**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 1148 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI**

Approved for Reporting	Yes	No
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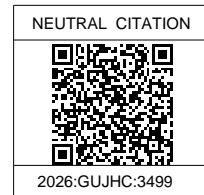
Versus
STATE OF GUJARAT

Appearance:

H B SHETHNA(2436) for the Appellant(s) No. 1
MR ROHAN H.RAWAL APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 19/01/2026****ORAL JUDGMENT**

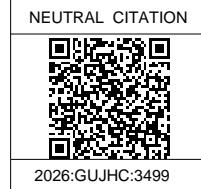
1. The present appellant has challenged the judgment and order of conviction and sentence passed on 28.08.2003 by Additional Sessions Judge, Valsad in Sessions Case No.125/2002 (Old Sessions Case No.122/1997), whereby appellant - accused came to be convicted under Section 498A of Indian Penal Code (for short 'IPC') and was ordered to undergo two years rigorous imprisonment and fine of



Rs.1,000/- was ordered with default stipulation that in failure to pay the fine amount, further three months simple imprisonment. While under Section 306 I.P.C., seven years rigorous imprisonment with fine of Rs.1,000/- and in failure to pay the fine amount, further three months simple imprisonment.

2. The charge (Exh.3) was framed on 17.01.2003 by the learned Sessions Judge (Fast Track Court), Valsad against the appellant referring that the marriage between the accused and deceased-Rita was solemnised on 12.05.1994 and thereafter both were residing together as husband and wife at Dungri village, and during the subsistence of matrimonial life, the appellant-accused subjected his wife Rita to such physical and mental cruelty likely to drive her to commit suicide or to cause grave injury to herself and thus committed offence under Section 498A IPC.

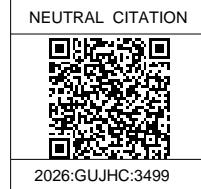
2.1 It was further alleged in the charge that the appellant-accused subjected the deceased to physical and mental cruelty, thereby abetting her to commit suicide. As a result of



which, on 18.07.1996 at about 14:40 hours, deceased along with one year minor child [REDACTED] went to Dungri-Valsad railway track and committed suicide by jumping in front of a train going towards Mumbai. Thus, by instigating and abetting deceased to commit suicide, the appellant-accused had committed an offence punishable under Section 306 of the I.P.C.

3. Learned advocate Mr. H.B. Shethna for the appellant submitted that the complainant (P.W.2), his daughter (P.W.3) and his wife (P.W.4), all as parents and sister of deceased were consistent in their say that accused was beating deceased only under the influence of drink, otherwise he was treating her very well and even her parents-in-law were treating her very well, as if she was their daughter.

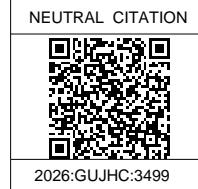
3.1 Learned advocate Mr. Shethna submitted that in cross-examination the complainant had admitted that the contents of Exh.19 are true, which was a letter by the complainant to P.S.I. Valsad Rural Police Station, wherein he wrote that relation between his family and that of accused were good;



accused was young and that he was expiating in jail and therefore he had no objection, if bail was granted to accused. Learned advocate further stated that the complainant admitted Ex.20, the list of articles received from the father of the accused on 27.08.1996.

3.2 Learned Advocate Mr. Shethna stated that the complainant admitted that the mortal remains of the deceased and her daughter were consigned to fire by the accused himself. It is further submitted that on that occasion and also on the day of 'Barma' and 'Terma' (after death rituals), the complainant and his family members had gone to the place of the accused to attend the ceremony, and they had also attended 'Besana' (prayer meet) for which invitation cards were published by the accused. It is also submitted that accused and his relatives had gone to the residence of the complainant to attend the obsequies of the deceased kept at her parents' place.

3.3 Learned advocate Mr. Shethna further submitted that if the only allegation of accused beating deceased in drunken

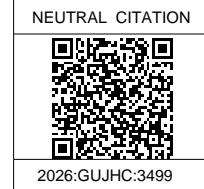


condition is urged, then element of *mens rea* was absent and therefore, conviction under Sections 498A and 306 I.P.C. cannot sustain, since both offences require the element of *mens rea* to be established.

3.4 Learned advocate Mr. Shethna submitted that no independence witness like neighbours have been examined to establish the offence of cruelty against accused and even no complaint of cruelty was filed by either deceased or complainant, nor alcohol test of accused was conducted to establish the fact of drinking.

3.5 Learned Advocate Mr. Shethna further submitted that there are no allegations whatsoever of bad looks, bad cooking, demand of money or any other allegations generally associated with cruelty, and further there is no allegation that due to any alleged beating by the accused the deceased ever required medical treatment.

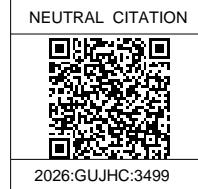
3.6 Learned Advocate Mr. Shethna stated that in his evidence-in-chief the complainant stated that about one month prior to the incident, deceased Rita had come to his place and



stayed there, and that thereafter the accused himself had come to take her back to his place. In his cross-examination, the complainant stated that he had sent Rita to her in-laws residence on 12.07.1996 and that fifteen days prior to the incident the deceased had come to her parents place. The complainant further stated that on every occasion the accused used to go to his in-laws house to bring back Rita to his house and that she voluntarily and willingly joined him.

3.7 It is submitted by learned advocate Mr. Shethna that the complainant never informed any other person about the alleged ill-treatment to deceased by the accused under the influence of drink, and that even the deceased had never told him at any time that for that reason she wanted to divorce the accused.

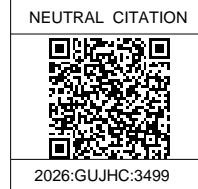
3.8 Learned Advocate Mr. Shethna stated that accused is the son of sister of Kaki of deceased and therefore, marriage was solemnised through close family reference. It is submitted that in such circumstances it is highly unlikely that if the accused had any drinking habit, the same would not have been



known or disclosed prior to the marriage.

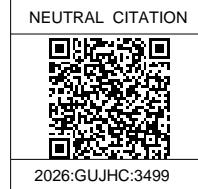
3.9 Mr. Shethna, learned advocate submitted that even assuming without admitting that the accused did misbehave with deceased under the influence of liquor, the same itself suggests absence of *mens rea*. Mr. Shethna stated that an important circumstance remains unexplained as to why deceased had taken an umbrella with her while proceeding towards the railway tracks on the fateful day. Mr. Shethna stated that on the date of incident, the accused had gone to the complainant's house in search of deceased, hence this conduct according to learned advocate Mr. Shethna, demonstrates concern of accused for deceased.

3.10 Learned Advocate Mr. Shethna submitted that crucial *res gestae* witnesses were not examined by the prosecution, including train driver, guard, Shailesh — servant of accused, Kaki of deceased (Maasi of accused). It is submitted that Kaki of deceased (Maasi of accused) had arranged the betrothal, yet she was not examined qua the alleged drinking habit of accused.



3.11 Relying on the judgment of **K.Ramakrishnappa Vs. State of Karnataka**, 2007 (5) KantLJ83 : 2006 (0) ILR (Kar) 3347, learned advocate Mr. Shethna submitted that in that case the learned Sessions Judge mainly relied on the evidence of P.Ws 4, 5 and 6, wherein they stated in their evidence that they had seen accused quarreling with deceased in drunken condition several times, but none of them have reported the same to the higher officials about the harassment or ill-treatment meted out by accused to deceased wife in drunken condition, and the prosecution has not corroborated their evidence through any independent witness and therefore, it was observed that their evidence cannot be believed that the accused was frequently quarreling with his wife in drunken condition and further that no test was conducted by police of accused to establish that accused was consuming alcohol, and therefore, prosecution case was disbelieved.

3.12 Learned advocate Mr. Shethna relied on the judgment of **Smt. Sarla Prabhakar Waghmare v. State of Maharashtra and Ors.**, 1990 Cri.L.J. 407, to submit that it is not every harassment or every type of cruelty that would attract Section

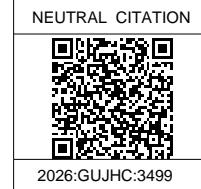


498A.

3.13 Learned advocate Mr. Shethna further relied on the following judgments:

- (i) Krishan Kumar Malik v. State of haryana, (2011) 7 SCC 130;
- (ii) Hansaben @ Hasina Yusufbhai & Anr. v. State of Gujarat, 2024 (0) GUJHC 38220 : 2024 (0) JX (Guj.) 908;
- (iii) Majirana (Bheel) Shankerji Chamnaji v. State of Gujarat, 2024 (0) GUJHC 26905 : 2024 (0) JX (Guj) 578;
- (iv) Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177;
- (v) Punambhai Ramjibhai Patani Vs. State of Gujarat, 2015 (1) GCD 817 (Guj).

14. Learned APP Mr. Rohan H.Rawal for the State submitted that it is not a case of disbelieving the witnesses, since all have given a consistent evidence of the incident. Mr. Rawal, learned APP stated that accused had mentally and physically

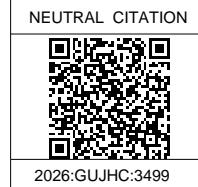


harassed deceased and, as she could not endure such cruelty of the husband, she committed suicide.

14.1 Supporting the impugned judgment of the learned Judge, learned APP Mr. Rawal submitted that the charge of Section 498A and Section 306 of I.P.C. was believed and the analysis of the evidence had led to the conviction under the said sections, which is just and proper and hence, the sentence was appropriately awarded thus, urged to affirm the observations of the learned Trial Court Judge and upheld the conviction and sentence.

14.2 In support of his submissions, learned APP Mr. Rawal relied on the following judgments:

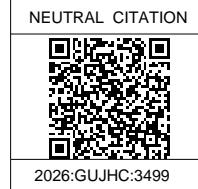
- (i) Vajresh Venkatray Anvekar v. State of Karnataka, 2013 (3) SCC 462;
- (ii) Shakuntla Devi v. State of Uttar Pradesh, 2025 (5) Supreme 202 : 2025 (2) Crimes 353;
- (iii) Chabi Karmakar v. State of West Bengal, 2024 (0) AIR (SC) 5295 : 2025 (1) SCC 398;



(iv) Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan v. State of Gujarat, 2021 (0) AIR (SC) 4174 : 2021 (10) Scale 198;

15. The prosecution in total examined five witnesses and had relied upon seven documentary evidence. The nearest relative of the deceased examined were the complainant father as P.W.2, mother as P.W.4 and younger sister as P.W.3. P.W.1 was a Doctor and P.W.5 was the Investigating Officer.

16. The charge against accused, more specifically, was that he mentally and physically harassed deceased after consuming liquor. The accused in his further statement under Section 313 of Cr.P.C. had stated that there was no quarrel or dispute between him and deceased [REDACTED]. The allegation of mentally and physically harassing her after consuming liquor is far from truth. He stated that he was not drinking. Rita had no suffering at his house. Unfortunately, [REDACTED] met with a train accident and died, and a false case has been filed against him. The complainant and witnesses had given false evidence against him, he also had stated that all gift articles of Rita received during the marriage had been returned back, and

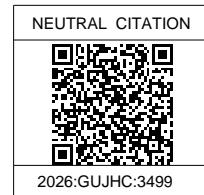


that he was innocent.

16.1 The trial was only against the husband. The parents-in-law were not made as accused. The opinion as to the cause or probable cause of death, as recorded in the P.M. Note (Exh.10) dated 19.07.1996, was the death due to shock and hemorrhage resulting from crush injuries over left lower limb. It also records that the viscera was preserved. The cause of death of nine months old baby recorded at Exh.12 was shock and hemorrhage resulting from fracture skull, which was also issued on the same day i.e. on 19.07.1996.

16.2 The corpus were brought before the Doctor, by P.S.I., Western Railway, Bobar, Dungri railway line, noted at a distance of seven kilometers from Shri Gunvantrai Chunilal Sheth Surgical Hospital. The Hospital was under the management of Valsad Nagarpalika on Jahavarnehru Road, Valsad. The postmortem report was forwarded to the Police sub-inspector, Valsad (Bulsar).

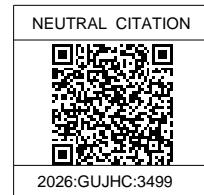
16.3 Exh.8 and 9 are the police reports of dead bodies of deceased Ritaben and deceased Vruti (baby), the wife and



daughter of accused. Both the documents came to be exhibited during trial in the deposition of P.W.1 – Josnaben Vyomesh Desai being a Medical Officer, had deposed on behalf of Dr. Ramawat since deceased in the year 2002.

16.4 P.W.1 stated that she could identify the handwriting and signature of Dr. Ramawat since she had worked along with him as a Medical Officer. P.W.1 deposed that on 19.07.1996 Dr. Ramawat was Chief Medical Officer of Nagarpalika Valsad Hospital and on that day dead body with the inquest panchnama were brought by P.S.I. of Western Railway Valsad. The original Yadi was placed in evidence at Exh.7. She referred to the postmortem conducted on the dead bodies and had given description about the injuries sustained by both deceased. The witness referred to the cause of death.

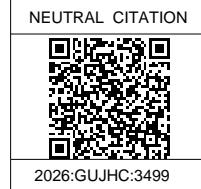
16.5 In the examination-in-chief, P.W.1 as a Doctor stated that if a person with a small child in her hand comes with an intention to commit suicide and falls before a train and get dashed with the train, then there were all possibilities of the injuries, which were suffered by deceased and death is



possible in the natural course of the injured person, while in the cross-examination the witness stated that she had no personal knowledge about the postmortem and affirmed that while being in a running train if a person meets with an accident, then there are possibilities of sustaining the injuries. Doctor witness could not definitely opine the cause of death nor could state that the death was because of suicide.

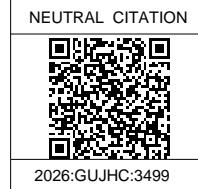
17. In the death report Exh.8 and 9 by the Western Railways, which was sent for P.M., the police had recorded that death was because of railway accident. Further clarifying the cause of death recorded by the railway police noted that the injuries the deceased sustained was while coming in collision with up-train.

18. It is the argument from the side of the accused that deceased was carrying an umbrella with her and probably with child she must have decided to go to her parental home, and during that time, may have met with an accident by falling from the running train. Advocate Mr. Shethna submitted that engine driver of the train was not examined to prove the fact

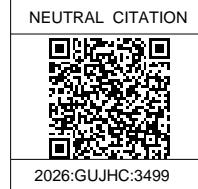


that the deceased had jumped before the train.

18.1 According to the railway police it was the accidental death. The Investigating Officer - Kishorsinh Gagubha Vaghela (P.W.5) was a P.S.I. at Valsad Rural Police Station. He received investigation on 19.07.1996 on the basis of the complaint of P.W.2 - Hasmukhbhai Lalbhai Patel. The complaint was forwarded by Divisional Police Officer, Western Railway, before whom the complaint Exh.18 was recorded. P.W.5 the Investigating Officer stated that the Accident Death No.164/96 was recorded prior to the complaint at Valsad Railway Police Station. He produced the Accident Death Report at Exh.28 recorded under Section 174 of Cr.P.C., referring the name of the deceased Ritaben and Vruti @ Vibhuti as 9 months old child. The time of incident was shown as prior to 14:40 hours on 18.07.1996 between Dungri-Valsad Railway line with Klm. No.205/21-19 from Dungri to Southern up-line. The incident was registered on 18.07.1996 at 16:45 hours. The summary was recorded as death because of grievous injury owing to accident in collision with the train.



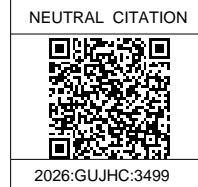
18.2 The witness as an Investigating Officer stated that after taking over the investigation, he had procured the inquest panchnama of dead bodies and panchnama of the place of offence from the railway police in connection to the accidental death and had included in his investigation record. He recorded the statements of witnesses, and since the evidence was limited to accused, he arrested him. P.M. note, certificate and the F.S.L. note were received. The charge sheet was filed before Valsad Magistrate Court. The forwarding letter as well as F.S.L. report, the Investigating Officer produced in evidence at Exh.29 and 30. In cross-examination the Investigating Officer stated that he had not investigated as to under which train the incident had occurred. He had not recorded the statement of driver as well as Guard of any of the train. The witness as an Investigating Officer also affirmed that apart from the statement of witnesses he had not specifically investigated with regard to the consumption of alcohol by accused. The Investigating Officer further stated that there was no case registered at his police station against accused on the ground of consumption of alcohol. He had also not recorded the statement of any employee or the audience of



the theater, where the incident alleged, had taken place at Dream Land Talkies, Thethal Road. The Investigating Officer also stated that he has not recorded the statement of any neighbours of accused.

19. The whole of the prosecution case hinges upon the complaint of beatings after consumption of liquor by accused. The case drawn against accused was under Sections 498A and 306 of the I.P.C. The Trial Court had considered accused guilty under both the sections.

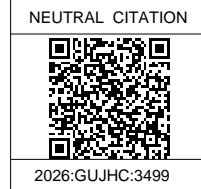
20. The case of consumption of alcohol by accused was considered by Karnataka High Court, wherein the charge against accused was under Sections 306 and 498A of I.P.C. In the said case of **K. Ramakrishnappa** (supra) relied upon by learned advocate Mr. Shethna, while considering the facts of the prosecution case that the accused was consuming liquor and always quarreling with his wife and daughter. For determination, whether such action constituted legal definition of I.P.C. to be defined under Section 498A, it was observed that mere consumption of alcohol and subsequent quarrel did



not meet the threshold for establishing legal cruelty. While considering the case it was observed in para 11 and 12 as under:

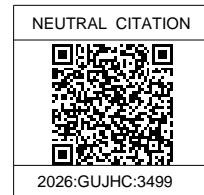
"11. The learned Sessions Judge mainly relied on the evidence of the P.Ws. 4, 5 and 6. P.Ws. 4, 5 and 6 have stated in their evidence that they have seen the accused quarrelling with deceased in drunken condition several times. But none of them have reported the same to their higher officials about the harassment or ill-treatment meted out by the accused to the deceased wife in drunken condition. Further, the prosecution has not corroborated their evidence through any independent witnesses. Therefore, their evidence cannot be believed that the accused was frequently quarreling with his wife in drunken condition. The prosecution has mainly contended that the accused was daily quarreling with his wife under the influence of alcohol. It is further contended that on the date of the incident also the accused had come to the house after consuming alcohol and picked up quarrel with his wife. To prove that he was under intoxication of alcohol he was not subjected to any kind of test conducted by the police. Therefore, the say of the prosecution that the accused used to consume alcohol daily and quarrel with his wife cannot be believed.

12. The prosecution has not examined any women folk of the neighbouring quarters of the deceased to show that the accused was harassing the deceased physically and mentally. If there was any ill-treatment meted out earlier by the accused, the deceased might have told about the same, especially, with their neighbouring women folk, and if those women had been brought to witness-box the truth would have come to light. In view of this infirmity also, it cannot be said that the accused was ill-treating or harassing the deceased physically or mentally by consuming alcohol and abetted the deceased to commit suicide."



20.1 The Karnataka High Court while noting the reliance placed by the Sessions Judge on the evidence of the witnesses, who stated that they had seen accused quarreling with deceased in drunken state several times, the High Court observed that none had reported the same to the higher officials about the harassment or ill treatment meted out by the accused to deceased wife in drunken condition and that the prosecution has not corroborated their evidence through independence witness. Further observed that the accused was not subjected to any test to prove that he was under intoxication of alcohol. No women folk of the neighbouring quarters were examined to show that accused was harassing deceased physically and mentally.

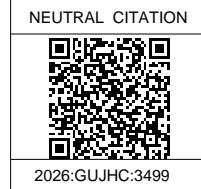
21. Here in the present case, the Investigating Officer conducted the investigation on complaint of the father. Earlier the complaint of railway death due to collision with the train was recorded. The fact does not become clear whether deceased was travelling from Dungri to Pardi from her matrimonial house to her parental house through train. The



driver or the guard of the train had not been examined. The Investigating Officer had not deem fit to even inquire about the name of train with which the railway accident had been recorded. The Investigating Officer was confronted with the statement of witness Hansaben, mother of deceased Rita, who had received a phone call from accused and it was recorded in the police statement of witness Hansaben that accused had informed her that her daughter Rita with girl had died, as she got cut under the railway.

22. In **Girdhar Shankar Tawade** (supra) relied upon by learned advocate Mr. Shethna, Hon'ble Supreme Court was considering the maintainability of a charge under Section 498A of the I.P.C. by reason of an order of acquittal under Section 306 of the I.P.C.

22.1 The Hon'ble Supreme Court explained the object of introducing section 498A in the statute book. The relevant paragraph necessary to be read for understanding the meaning of 'cruelty' incorporated under section 498A is reproduced herein below:



"2. Before, however, adverting to the factual score, it is to be noticed at this juncture that Section 498-A has been engrafted on to the statute-book by way of a separate Chapter in terms of the provisions of Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). The above amendment stands incorporated by reason of present trend in the society and to meet the requirement of the society, the legislature thought it fit to incorporate a new Chapter being Chapter XXA in the statute book consisting of Section 498 A in the Indian Penal Code. For convenience sake, Section 498-A is set out herein below:-

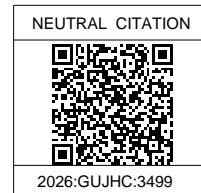
"498-A. Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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

(a) any 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."

3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii)

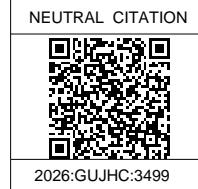


to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A."

23. Specific statutory meaning is attributed to the expression 'cruelty' as used in Section 498-A. Expression 'cruelty' has been dissected into two different forms; one amounts to 'wilful conduct' and another is 'harassment of the woman'.

23.1 For the purpose of section 498A of I.P.C. 'cruelty' is given the meaning in the explanation. The explanation (a) refers to the wilful conduct of an individual, which should be of such a nature to a degree which indicates that it had driven the woman to commit suicide, or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

23.2 Wilful conduct of a person effecting physical or mental health of the victim woman ultimately taking her own life or

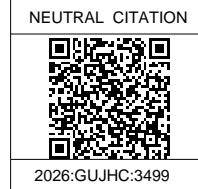


causing grave injury or danger to her life, limb or health is required to be proved by the prosecution.

23.3 What was the nature and kind of wilful conduct, which drove the victim woman to commit suicide has to be proved. It is not every harassment or every type of cruelty that would attract the provision of section 498A I.P.C. The conduct of the accused wilful in nature would require judicial scrutiny.

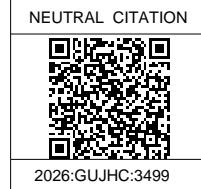
24. Section 113A of the Indian Evidence Act was introduced in the Evidence Act for presuming abetment of suicide by a married woman. For the purpose of Section 113A of the Evidence Act, 'cruelty' shall have the same meaning as in section 498A of the I.P.C. The presumption of abetment of suicide gets involved when it is shown that the deceased committed suicide within a period of seven years from the date of her marriage.

25. In the case of *State of West Bengal Vs. Orilal Jaiswal*, [(1994) 1 SCC 73], the Hon'ble Supreme Court has held as under:



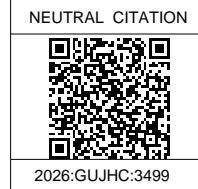
"15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the 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."

26. 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.



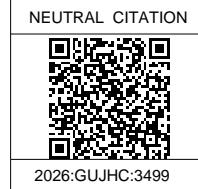
26.1 To prove the case under Section 498A, the prosecution has to prove the case beyond reasonable doubt. In the case of **Orilal Jaiswal** (supra), it has been observed that the standard of proof being beyond reasonable doubt does not get altered even after the introduction of Section 498A of IPC and Section 113A of the Indian Evidence Act, 1872.

27. The present case creates a doubt about the incident, whether it should be considered as 'suicide' committed by jumping before the train or 'accident' in collision with railway train. Further it is to be considered, whether the act of drinking alcohol and beating the wife should be considered as 'wilful conduct' in terms of explanation (a) of Section 498A I.P.C., since 'harassment' would be an aspect to be understood in terms of explanation (b) to section 498A, which does not include all and every type of harassment, but only those harassment which is with a view to coerce the woman or her family members to meet any unlawful demand for any property or valuable security, or the harassment is on account of failure to meet such demand.

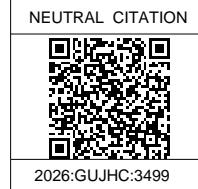


27.1 Here in the present case, it is not the case of any unlawful demand of property or valuable security. The only allegation is that accused after consuming alcohol would beat his wife, otherwise he was good.

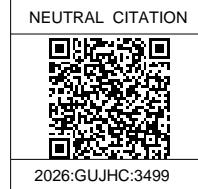
28. Exh.15 is the panchnama of place of incident, which was drawn at the instance of Bilimora Railway Police. Both the panchas had appeared on the southern side Kilometer No.205/19/21 from Dungri Police Station. The panchas were informed by the police that one woman and a small girl met with railway accident and had died since got cut by the train. Such understanding was given in connection with Valsad Police Station A.No.164/96 drawn under Section 174 Cr.P.C. The panchas had recorded that on the eastern side of railway line, on the track, there was fresh blood, pieces of flesh and bones were found lying. From that place, one ladies' umbrella and ladies' plastic 'chappal' was found. The 'chappal' and the umbrella was handed over to the husband Niranjankumar (accused), who was present there. Apart from that, police had not seized any other articles.



28.1 The panchnama further notes that on the eastern and western side, there were open field and the railway line was going north to south. The panchnama was drawn on 18.07.1996 between 18:00 to 18:30 hours. The inquest panchnama was also drawn on the same day between 17:15 to 17:55 hours. The common panch in both the panchnamas was Jayesh Hasmukhbhai Tailor, while second panch No.2, Tarunaben Subodhbhai Patel was shown in the inquest panchnama. Both the panchas came at Bilimora Railway Station. At about 14:55 hours on that day, the memo of Dungri Station Master was received through Bilimora Station, which read as Railway Gangman informed that, one woman and one child were lying dead between Dungri - Valsad at Kilometer No.205/19/21; the memo was for proper investigation. Therefore, they came at the place of incident in a light engine at Dungri and at 17.05 hours they saw dead bodies of a woman and a small girl, thus, for inquest panchnama a process was undertaken for Yadi to Executive Magistrate, Valsad. In presence of the lady panch No.2, the dead body No.1 of a woman aged about 20 years was examined recording the place of incident as up-railway line

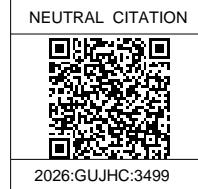


and the woman was lying on the eastern side in supine position and the legs were on the northern side, while head was towards south, eyes were closed and mouth was half open; the hair were black. On the forehead there was a 'bindi'. Both the hands were straight towards the waist and there was a sign of laceration on the elbow of the right hand. The injury was on the forehead with blood oozing out from there. Out of two legs, the left leg from the thigh was found severed. The right leg was straight and there were dark oil and char-spot with laceration on hands and legs. The description of Sari, Blouse and Petticoat had been recorded and the ornaments including 'Mangalsutra' had been recorded. The panchnama does not record the condition of Sari, Blouse and Petticoat. The laceration was recorded on the hands and legs, which were dark oil-charred spot, which was relied upon by the defence advocate to submit that victim appears to have suddenly fallen down from the train and was dragged in the accident. It does not become clear, whether the victim had jumped before the engine of the train or dragged. The I.O. had not recorded the statement of engine driver or any person travelling in that train or even the guard of the train.



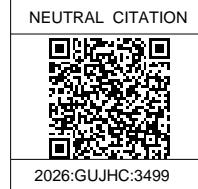
28.2 The said panchnama (Exh.16) also records the condition of nine months old baby girl, who was lying at a distance of one foot on the southern side, same in the supine condition. There was injury on the back of the head and face. Blood discharge was seen coming out of the injury, eyes were closed, mouth was half open, the child hands and legs were found to be straight. After recording condition of the clothes as well as the earnings and silver metal bracelet (Kada) in the hand, and on observing the body of the child, they could see there was sign of laceration of black charred oil. The accused was present there, who identified them as wife and child. The panchnama notes that woman and the child had come in collision with up-train and because of the train accident sustained injuries, the said was shown to be the cause of death. Inspite of that, to know the exact cause, the bodies were sent for P.M. and nothing further was seized from dead bodies by the police.

29. The evidence of father Husmukhbhai Lalbhai Patel as P.W.2 was recorded, who was serving as an operator since last 30 years in Siva-Atul Ltd. Company. His children were two



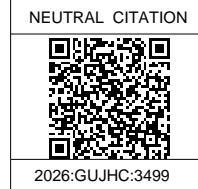
daughters and two sons and deceased was eldest. The deposition notes that on 12.05.1994, his daughter was married to Niranjan son of Dungri resident Chhaganbhai. So the evidence of the matrimonial house was at Dungri.

29.1 The complaint was given on 19.07.1996 and the panchnama for the place of offence was drawn on 18.07.1996. The complainant father was the resident of Killapardi. In his complaint he had recorded the age of deceased of Rita as 20 years. He had narrated that the marriage of Rita was solemnized on 12.05.1994, two years prior to the incident and during the matrimonial life she gave birth to a daughter Vibhuti, who was one year old. According to the complaint, about one month from the marriage the daughter was kept well by husband Niranjan, but thereafter he used to come home drinking liquor and used to harass his daughter by beating her. The daughter used to inform them about this behaviour of accused, as and when they used to visit her. The witness narrated in the complaint that they would assure her and would make her understand to live peacefully in the matrimonial house enduring the pain. The complaint records



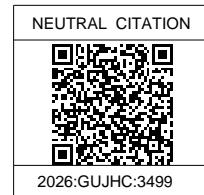
that the husband after consuming liquor would give unbearable beatings. She had informed about the said cruelty, but they had made her understand when she stayed with them for about a week and thereafter had sent her back on Friday dated 12.07.1996.

29.2 This fact of the complaint shows that daughter had come back to the parental house and had stayed there for about a week having made complaint of the unbearable pain she was suffering because of the beatings by her husband, who was alleged to be an alcoholic. The parents instead of confronting the husband had sent the daughter back to face the same cruelty. It appears from the complaint that the father was apprised about the fact of son-in-law, who was addicted to alcohol and beating the daughter. Such beatings were unbearable for the daughter. Inspite of that, the father did not deem fit to stand with daughter and to give courage to remain back at parental house and not to bear any such cruelty. This kind of conduct of the parents requires to be condemned when the daughter comes back home complaining about the cruelty, which could not be endured and which



would go beyond the level of her tolerance, then the father, if could not protect the daughter himself, the right action ought to have been taken was legal assistance and move the court of law for necessary restrain; instead of sending back the daughter to matrimonial home. When the daughter comes back to the parents and more specifically to the father with the hope of protection, the action of father not protecting the daughter at such stage of her matrimonial life could also be a ground for commission of suicide, where the daughter would have no recourse except to put an end to her life.

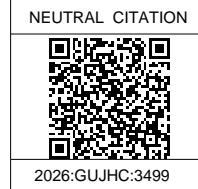
29.3 When the father knew that the son-in-law was incorrigible because of his drinking habits and when there was no hope of any change in behaviour of son-in-law, the father instead of helping the daughter and standing with her had sent her back to such a place, where she found no rescue. The father even has recorded in the compliant that 20 to 22 days prior, he had sent his younger daughter Chhaya to inquire about the health of his deceased daughter as well as to find out if there was any harassment in the matrimonial house. As per the younger daughter Chhaya, who remained in the house



of deceased, when she informed brother-in-law Niranjan of sending Rita home the accused son-in-law had not sent her home and after drinking liquor had quarreled and beaten Rita. The said fact was informed to parents by younger daughter Chhaya and the complainant has stated that every night, the husband after drinking liquor would harass and beat Rita. He stated that when Rita had asked to come to his house, son-in-law Niranjan had not come to leave her, but made her sit in a vehicle to reach home and till 12.07.1996, she stayed at his house, and thereafter on receiving the message they had sent her back to the matrimonial house.

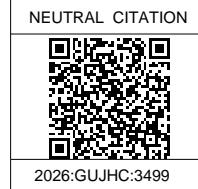
29.4 This incident further clarifies that the father had information from the younger daughter, who stayed for about four days in the matrimonial house of deceased Rita, who had informed the father that the husband was beating her sister; inspite of that fact, he sent the daughter back to the matrimonial house on 12.07.1997.

29.5 After six days on 18.07.1996, the complaint notes that his son-in-law Niranjan and his employee Shailesh at about 3



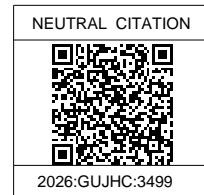
O' clock afternoon had come to his house and had informed the complainant that his daughter had gone away from the house at unknown place. The complainant stated that his son-in-law also informed him that since the son-in-law had given three to four slaps therefore, she left the house. The complainant searched at the relatives place and in evening at 6 O' clock when they telephoned to the house of son-in-law, they were informed that his daughter Rita got crushed to death under railway train.

29.6 The cause of the complaint was that after the marriage his daughter Rita was often mentally and physically harassed and beaten by the husband after drinking alcohol, and on 18.07.1996 his son-in-law Niranjan after drinking alcohol had given two to four slaps. According to the complainant accused Niranjan would drink alcohol outside the house and would come late at home and though accused parents had made him realise things, inspite of that he was not in their control and when his daughter tried to make him understand he used to beat her vigorously and because of unbearable mental harassment, she had broken down and the constant cruelty



had led her to commit suicide and fed-up of her life along with her daughter Vibhuti she had ended her life below the train.

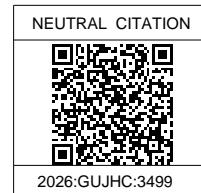
30. Here, learned advocate Mr. Shethna, independent of merits of the case, submitted that the daughter of the complainant had no right to take the life of accused's daughter along with her. One year old child would have her own fate. The act of deceased Rita taking the infant along with her, if at all the case is considered of suicide, then it was a criminal act on the part of deceased Rita and she was required to be posthumously dealt with for the murder of her own daughter. Advocate Mr. Shethna had referred to a news article of 'Times of India' Ahmedabad, December 12, 2025, to submit that in two tragedies separated by barely three months, Sabarmati River Front (West) Police had registered criminal cases against two women. Both of whom are dead. The case registered was allegedly killing their young daughters by jumping in Sabarmati river with them. Advocate Mr. Shethna referring to the facts of those cases stated that initially accidental death was registered and then it was converted into murder and abetment charges. Mr. Shethna submitted that two women



came to be booked posthumously for drowning their daughters. It was contended by Advocate Mr. Shethna that the police has set a good example by entertaining the application of the husband and had booked deceased for causing the daughter's death. By referring to the instances, advocate Mr. Shethna tried to canvas by convincing this Court that no person has a right to take the life of another, when the law even does not permit a woman to remove the foetus unless permitted under the Medical Termination of Pregnancy Act, 1971.

30.1 The argument of learned advocate Mr. Shethna supported by progressive approach of the police requires a constructive place in the criminal jurisprudence, where the parents are required to be educated that in any adversaries of the life they have no right to take the life of their children.

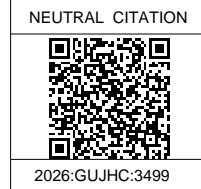
30.2 The parents, who do not support their married daughters even after complaint made by the daughters and even seeing the cruelties endured by the daughter at the hands of in-laws, and when the daughter wants to come back



to the parental home and when the parents deny or forces her to go back to such cruel matrimonial house, whether those parents could be made an abettor to the suicide of the daughter. The mind set of the society at large requires a paradigm shift. Daughters cannot be held as an object, who would be made responsible solely to hold the pride of the parents. Daughter as an individual person has a right to decide about her life. If the married daughter does not feel her matrimonial house comfortable to live in, every parents must grant the daughter the right to decide for her life at such crucial stage.

31. Under Section 306 I.P.C., for a person to be convicted, there has to be a clear *mens rea* to commit the offence. Section 306 I.P.C. also requires an active or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the daughter into such a position that she commit suicide.

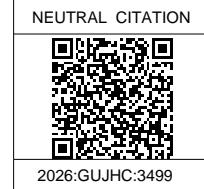
32. In the case of *M.Mohan V. State*, (2011) 3 SCC 626, the Hon'ble Supreme Court has held as under:



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

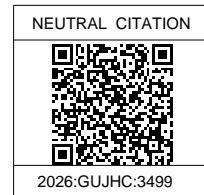
45. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing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

33. If posthumously the mothers could be made an accused for killing the minor children, then police with the law could think progressively, with an intention to bring a change by their policing, in the patriarch society where the will of the male head or the caste and community head prevails and the life of innocent daughters remains at stake. Invoking Section 306 I.P.C. against the parents and the family members of the daughter and even against the caste and community head could bring down the ratio of suicidal death of the daughters, who finds no place to go for their safety. The legislature in its wisdom has now brought in force, The Protection of Women from Domestic Violence Act, 2005, which at present is the only safe course available to the married women to find her way for



own protection, when they would have no support from their parental house.

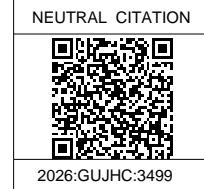
33.1 Here in this matter, the father's testimony as P.W.2 records that the matrimonial life of the daughter with accused was cordial only for one month from the date of marriage. Thereafter, accused started drinking liquor and whenever would come home, without any fault of the daughter, would remove her out of the house and at times would beat her. The deposition further records that one month after the marriage the father had gone to the matrimonial house of the daughter, where the daughter weeping, informed the father that her husband after drinking liquor would come any time as per his will at the house and without any rhyme or reason would beat and harass her. At that time, they brought their daughter back home, however within three to four days the son-in-law came to take the daughter back stating that there was no one in the house to look after the household things and therefore, the father pacifying the daughter had sent her back. The father stated that they often telephonically inquired from the daughter about any continuation of harassment, where the



daughter had replied that she was making her effort to explain her husband. The father stated that just with an intention that his daughter's matrimonial life does not get spoiled he allowed Rita to stay in her in-laws house.

33.2 The father as witness has referred to four days stay of her younger daughter Chhaya at the place of accused. The younger daughter had informed the father about an incident which had occurred at the cinema hall, where accused son-in-law had gone to purchase a bottle of liquor and after bringing it had consumed half of the liquor from the bottle and had asked the deceased to keep safe the bottle in her purse. After coming home the accused had asked for the bottle and had started quarreling, therefore, on the next day his younger daughter Chhaya came back home.

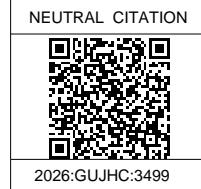
33.3 In the cross-examination, the father could state that accused would beat the daughter only after he would be under the influence of liquor otherwise accused was keeping his daughter in a good condition. On the day of the incident, his son-in-law had come at their house to inquire about his missing wife. He also stated that whenever his daughter would



visit their house, the son-in-law would come to take her back. The father stated that his daughter had never told him to take divorce on the ground of violence suffered by her. Prior to the marriage with the accused, they had inquired about the character of son-in-law. The matrimonial ties was established through the maternal aunt of accused, who was the paternal aunt of the deceased.

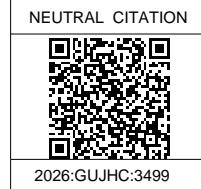
33.4 The only complaint was of physical violence in the form of beating after consumption of liquor, which was the cause of suicide by the daughter, as otherwise according to the complainant his son-in-law was good.

34. The prosecution had also examined the younger sister of deceased, Chhayaben, who stated that sister's marriage was quarrelsome. She was suffering from husband's cruelty. The accused as husband in an inebriated state would often quarrel and beat Rita. On 18.07.1996 according to the witness between 3:00 to 4:00 p.m., the accused along with his employee Shailesh had come on scooter, the accused had told them that there was quarrel between them and he had given



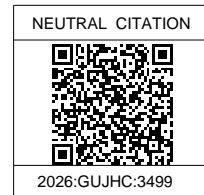
three to four slaps to Rita and without informing, Rita taking along the daughter had left the house between 1:00 to 1:30 hours.

34.1 The witness has also referred about deceased Rita having come to their house on 01.07.1996 and had returned on 12.07.1996 since accused had come to take her back. When she stayed at their house, deceased had informed the witness sister that accused Niranjan was drinking excessively and would create commotion in the house and also quarrel and harass everyone in the house. The witness stated that prior to 01.07.1996, she had gone to the house of Rita and had stayed there for about four days. The witness had referred to an incident at Valsad Dreamland Cinema, where they had gone to watch a movie in 3:00 to 6:00 show. The witness stated that after purchasing the tickets and since there was still time for movie, the accused took them to Tithal, where he took out a bottle of liquor and drunk half of the bottle and gave the sister to keep the bottle in the purse. The witness stated that thereafter, after watching the movie they came back and at home the accused asked for the bottle from her sister and



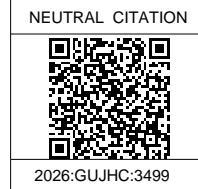
when she refused to give, there was quarrel between her sister and accused. At that time, the witness stated that accused's parents intervened and asked accused as to why he was harassing Rita. On the next day, the witness came back to her house.

34.2 In the cross-examination, the witness as sister of deceased stated that accused was in habit to drink liquor, but not eating Gutkha. He was not having any other addiction. For the incident of carrying a liquor bottle, the witness stated that she had not informed the police. She came to know after one year of her sister marriage that her brother-in-law was alcoholic. The witness also affirmed that brother-in-law would quarrel and beat sister only after consuming liquor. The witness also stated that accused's parents would keep her sister as their daughter. They had also got a fixed deposit in the name of the sister along with the father-in-law at the time of birth of the daughter. The witness also stated that she was knowing the fact that her sister had gone out of the house with an umbrella.



34.3 The mother of deceased Hansaben was examined as P.W.4. According to her, the matrimonial life was good only for one month after marriage, thereafter, the son-in-law consuming liquor would beat her daughter. The mother stated that when the daughter had come eight days prior to the incident at their house and had stayed there, at that time, she expressed her unwillingness to go to matrimonial house, but it was they who had sent her back pacifying her. The mother also affirmed that it was only because of addiction of liquor that the son-in-law was harassing the daughter. The mother could state that after the settlement on 12.07.1996, she had not heard of any quarrel between her daughter and son-in-law. The mother also stated that except his habit of drinking otherwise the son-in-law was good. The parents of the accused were looking after her daughter as their daughter.

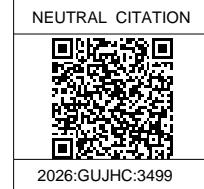
34.4 The Investigation Officer – Kishorsinh Gagubhai Vaghela as P.W.5 in the cross-examination stated that they had not made any separate investigation with regard to accused drinking liquor and there was no any case under the Prohibition Act in the police station against the accused.



35. The consistent version of the father, mother and the sister of deceased was that it was only under the influence of alcohol that the accused would beat the daughter, otherwise he was good in all respect.

35.1 When the police as an Investigating Officer knew the facts of the case by the complaint as well as statements of the witness, the police was required to take the blood test of the accused to get the corroboration of the fact that accused was addicted to liquor to prove the case of consumption of liquor. The police could have also recorded the statements of the neighbours to support the prosecution case regarding accused habit of drinking liquor and, creating commotion in the house and beating deceased. Even the person at the work place of the accused could have been examined.

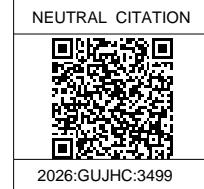
36. The case of **Chabi Karmakar** (supra) is relied upon by the learned APP, wherein it is held that sufficient evidence was there to indicate that husband's actions constituted abetment leading to suicide of deceased and thus, husband was convicted under Section 306 I.P.C. with appropriate sentencing



reflecting his culpability in the matter.

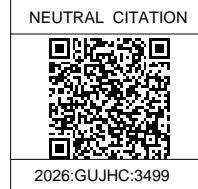
36.1 Learned APP further relied on the judgment of **Vajresh Venkatray Anvekar** (supra), in the said case the allegation of prosecution was that deceased married woman was subjected to cruelty in matrimonial home and there were delay of six hours in lodging the FIR. It was held that the delay was not fatal to prosecution, father would take time to recover and file FIR. It was further held in the said case that assault on woman offends her dignity and what effect it will have on a woman, depends on facts and circumstances of each case, and that giving slaps to woman, part of social norms amounts to be insensitive to woman's problem.

36.2 In the case of **Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan** (supra), 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.

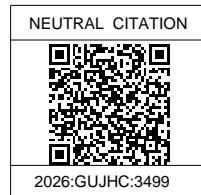
37. Learned advocate Mr. Shethna has placed reliance on the judgment of **Krishan Kumar Malik** (supra), to make



relevant the provision of Section 6 of the Evidence Act.

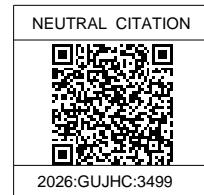
Advocate Mr. Shethna submitted that non-recording of statement of the driver and guard of the railway train as well as neighbours of the matrimonial house is a missing link in the present matter to prove the case beyond any shadow of doubt, where the evidence of collision with railway train has been brought on record. Advocate Mr. Shethna, thus stated that this lacuna has not been explained by the prosecution. The observation in the judgment is abstracted herein below, which reads as under:

37. Section 6 of the Act has an exception to the general rule whereunder, hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of res gestae must have been made contemporaneously with the act or immediately thereafter. Admittedly, she had met her mother Narayani and sister soon after the occurrence, thus, they could have been the best res gestae witnesses, still the prosecution did not think it proper to get their statements recorded. This shows the negligent and casual manner in which prosecution had conducted the investigation then the trial. This lacunae has not been explained by the prosecution. The prosecution has not tried to complete this missing link so as to prove it, beyond shadow of doubt, that it was Appellant who had committed the said offences."



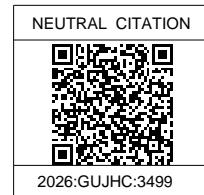
38. For the case to be considered as 'cruelty' under Section 498A I.P.C., it would be required to be established that the husband was wilfully beating and harassing with a view to force the wife to commit suicide. It has not been brought on record that the husband was beating the wife in his full senses. The quarrel with the wife was only when the accused was in drunken condition. The police ought to have lodged a case against accused under Prohibition Act by producing the test report of accused's blood, which could have corroborated the facts of prosecution witness, the parents and the sister, who all consistently stated that the accused would beat the daughter only in inebriated condition. The allegation of consumption of alcohol and thereafter subjecting to the wife to physical violence would not meet the legal definition of cruelty as explained under Section 498A I.P.C. more so when such act has not be proved by any test report.

38.1 In the same way, it could not be proved by any independent evidence that immediately before leaving house, the husband had beaten the wife instigating her to commit suicide. Even if, such evidence had been given by the



complainant father and sister and when the accused had come for the search of missing wife at their house and informed them that he had slapped the wife in the morning and that was the reason of her leaving the house, those facts would require an independent corroboration, as such facts stated in the complaint are of the accused and that could be believed only on corroboration from the person, who had seen such an incident, or may have heard such an incident or by a person to whom immediately the victim girl must have informed of such a beating suffered by her at the hands of the husband.

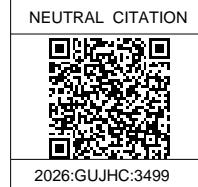
39. Section 306 of I.P.C. requires active act or direct act connecting the accused for the commission of suicide by deceased. Such a direct or indirect act would lead deceased to commit suicide seeing no other option and this act must have been intended by the accused to push deceased in such a situation that she commits suicide. The absence of corroborative evidence from key-witnesses, who could probably be the neighbours, weakens the prosecution case. It could be considered act of domestic violence, by the husband.



40. Rule 8(1)(ii) of the Protection of Women from Domestic Violence Act, 2005 prescribes Form-IV, which assists the Protection Officer to file a DIR (Domestic Violence Information Report), considering the act of physical violence; for example: (i) Beating (ii) Slapping (iii) Hitting (iv) Biting (v) Kicking (vi) Punching (vii) Pushing (viii) Shoving or (ix) Causing bodily pain or injury in any other manner.

40.1 The Domestic Violence Act also lays down safety plans under Rule 8(1)(iv), where there are apprehension of the aggrieved person regarding repeated physical violence. The woman who suffers physical violence at the matrimonial house can seek assistance of the Probation Officer. Large number of cases are reported under the Domestic Violence Act. The women are now seeking legal assistance for their protection. The alternative is not the suicide, but recourse to law for protection. Here in this case, the husband subjected deceased to physical violence only under the influence of alcohol.

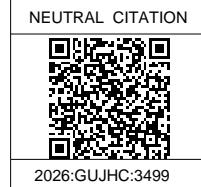
41. The Hon'ble Supreme Court in case of *V.Bhagat Vs. D.Bhagat*, AIR 1994 SC 710, in regard to the word 'cruelty' has observed as under:



"The context and the set up in which the word 'cruelty' has been used in the section, seems..., that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."

41.1 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 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."

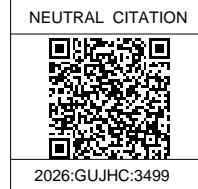
13. *Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act, the prosecution has first to establish that the 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.

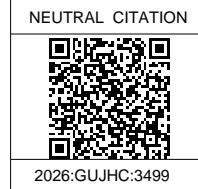
41.2 After having considered the whole case, the Hon'ble Supreme Court in case of **Hans Raj** (supra) has finally laid down as under:

"16. *Having regard to the principles aforesaid, we may now advert to the facts of this case. The learned Trial Judge took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the Trial Court, having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of*



investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence therefore we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 I.P.C."

42. Thus, considering the observation of the Hon'ble Supreme Court in the case of **Hans Raj** (supra) and the judgments relied upon by learned advocate Mr. Shethna, to the analysis of the evidence and the reasons given thereto, the fact that husband was wilfully beating the wife with the intent to drive the wife to commit suicide does not get proved. The judgment of the learned trial Court Judge, thus becomes erroneous, the conviction under Sections 498A and 306 I.P.C. is not justified by the evidence on record, and the law established, the conviction and sentence passed by the learned trial Court is required to be set aside.



43. In the result, the appeal is **allowed**. The judgment and order dated 28.08.2003 passed by the learned Additional Sessions Judge, Valsad in Sessions Case No.125/2002 (Old Sessions Case No.122/1997) is set aside. The accused stands acquitted. Record and Proceedings be sent back to the concerned Trial Court forthwith.

(GITA GOPI,J)

Pankaj/1