedings, including the testimony of the witnesses and documentary evidence in support of the case of the prosecution. It could be

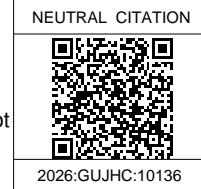


observed that the prosecution examined about 11 witnesses and relied upon 7 documentary evidences. The matrimonial life is almost of one year and during that period, it is alleged that the accused used to mentally and physically harass the deceased. The complaint of the father-Naginbhai Devjibhai dated 12.05.1996 states that one person on 11.05.1996 at 6.30 in the evening had come to his house at Sarigam and informed him that his daughter had committed suicide by hanging herself. Therefore, he immediately informed his father and his wife and had come to Village Sarigam at night. On enquiring at the son-in-law's house, the mother of the son-in-law informed the complainant that she was not aware where their daughter was and after some time, the mother-in-law Tulsiben herself led them to the place where the dead body of the deceased was lying. The complainant stated that dead body in the field was lying in a supine position and everybody had gathered there. On enquiring from the villagers who had assembled there about how the daughter had died, he felt that they would get instigated and therefore, he and his wife and his brothers sat at a distance.

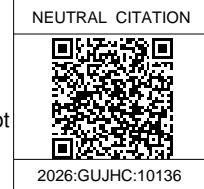


9. The father in the complaint at Exhibit 13 stated that prior to 11.05.1996, his son-in-law Dilip had come at Village Sarai but had not visited their house. It is further stated that the son-in-law Dilip had come to the house of Sumaben Ashwinbhai to enquire and the son-in-law had informed Sumaben that Premila on the earlier night alongwith a rope had left the house and he was not knowing where she had gone. The complainant also stated that his son-Kiku aged 12 years had gone to Sarigam to distribute the marriage invitation card of a relative. The son-in-law at about 3.30 pm had met Kiku and informed him that his sister had got lost and had asked Kiku to take the vessels and things given to Premila at the time of kanyadaan, by carrying it on his bicycle. This fact was narrated by Kiku to the complainant.

10. The complainant further in his complaint has stated that the marriage had taken place about one year prior to the incident and during the whole year, the daughter had

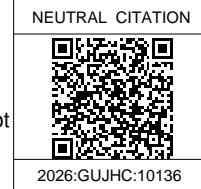


come thrice to his house and had stayed overnight only once at the complainant's place. At that time, the daughter used to inform the complainant and his wife that her husband many a times would go out at night to play 'banjo' and after that would come home late at night and would beat the deceased and would abuse her mentally and physically. It is further stated that one month prior, his daughter-Premila had come to his home and on the next day, the complainant's wife had gone to Village Sarigam to leave her, at that time, the son-in-law suddenly got excited and asked his wife why she had stayed overnight at her father's place and in presence of the complainant's wife, he gave one slap to his wife-Premila. At that time, the daughter Premila had informed the mother that the husband was beating her severely. Thereafter, the complainant stated that the son-in-law would often torture the daughter-Premila mentally and physically and subject her to cruelty and therefore, again on 10.05.1996, there was a quarrel. The husband during the dinner at night at that time, had beaten his wife and had broken her bangles and being fed up, she chose to end her life and went out of the house to commit suicide.

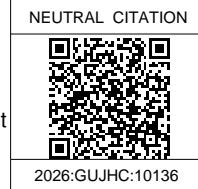


The complainant-father stated that often the appellant-son-in-law would beat the daughter and the mental and physical cruelty, had instigated her to commit suicide.

11. The specific allegation of the father is that there would be quarrels as the accused would go out to play 'banjo' and after returning home in the night, there would be quarrels, the accused then would beat the daughter and would verbally abuse her and mentally and physically torture her.
12. PW1-Arvindbhai Vasiyabhai is the panch of the panchnama of the dead body. He has not supported the prosecution with regard to the inquest panchnama and therefore, was declared hostile. PW2-Bhanabhai Ramabhai was also examined for the inquest panchnama who stated that he had seen one injury on the neck which was all black. According to PW2, the dead body was dragged and there were injuries because of the dragging. He also stated that the dead body was swollen. According to PW2, the deceased was murdered and the

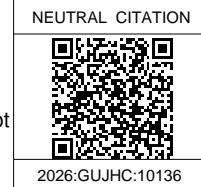


body was lying since there. The panchnama was placed in evidence at Exhibit 8. In the cross examination, the panch stated that he had not seen the dead body by turning it upside down. The dead body was totally swollen and there was stench coming from the body. He does not recollect as to whether it has been recorded in the panchnama as to whether the girl was murdered. He stated that he does not agree that he had dictated the panchnama and thereafter, it was recorded by the police. After recording of the panchnama, the police had taken his signature. He does not remember as to whether the dead body was brought there dragging and therefore, there would be bruises. He does not know about such fact being written in the panchnama. The witness stated that there were stains on the deceased's body at the time of panchnama, the accused as well as his family members were present. The witness also stated that the father of the deceased was his nephew and therefore, he had gone there at the place near the dead body. He does not re-collect whether it was recorded in the panchnama as to whether the deceased had died by hanging herself.



13. The case that was raised was the suspicion of murder while the trial conducted was for suicidal hanging. In the 16<sup>th</sup> Edition of 1997 of '**The Essentials of Forensic Medicine and Toxicology**' by Dr. K.S. Narayan Reddy, Professor of Forensic Medicine, M.R. Medical College, Gulbarga, the illustrations with regard to **suicidal hanging** is recorded and also for '**Homicidal Hanging**', it has been recorded at Page 283 and 284 as :-

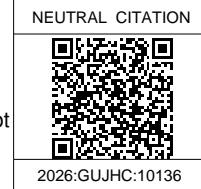
***"Suicidal Hanging*** : Hanging is a common method of committing suicide. A typical method of self-suspension is to attach a rope to a high point, such as a beam, window-casing, ceiling fan, branch of a tree, etc. The lower end is formed into either a fixed loop or a slip-knot which is placed around the neck. The victim stands on a stool, chair or other platform and jumps off or kicks away the support, due to which the body is suspended. The body must be in a position compatible with self-suspension. It is important to examine the point of attachment and the surrounding area. If the point is high, then it is likely that there will be recent disturbance of dust caused while attaching the ligature. The deceased's hands and sometimes part of his clothing may also show the presence of corresponding dust marks. There may also be disturbance of dust from the attached cord or form an abraded area particularly if a beam has been used to attach the ligature. Complete suspension of the body in the absence of any platform is unusual in suicide. Unusual positions, e.g., where the parts of the body touched the ground, kneeling or reclining, are almost diagnostic of suicide. The hands and feet are sometimes tied by the victim



*before hanging himself, to prevent a change of mind. The position of the ligature with reference to the knot and the manner in which it is attached to the support must be compatible with self-suspension. Determination of purpose will often compensate bodily infirmity. Blindness or age is no bar to hanging. The victim might pull away the ligature to free himself from the constriction and if he had long nails, nail marks may be inflicted on the neck. Sometimes, the upward movement of the rope at the time may scratch the skin. In an attempted resuscitation scratches or nail marks on the neck may be produced by another person. Sometimes, a person may hang himself after other forms of suicide, e.g., cutting the throat or wrists, stabs, firearm wounds, ingestion of poison, etc., have failed to produce death. Suicide pacts effected by hanging are rare.*

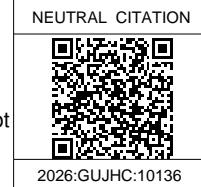
***Homicidal Hanging*** : *It is extremely rare. It is difficult for a single assailant to carry it out unless the victim becomes unconscious by injury or by a drug, or is taken unawares, or is a child or a very weak person. Homicide should be suspected (1) where there are signs of violence or disorder of furniture or other objects, (2) where the clothing of the deceased is torn or disarranged, (3) where there are injuries, either offensive or defensive. Any definite scratches, especially crescentic nail marks point to manual strangulation, and if associated with bruising of neck structures and fracture of larynx, the probability of murder is strong. In all doubtful cases, circumstantial evidence is important.”*

14. The inquest panchnama at Exhibit 8 recorded that the dead body was lying with a cloth cover on it. The dead body was of Premila and on removing the cover, it was noted that the dead body was in a supine condition. On

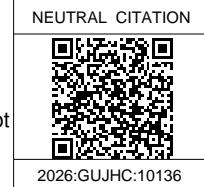


the head were hair approximately of one feet. There was black contusion on the face and on the head. The eyes were closed, the tip of the nose was abraised, the tongue and teeth were seen spurred outside. The throat and part of the neck was found swollen, and therefore, the interior part of the throat could not been seen. In the left eye, there was yellow piece of earing and both the hands were open. There were bangles on both the hands and both the hands of the deceased had black contusions. Both the hands and fingers were black and the body was swollen. The dead body was examined by rotating it, and the backside, waist were found swollen because of the heat. It was noted that the deceased had committed suicide by hanging herself.

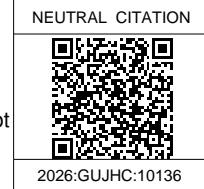
15. PW10-Dr. Arvindbhai Muljibhai Gori was the Medical Officer on 12.05.1996 at the Community Health Centre, Bhilad and he had examined the dead body of Premila at 12.55 hours in the afternoon and the post mortem was conducted thereafter and concluded at 1.50. The Doctor had stated that he had seen ligature marks on the neck,



the mark on the neck which was referred raised from the front part towards the right side and till back of the ear. The width of the ligature mark was noted to below 1.50 cms. There was rigor mortis present on both the legs. The black spots were found on the hands and on the lower parts of the legs. This area was swollen and the eyes had come out, the tongue had come out of the mouth, and from the nose and mouth, froth foul with smell was coming out. There were no injuries on the private parts. There were external injuries on the body and on the front part of the left hand and behind. Further, there were blood contusions behind the right hand which he stated that there were prior to the death. During the internal examination, the Doctor had not found any injuries. The cause of death as per the Doctor was 'asphyxia due to hanging'. Further, it was stated that if any person's neck tied with a rope was pulled, then the injuries that are visible would be the same. In the post mortem note in Column No.17, it was noted by the witness as 'multiple scratch marks over dorsal aspect of hand and forearm, side contusion over dorsal aspect and right arm'.

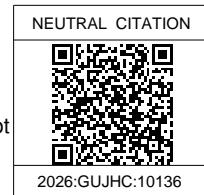


16. In the cross examination, the Doctor confirmed that if a person is tied with a rope at the neck and then dragged, then the friction because of the dragging can cause such injuries and when that person is pulled, then such injuries could be caused over many part of the body. It is stated that except on both the hands, no other injuries caused by dragging were observed. Further, while working in the fields, on the back of the hands, such injuries observed were possible. The Doctor could not state the age of the injury as were not specified for the injuries as noted in Column No.17 of the post mortem note. The Doctor also stated that there were many bruise injuries on the body but details of these were not made in Column No.17. He also found that only on examination of the external injuries, it could not be concluded as to how the death had occurred. He also stated that in a case of hanging, it is not necessary that the 'hyoid bone' of the neck would break. As the hyoid bone was not broken, therefore, the witness stated that he had written 'NAD' whereas had the hyoid bone been broken, then there would be a reference of the same in the post mortem note. He also stated

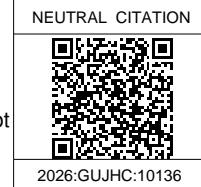


that the position of the lungs could not be said, as the same is not noted in the post mortem note. In the same way, he could not make mention about the condition of the brain. The conclusion which had been drawn by the Medical Officer as the cause of death was hanging. The Medical Officer stated that the death of the deceased was not a mechanical suicide.

17. The hyoid bone is attached to the base of the skull, the mandible, the tongue, the larynx and the scapular belt. Hyoid bone is the only unique bone in our body, that doesn't connect to another bone, it helps to speak, swallow and breathe. Here the doctor had observed that the hyoid bone was not broken. In homicidal hanging, because of bruising of neck structures and fracture of larynx, the probability of murder would be strong. In view of the evidence of the doctor with the medical literature as referred, the case of murder gets ruled out and thus, it was not found by the prosecution to make any case of murder against the accused.

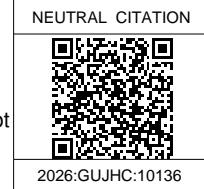


18. In the case of **Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan** reported in **(2021) 10 Scale 198**, relied on by the learned APP, it was held that most often offence of subjecting married woman to cruelty is committed within boundaries of house, where chances of availability of any independent witness are very slim. Further held that there is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives; evidentiary value of close relatives/interested witness is not liable to be rejected on ground of being a relative of deceased. It was further held by the Hon'ble Supreme Court that law does not disqualify relatives to be produced as a witness though they may be interested witness, however, when Court has to appreciate evidence of any interested witness it has to be very cautious in weighing their evidence, and evidence of an interested witness requires a scrutiny with utmost care and caution. It was further held that Court is required to address itself whether there are any infirmities in evidence of such a witness; whether evidence is reliable, trustworthy and inspires confidence of Court and that whether genesis of crime unfolded by



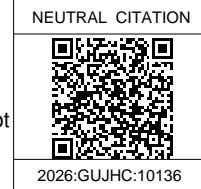
such evidence is probable or not. If evidence of any interested witness/relative on a careful scrutiny by Court is found to be consistent and trustworthy, free from infirmities or any embellishment that inspires confidence of Court, there is no reason not to place reliance on same.

19. The father-Naginbhai Devjibhai as PW5 had stated that the accused was beating his daughter and quarreling with her but this fact was never informed to him. When the husband would come back in the night, his daughter had told him that he would wake her up and beat her and was harassing her, even the husband had instructed her not to tell anyone about the same. The father stated that on the date of the incident, he was at home and in the evening, the son-in-law had come to the neighbour's house enquiring about the daughter-Premila. The neighbour had informed the father that Dilip had come to search for Premila. When the son of the complainant-Kiku had gone to Dilip's Village for giving the Marriage Invitation Card, at that time, Dilip met him and informed

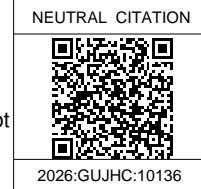


Kiku that his sister had got lost and had asked him to take back all the vessels and articles which were given to his sister at the time of kanyadaan and had asked them to be taken on the bicycle. The witness stated that he and his wife started making search of their daughter-Premila and later on, men from son-in-law's village had come on the vehicle, who met them on the road and informed him that their daughter had died by hanging herself.

20. The father stated that after marriage, the daughter had visited the house about 2-3 times, the daughter had visited them alongwith the son-in-law, they had stayed for one day and on that day, nothing had occurred. The complaint he produced in evidence at Exhibit 30. The learned Additional Public Prosecutor was permitted to cross-examine the father, though there was no request from the side of the Public Prosecutor to declare him hostile and in the cross examination by the learned Public Prosecutor, the witness stated that in his complaint, he had got it recorded that one month prior, the daughter-

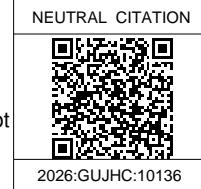


Premila had come to their house and on the next day, the wife had gone to leave her at Sarigam. At that time, the son-in-law suddenly got excited and in a loud voice had asked the daughter as to why she had stayed at the father's house and in the presence of his wife, had slapped his daughter. At that time, the daughter had informed the mother that her husband was beating her severely. The father confirmed that the incident which had occurred one month earlier of the accused slapping the daughter was not seen by him. The father affirmed that the accused had lit the pyre of the daughter and the death procession had started from the house of accused Dilip to the place of cremation. The witness was also put to question that he had not got it recorded in his complaint that the accused would wake up his daughter in the night and would beat her and that accused had also instructed the daughter not to inform it to any person to which the complainant denied. He confirmed that he has not got it recorded in the complaint that he had sent Kiku to Dilip's house for giving the marriage invitation card to Govindbhai. The witness also stated that none of the neighbours had informed that Dilip was



beating his wife Premila. The father stated that he had informed police complaining of murder. The father does not remember the dates on which the daughter had complained about accused beating her. The father does not know if any treatment was done for that purpose.

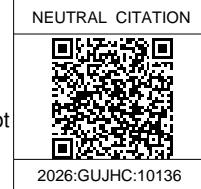
21. The father stated that whenever Premila and Dilip visited their house, both of them had stayed there and their stay was cordial. The father also stated that the accused was serving in GIDC and was also playing 'banjo' for extra income. He confirmed that the son-in-law was playing 'banjo' and therefore, he would come late in the nights. As Dilip would come late, his daughter did not like it and therefore, there would be quarrels. The fact of complainant's son-Kiku visiting the village for giving the marriage invitation cards was 2-3 days prior to the date of incident. The father also stated that when had visited the place of incident, he had seen the body of daughter Premila swollen and there was foul smell coming from it. The dead body was in a jungle area. The father also stated that there was no difficulty in the daughter's



matrimonial life with regard to day-to-day basic necessities.

22. At this stage, this Court would refer to the decision in the case of **State of West Bengal v. Orilal Jaiswal** reported in **AIR 1994 SC 1418**, wherein it has been held that the requirement of proof beyond reasonable doubt is not altered by introduction of Section 498A of IPC and Section 113A of the Evidence Act, 1872 (hereinafter referred to in short as 'the Evidence Act'). If the prosecution fails to prove the cruelty which falls within the meaning of explanation of Section 498A of IPC, the presumption under Section 113A of the Evidence Act cannot be read.
  
23. The observation in **State of West Bengal Vs. Orilal Jaiswal, [(1994) 1 SCC 73]**, by the Hon'ble Supreme Court was as under :-

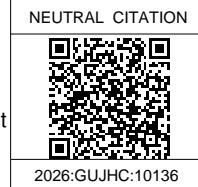
*"15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the 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 Bater v. Bater [(1950) 2 All ER 458, 459 : 66 TLR (Pt. 2) 589] 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."*

23.1. To prove the offence under Section 498A of I.P.C., the prosecution has to establish that the husband subjected the deceased woman to cruelty as defined under Section 498A. As noted in the referred judgment, the requirement of proof beyond reasonable doubt does not stand altered even after introduction of principle of presumption as noted under Section 113A of the Indian Evidence Act, 1872.

24. In the case of **Hans Raj Vs. State of Haryana, (2004) 12 SCC 257**, wherein the case was of suicide by the wife, and on facts the Hon'ble Supreme Court observed that

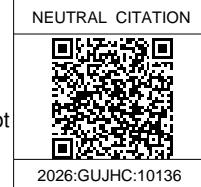


there were frequent quarrels between husband and wife, sometimes physical assault on wife, on account of husband's addiction to 'Bhang'. The Hon'ble Supreme Court observed as under :

*"12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113-A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Indian Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498-A of the Penal Code, 1860 which means :*

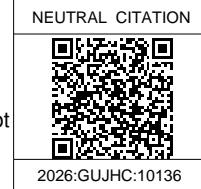
*"498-A. (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

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



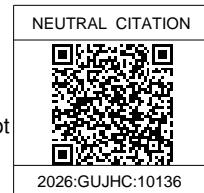
13. Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman."

25. The mother-Chikiben Naginbhai as PW6 had stated in her testimony that the matrimonial life of her daughter was not good. The accused was subjecting her to excessive harassment and beatings and if she could not do any work, then also the accused would beat her. They were hopeful that the accused would mend his ways and therefore, had not filed any complaint.



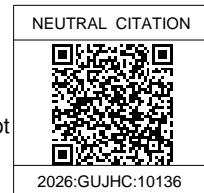
26. The mother stated that one month prior to the incident, the daughter had come to their house and at that time, she complained that her husband was harassing her and beating and was questioning as to why she had gone to her parents house inspite of his refusing and why she had stayed at night. Fifteen days after that incident, the mother stated that the accused killed his daughter.

27. According to the mother, the daughter was found dead in the accused's field. The mother of the accused had led them to the field where the dead body was lying. According to the mother, the daughter was murdered and when she had seen the dead body, she had seen her daughter beaten with the wooden log on hand, face and body. She also stated that some dispute had taken place on the day of the incident between accused and Premila which she came to know later on. There was no weapon near the body, the body was hanged up with the rope on the tree. According to the mother, thrice Premila had come to their house and whenever, she came she would tell her about the beatings by the husband. In the cross



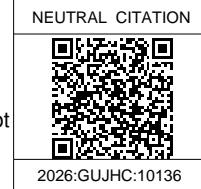
examination the mother stated that she had not got it recorded in the statement before the police about the accused scolding the daughter by using the expression "without informing me". She had denied that she has not got it recorded in the statement before the Police that Dilip had murdered her daughter and also denied that she has not informed the police that she had seen injuries on the body, hands and face of the deceased sustained by wooden log.

28. In the cross examination the mother stated that she had taken her daughter for the treatment for the beatings by Dilip and had also informed the police about it, but she does not recollect the date of the treatment. She stated that though accused was beating Premila, she had not given police complaint nor asked anyone or the panch to intervene to resolve the dispute. They had also not informed the parents of the accused Dilip, that he was beating their daughter Premila and also that the daughter had not filed any complaint against the accused. The mother affirmed that the accused was serving in GIDC



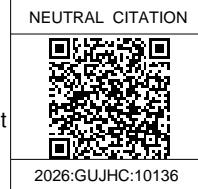
and stated that after taking leave on job, he used to go for playing 'banjo' in marriage ceremonies. The mother affirmed that since Dilip used to go during night hours for playing 'banjo' and would come late in the night, therefore, Premila was not liking it.

29. Thus, in the evidence of the witness-mother, she had tried to give evidence to convince that it was a case of murder. The incident which she stated of accused slapping the wife was with the accused grudge that the daughter had gone to her parental house without informing the husband. Though the parents were knowing that the accused was beating her, they have never filed any complaint nor had they ever thought it fit to take the matter to the community panch nor had they instructed the daughter to leave the accused and not go at the matrimonial house in the company of the accused.
30. The main dispute which appears from the testimony of father and mother between the accused and the deceased was that she was not liking the accused going

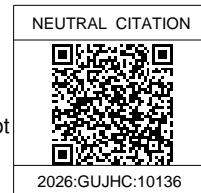


out at night to play 'banjo'. The dispute was about the accused returning late at night. The parents of the deceased had never complaint about beatings by the accused to accused parents. The dispute appears to be of each other's possessiveness in their emotional ties. The mother stated that they had also gone for medical treatment since the husband was beating the wife, but no such documents have been placed on record. The father is not corroborating such a fact.

31. The brother-Kikubhai was examined as PW7. The fact of his visiting the village was recorded as he had gone to give the marriage invitation card of Govindbhai's daughter, at that time, the accused met him and informed him that his sister was missing and asked him to take back all the utensils given in kanyadaan carrying it on the cycle. The brother stated that his sister was murdered by strangulating her with a rope. In the cross examination, the brother witness stated that since he was young, his statement was given to the police by his father. He has no information how and why the incident

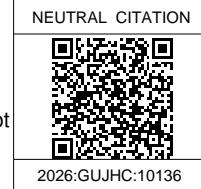


had taken place, he had not gone with his mother to leave his sister and he had not seen accused beating his sister. He affirmed that he has not stated before the police that the accused had murdered his sister by strangulating her with a rope. He had gone on 10.05.1996 and in the afternoon, he met Dilip at that time, Dilip was searching for Premila. The brother also affirmed that the accused brother-in-law was going during night hours to play 'banjo' and would return late at night which his sister disliked. He affirmed that on 10.05.1996 when he met Dilip he came to know that Premila had gone missing and that he was searching her. Dilip and his family members were searching Premila. The brother stated that they had never taken the sister Premila for any treatment after her complaining of cruelty at the hands of the accused. So the fact of medical treatment as stated by the mother gets disproved too by the brother of the deceased. The brother could also say that it was the brother-in-law coming late at night after his playing 'banjo', that was disliked by his sister.



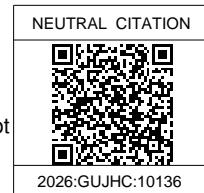
32. Savitaben Chintubhai is the paternal aunt of the deceased who was examined as PW8 and the aunt stated that after one month of the marriage, Dilip started harassing Premila and after playing 'banjo', would return late at night and for minor reasons would beat Premila. After marriage, twice or thrice she had come to their house. In the cross examination, she has stated that she does not recollect the date. The aunt stated that they had taken the deceased for treatment at Sarigam Dispensary but had not informed the same to the police. She also affirmed that since accused was going out at night to play 'banjo', Premila was not liking it. They had not intervened to settle the dispute between the accused and Premila.

33. PW9 is Ashwin Mahodobhai. He is a neighbour of the complainant. He stated that in the morning, the day when the dead body of Premila was found, Dilip had visited his house and informed that being offended Premila had left the house.



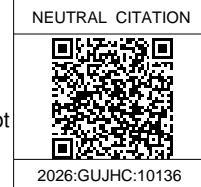
34. PW11-Maheshkumar Babulal Naik was the PSI of Umargam Police Station. On 12.05.1996, he received the complaint at Exhibit 30. The accidental death Entry No.12 of 1996 was registered at Umargam Police Station with regard to the death of wife of Dilip Mangal. The inquest panchnama was drawn and thereafter, the dead body was sent for post mortem. The panchnama of the place of offence-Exhibit 24 was drawn in the presence of the panchas and the panchnama of the seizure of clothes at Exhibit 27. After the complaint-Exhibit 13, further investigation was handled by him and the statement of witnesses were recorded. The accused was arrested on 13.05.1996. The contradictions in the statements of the witnesses were affirmed by the police. The police in the cross examination stated that they had recorded the statement of the neighbours and also recorded the statement of independent witnesses, apart from relatives.

35. The police witness stated that he had enquired whether there was any complaint alleging any beatings to



Premila, and it was found that there was no such complaint. The witness also stated that it was not disclosed during the investigation that on the day earlier there was any quarrel between husband and wife. He had not recorded any statement in connection with the accidental death entry.

36. The evidence of this police as a witness would show that no exact cause of suicide has been proved or established. The parents and more specifically the mother had tried to bring the evidence on record that there was quarrel between the husband and wife on the day prior and therefore, the daughter has left the house. Rather the mother was considering it as a murder by the son-in-law but the police has not found any quarrel between the husband and wife on the day prior the incident nor any complaint was filed earlier with regard to the beatings. If any medical treatment was given, then those evidence were required to be given to the police to corroborate their case of unbearable beatings at the hands of the accused.

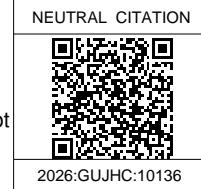


37. In the case of **M.Mohan V. State** reported in **(2011) 3 SCC 626**, the Hon'ble Supreme Court has held as under :-

*"44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of" 44. 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, conviction cannot be sustained. a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.*

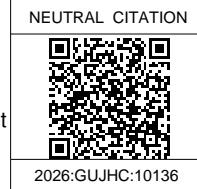
*45. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."*

38. On overall analysis of the evidence, it appears that the quarrel was only on the ground as the husband was going out at night to play 'banjo' in marriage ceremonies and after returning late, there would be quarrel between the husband and wife. All the witnesses consistently stated that the deceased as a wife was not liking the accused returning late in the night after playing 'banjo'. The quarrels were specifically stated to have occurred after accused returning back home at night, after his



performance on the 'banjo'. One incident of husband slapping the wife on the ground of staying overnight at parental home without informing him would not be counted as cruelty. The proximate cause to suicide was not proved. And persistent, unbearable continuous beatings, would require cogent evidence to be considered as proved, for the same to be believed as cruelty that drove the daughter to commit suicide by hanging herself to death finding no other alternative. The witnesses failed to prove the case of cruelty and of abetment for the commission of suicide. The conclusion reached by the trial Court becomes erroneous. The conviction and sentence thus cannot sustain.

39. In the result, considering the aforesaid discussion and observation as well as taking into account the ratio laid down in the above mentioned decisions, the present Appeal deserves to be allowed. The judgment and order passed on 20.05.2003 by the learned District Judge, Valsad in Sessions Case No.90 of 2002 (Old Sessions Case No.128 of 1996) is set aside. The accused stands



acquitted of all the charges against him. Record and Proceedings be sent back to the concerned Trial Court forthwith.

Sd/-  
**(GITA GOPI, J)**

CAROLINE / SB-1 # 1