

(2013) 06 GAU CK 0002**Gauhati High Court****Case No:** Criminal Appeal No. 23 (J) of 2010

Kandarpa Deka and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: June 25, 2013**Citation:** (2014) 1 DMC 748 : (2013) 3 GLD 865 : (2013) 4 GLT 420**Hon'ble Judges:** A.C. Upadhyay, J**Bench:** Single Bench**Advocate:** A.K. Bhuyan, for the Appellant; B.B. Gogoi, Addl. PP, for the Respondent**Final Decision:** Dismissed**Judgement**

A.C. Upadhyay, J.

Appellant has been convicted u/s 498(A) and 306 of the IPC by the learned Sessions Judge at Morigaon in Sessions case No. 30/2007 and sentenced to undergo rigorous imprisonment for two years with a fine of Rs. 500/- and in default to further rigorous imprisonment for fifteen days more for commission of offence u/s 498A IPC. Appellant has also been concomitantly sentenced to undergo rigorous imprisonment for five years with a fine of Rs. 2,000/- and in default to further rigorous imprisonment for three months more for commission of offence u/s 306 of the IPC. The FIR filed by one Manidip Bhagawati reveals that soon after marriage of his sister Itimalati Bhagawati with the appellant she was regularly physically and mentally tortured by the latter and lastly on the morning hours of 5.8.06 he was informed by one Dilip Delta over phone that his sister was doused with kerosene by the appellant and she was burnt to death.

2. On the basis of the ejahar, Laharighat police registered a case, initiated an investigation and on conclusion of the investigation, submitted the charge sheet u/s 302 of the IPC against the appellant.

3. Being it exclusively triable by the court of sessions, the case was committed for trial and the learned Sessions Judge framed formal charge u/s 302 /306 of the IPC

against the appellant. When the charge was read out and explained to the appellant, the latter pleaded innocent and demanded a trial.

4. The prosecution examined as many as twenty witnesses to bring home the charge against the appellant. After recording of evidence of the prosecution witnesses, statement of the appellant (under Section 313 of the CrPC) was recorded. The stand of the appellant was of total denial; he declined to examine witness in his defence. On conclusion of hearing, the learned Sessions Judge convicted and sentenced the appellant as aforesaid, giving rise to this appeal.

5. Mr. A.K. Bhuyan, learned counsel for the appellant, submitted that he is not challenging the conviction of the appellant u/s 498(A) of the IPC. However, he submitted that as there is not even an iota of evidence to establish a charge u/s 306 of the IPC, the appellant, deserves acquittal forthwith.

6. Mr. B.B. Gogoi, learned Additional Public Prosecutor, on the other hand, submitted that since the prosecution has been able to establish the charge u/s 498(A) as well as u/s 306 of the IPC "beyond all reasonable doubt" against the appellant, the findings of the learned trial court do not call for an interference by this Court. More so, learned Addl. P.P. pointed out that the cruelty perpetrated by the accused upon the victim invited application of presumption clause as provided u/s 113A of the Evidence Act.

7. In order to appreciate the submissions of learned counsel for the parties, I am extracting below the core of the prosecution evidence:

8. PW 1, Madan Ch. Deka, father of the accused deposed that accused Kandarpa is his son and grandson Abhranil Deka was about seven years of age at that time. According to the PW 1, both were living together in his house at the relevant time along with the daughter-in-law Itimalati, the wife of accused Kandarpa. Itimalati prepared food and took care of all of them. PW 1 stated that the marriage of Itimalati with his son Kandarpa was performed about six months prior to the date of occurrence and his son Kandarpa, a graduate, was serving at a venture school. PW 1 deposed that Itimalati was picked by them for marriage as her attitude was up to their expectations. Everything was going on peacefully in the marital life of Itimalati and Kandarpa. PW 1 stated that Kandarpa was a drunkard, which Itimalati did not like and this was one of the reasons that tussle broke out off and on between them. On the day of occurrence, PW 1 was at home and Kandarpa had gone to Guwahati in the morning. Kandarpa returned home at about 7.00 p.m. and they had their meal at about 10.00 PM. PW 1 also stated that all the four members took their meal together and rested their weary selves in their respective rooms. There is a room between the rooms of the PW-1 and the couple.

9. Thereafter, PW 1, after hearing sound of a quarrel between accused Kandarpa and Itimalati PW-1 asked them to keep quiet and then went on to sleep. On next morning at around 4 AM, PW 1 woke up to find Itimalati engulfed by afire but still

alive. PW 1 raised a hue and cry for help. Then his son Kandarpa came out of his room and scrambled a gunny bag on the body of Itimalati to douse the flame. Thereafter, his other son Dipamoni, who resides barely at a distance of 1 furlong, came there, after bearing a hulla, as also the village headman. Itimalati was rushed to the Civil Hospital, but the doctor there advised them to take her to the GMCH for better treatment. Itimalati was not in a position to speak, though she was alive. On the way to GMCH, she died at a place near Khetri. On being informed, the family members of Itimalati had arrived after sometime. PW 1 proved Ext. 1 (his statement) and his signature thereon.

10. Smti. Moina Deka, PW 2, stays barely 200 metres away from the house of Kandarpa, made a statement in the Court that Kandarpa is a drunkard. Exhibit 2 is her signed-statement. During cross-examination, she stated that Abhranil is her son who lives with her father-in-law (PW 1) and that she cannot say what actually happened on the night and that her father-in-law (PW-1) will be in a better position to say about the state of affairs.

11. Tapuram Deka (PW-4), village headman, deposed that the accused is his nephew. Being a close neighbour of the accused, hearing a bulla in the relevant morning, he came out of the bed to find Itimalati burnt by a fire with her body lay on the verandah sans any cloth. PW 4 also stated that Itimalati was not suffering from mental illness. PW-4 is a witness to the Inquest; Ext. 3 is the Inquest Report, Ext. 3(1) is his signature.

12. PW 5 (Sukleswar Deka), brother of the accused, had been declared as a hostile witness by the prosecution.

13. Open Bhuyan, PW-6 deposed that he lives at a distance of around one kilometre from the house of the accused, and that on the relevant morning Sukleswar Deka came to his house at about 4.30 AM to inform him that he had to take his Tata Sumo, for taking Itimalati for treatment. Accordingly, PW 6 advised Sukleswar to take his driver. Subsequently, the driver took the vehicle to the house of Kandarpa. Itimalati was taken in the vehicle of PW 6 for treatment to Morigaon Civil Hospital and from there to Guwahati but on way, she died. PW 6 further stated that on his arrival, severely-burnt Itimalati wanted to take water and at that time PW-6 asked the accused Kandarpa to bring water for her, but Itimalati refused to take water from him and muttered "I will not take water from your hand". The accused Kandarpa brought water, but she did not take water from him, and then he asked the father of Kandarpa to give water into her mouth, which his father did whit around three spoons and Itimalati gulped it. The driver of PW 6 Hareswar Saikia drove the vehicle. His statement was recorded by the Magistrate and he made the same statement before the Magistrate also which is Ext. 5, Ext. 5(1) and Ext. 5(2) are his signatures.

14. During cross-examination, the PW 6 revealed that when attempt was made to put her into the vehicle, she had objected and declined to go for treatment. The PW 6 also stated that the accused Kandarpa was a drunkard.

15. During further examination, the PW 6 proving the seizure list stated that police also seized one empty liquor bottle scattered under the bed of the accused and a half filled mug of liquor beside it.

16. Dimbeswar Deka, PW-7 deposed that the accused Kandarpa is his cousin. His house was at a distance of about 200 metres. That the accused used to drink and create nuisance and if anyone attempted to intervene, he abused. That, after taking drink, the accused Kandarpa did not remain normal. Sometimes even they could hear a ruckus created by the accused Kandarpa and during the night when he gulped liquor his behavior appeared abnormal.

17. Smti. Dulprabh Deka, PW-8, hearing the incident, arrived at the house of Kandarpa on 5.8.06 to find the dead body of Itimalati in the courtyard. That the father of the accused Kandarpa stated in her presence that there was quarrel between the husband and the wife on that night as the accused Kandarpa was drunk. The PW 8 also stated that prior to some days of her death, Itimalati met her elder sister Dipali had stated about the torture on her and that she also showed the mark of injury on her back, as a result of assault on her, by her husband. The PW 8 also stated that on her arrival, she found the room of Itimalati washed by mud and water and also saw two empty wine bottles inside the room. She also made a statement u/s 164 CrPC. Exhibit-6 is her statement and Ext. 6(1) is her signature. Her cross-examination by the defence could not discern anything to suspect the truthfulness of her deposition.

18. Monideep Bhagawati, PW 10 is the brother of Itimalati. The PW 10 stated that the married life began peacefully, but thereafter, the accused Kandarpa began to assault Itimalati which was reported by her. PW 10, stated that when he met her about 15 days prior to her death, he could learn about the family discord which was due to assault on her by the accused Kandarpa after being drunk.

19. Lalit Konwar PW 12, president of the local Gaon panchayat and having learnt about the incident, came there to find an Executive Magistrate and police party in the house of the accused Kandarpa. PW 12 revealed that about 1 $\frac{1}{2}$ months/2 months prior to the date of incident there was a quarrel between Itimalati and her husband accused Kandarpa and he was called by Dilip Deka. On arrival in the house of the accused Kandarpa, PW 12 asked him as to what had happened and then it was informed to him that he was a heavy drunkard and so Itimalati was unhappy for this reason and the PW 12 accordingly advised accused to abandon taking liquor.

20. Smti. Dipali Deka, PW 14, is the younger sister of Itimalati. PW 14 has also revealed that initially they were reluctant to the marriage between her sister and the accused as he was a drunkard but on insistence of the accused Kandarpa the

marriage was socially arranged. Accused Kandarpa had also promised that he would never indulge in liquor. Itimalati had visited her marital home on the death of her Barma. Itimalati stated to PW 14 about her marital life and revealed that Kandarpa had assaulted her and also shown some patches/mark of injury on her body. Itimalati further stated that the accused Kandarpa used to assault her at every night after taking liquor and that after having intoxicated he used to raise a hue and cry at night. PW 14 also stated that prior to about ten days of her death her younger sister Padma visited Itimalati and stayed there for two night and on both the nights the accused Kandarpa consumed liquor and assaulted Itimalati. After staying two nights in the house of Itimalati, Padma came to her house along with one nephew and that Padma also could learn about all these from Itimalati.

21. Dilip Deka, PW 15, is the brother-in-law of Itimalati. About three months after marriage his other sister-in-law Padma came to their house and thereafter visited to the house of Itimalati and stayed there for one night Padma returned to then home in the early morning and reported that in the night after taking liquor, Kandarpa created an unpleasant situation and abused Itimalati and as such he informed the matter to Lalit Konwar, the Panchayat President to help in the matter and hence Lalit Konwar proceeded to the house of the accused Kandarpa. The accused Kandarpa came alone with his friend Pradip Deka and begged apology to Padma as well as his parents and wife and promised that he would not repeat such incident which he created on the previous night and would live peacefully and thereafter he departed.

22. Smti. Padma Bhagawati alias Parbati PW 17 deposed that Itimalati was her elder sister. That she went to the house of Itimalati along with nephew Aniruddha alias Nitu, accompanied by Nayanmoni and Dandidhar. They had gone there in a truck with furniture meant for Itimalati, since the furniture could not be given to her at the time of marriage as the marriage was performed within a short time. PW 17 stayed in the house of the accused Kandarpa for one night but the accused Kandarpa went out in the evening and came back in the midnight in a drunken state. Two other persons brought Kandarpa riding on a bicycle. PW 17, was sleeping along with sister Itimalati on the same bed till that time as the accused Kandarpa did not reach home. That there was rain outside. On reaching home the accused Kandarpa started abusing Itimalati giving that the furniture were below standard. In the family there was Kandarpa and his father. At night none came to intervene the situation. PW 17, brought Itimalati inside the room and both of them slept in the bed room of Itimalati while Kandarpa remained in the drawing room as well as in kitchen. The father of the accused Kandarpa was sleeping in another room intervened by the drawing room. PW 17, revealed that she wept to see the plight of her elder sister. The following morning PW 17 went to the house of her sister Dipali, who was married at a village at about 3 km distance from the house of Kandarpa. The matter was informed to her sister Dipali and her husband Dilip Deka including Dulu Prabha, the mother of Dilip Deka and Satya Prabha. Thereafter Dilip Deka

called three persons of gaon panchayat and went to meet Kandarpa. Thereafter Kandarpa came in normal state and requested the village headman and all of them came to the house of Dilip Deka and apologized for whatever he had done in the previous night and Kandarpa also apologised to her and assured that he will not repeat his misdeed in future. Though she wanted to take back Itimalati, the members of the family of Kandarpa assured that she should not worry and no such situation will be repeated. Thereafter the incident of murder of Itimalati occurred. She has also mentioned that on that relevant night Itimalati was assaulted and kicked by Kandarpa and so she bolted the room from inside, but Kandarpa demanded opening the door so he can also sleep inside and that Kandarpa raised hue and cry and threw the furniture.

23. Dr. A.T.M. Eusuf, PW 11 deposed that he conducted the post mortem on the dead body of Itimalati on 5.8.2006 on police reaction in connection with Bhuragaon GDE No. 80 dated 5.8.06 and he recorded his finding as below:

External Appearance.

A stout female dead body of 27 years old. Rigor Mortis present. Pugilistic attitude present due to deep burn all over the body. Hairs are burnt completely, Multiple blisters are present on the chest, abdomen and back of the chest. Genitalia and public hairs are burnt completely. Ashes are seen on the ribs due to partial burnt of the chest. No any sign of other injuries or deformity is seen except those deep burns.

Abdomen

Walls, peritoneum burnt partially.

Mouth, pharyns, oesophagus congested.

Stomach and its contents - food matter with water present.

Small intestine and its contents - partially digested food matter present Bladder empty.

Large intestine and its contents - faecal matter present

Liver, spleen and kidneys congested.

Thorax

Walls, ribs and cartilage - partially burnt present.

Pleurae congested.

Larynx and trachea congested.

Right lung, left lung, pericardium, heart, vessels are congested.

Cranium and spinal canal.

Scalp, skull, vertebrae - hairs and scalps are burnt Membrane congested. Brain and spinal cord congested

More details description of injury or disease:

- (i) All the injuries sustained that is burn injury are antemortem in nature.
- (ii) No sign of disease or deformity is seen.

Opinion: In my opinion the cause of death is due to shock, coma leading to cardio respiratory failure as a result of 100% bum and death appears to be instantaneous.

Ext. 9 is my post mortem report and Ext. 9(1) is my signature.

24. Un-relented cruelty and assault on her by the accused husband which was repeated in the bed room every night and there being no respite from it and rather it increased in intensity and even the accused husband did not spare her at midnight, these facts generated in her mind utter sense of frustration which ultimately led her to take the extreme steps.

25. The learned trial court on meticulous consideration of the evidence placed on record extracted the following special features, which is quoted herein below:

1) The marriage of Itimalati with Kandarpa Deka took place in the month of March, 2006 and the occurrence took place in the month of August in the same year within five months.

1) Kandarpa used to drink and used to create nuisance at night and also assaulted Itimalati for the simple reason that Itimalati did not like Kandarpa's drinking habit and objected to it

2) Padma Bhagawati, the younger sister of Itimalati stayed one night in the house of Kandarpa when she went there along with the furniture and at that night also accused Kandarpa came back home late at night under influence of liquor and alleged that the furniture was below standard and even refused to accept and assaulted and kicked Itimalati in presence of her sister Padma.

3) The incident of assault on Itimalati in presence of Padma by the accused was reported in the house of Dipali Deka and Dilip Deka and consequently Dilip Deka took up the matter with the GP president Lalit Konwar to intervene and prevail upon Kandarpa so that such incident do not occur.

4) Lalit Konwar, the GP president went to the house of Kandarpa and advised him to abandon the habit of drinking, consequent to which, Kandarpa came to the house of Dipali Deka and Dilip Deka where Padma was also available and begged apology to them and assured that he will not repeat such incident in future.

5) It further appears from the Ext. 1 statement of Madan Deka, father of the accused made u/s 164 CrPC that on the relevant night at about 12 p.m. he could hear quarrel

between his son Kandarpa and Itimalati and from outside itself be asked them not to quarrel.

6) The fact that Kandarpa quarreled with his wife at midnight can be considered to be the tip of the iceberg of discontent and having found his wife in his room what may be the latitude of harassment, cruelty and torture towards Itimalati which had its clear manifestation when Itimalati was found in burning condition in the morning on the verandah of the room.

26. The next feature which is required to be reckoned is the fact of the accused Kandarpa Deka went to the house of Dipali Deka (PW 14) and Dilip Deka (PW 15) wherein Padma Bhagawati (PW 18) was also present to express his regret for what he had done on the previous night against Itimalati in presence of padma Bhagawati and that he begged apology to also the family members of Dilip Deka and furthermore that the GP president Lalit Koknwar (PW 12) was also made to move to the house of the accused to persuade him not to create situation after taking drink and moreover that he was advised to abandon drinking. This set of evidence clearly incriminates the accused.

27. According to witness Padma Bhagawati (PW 17), the accused, even in her presence assaulted and kicked Itimalati for which she had to take her inside the room and bolt it from inside, to cool the situation.

28. In Ramesh Kumar Vs. State of Chhattisgarh, wherein their Lordships of the Hon'ble Supreme Court observed that a bare reading of section 113A shows that to attract applicability of section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty, on existence and availability of the aforesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly the presumption is not mandatory, it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn, before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption, the expression-

"The other circumstances of the case" used in section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption.....

29. Learned counsel for the appellant submitted that in the instant case on appreciating the evidence on record, there appear instances of manhandling of the

deceased by the appellant According to learned counsel, there is no evidence on record to show that after the intervention of the family members as well as village elders the appellant had ever manhandled the deceased.

30. But, the evidence on record reveal that the accused tortured the victim after getting himself intoxicated. It has also come on evidence on record that after intervention of family members and village elders the accused begged for apology for his remiss and promised not to repeat such incident.

32. Learned counsel for the appellant submitted that to constitute an offence u/s 498(A) of the Indian Penal Code, isolated incident of assault or abuse, in the legal language is stated to be harassment simpliciter, does not constitute an offence u/s 498(A) of the Indian Penal Code. In the instant case, even assuming but not admitting, if at all the evidence on record makes out a case of section 498(A) of the Indian Penal Code, but by no stretch of interpretation the evidence on record makes out a case u/s 306 of the Indian Penal Code.

32. According to the learned counsel for the appellant, on reading of the evidence on record in totality there is no evidence on record to show that after the intervention of the family members as well as village elders there was instances of any manhandling or abuse meted out by the appellant to the deceased, on the contrary, the President of the Gaon Panchayat P.W-12 specifically and categorically stated that after his intervention there was no report of assault or abuse by the appellant.

33. According to the learned counsel for the appellant, P.W-8, P.W-17 and P.W-14 did not even adduce any evidence that the deceased was subjected to any sort of cruelty either mental or physical by the appellant after the intervention of the family members and village elders. On the contrary, P.W-1 who has candidly adduced evidence to state that on the night before the incident he heard quarrel between the appellant and the deceased at night hours but when he intervened mere was silence. On the contrary, liquor bottles and half filled mugs of liquor were found in the room of the accused, next morning after the incident With the certificate given by the witnesses about the accused and his habit of getting abnormal with wine a lot is spoken without saying a word.

34. According to the appellant's counsel this piece of evidence cannot by any stretch of interpretation can be brought under the definition of Cruelty since a quarrel between a husband and wife is as natural as quarrel between two brothers. Two individuals having different background, taste, habits, characters, thought process came together to lead a marital life.

35. Learned counsel for the appellant submitted that there ought to be differences between two persons. The quarrel between the husband and wife is as natural, like a quarrel between two brothers or two good fiends.

36. Learned counsel for the appellant submitted that every person has its own outlook, thought process, sentiment, emotions and feelings which cannot be categorised into a straight jacket formula. Some people are sensitive, emotional but they have control over their feelings, emotions and sentiments but some have less control over their emotions, sentiment and feeling.

37. Learned counsel for the appellant submitted that in the instant case section 113(A) cannot be invoked in view of the fact that the deceased was not subjected to cruelty after the intervention of the family members and village elders.

38. In the instant case it has come on evidence on record that the appellant was suffering from alcoholism. It has come on evidence on record that he used to create reclines under the influence of liquor. It has come on evidence on record that he used to assault the deceased under the influence of liquor and not otherwise. It has come on evidence on record that after at intervention of the family members and village elders he apologised his misdeeds with his deceased wife.

39. Learned counsel for the appellant submitted that there is no evidence on record to show that after the intervention of the village elders and family members accused continued to consume alcohol or abused or manhandled the deceased. Unfortunately, as a matter of fact, unlike what has been submitted by the learned counsel for the appellant, there is no cut off date or cut off point for a husband in perpetrating and/or subjecting wife to physical and mental cruelty. Every episode of subjecting wife to cruelty counts in the long run. Such cruelty over a period of time can cause mistrust and erode the relationship of husband and wife. Such rough treatment for a long time would instigate a wife to take the extreme step. It cannot be downplayed as a dispute or quarrel between two good friends. In the present case prosecution evidence clearly depicted that even on the intervening night, before going to bed, the father of the accused, PW-1 himself acknowledged having witnessed a quarrel between the accused and the deceased. The prosecution has adduced evidence to show and confirm that after the incident, in the room of the accused, liquor bottle and half filled liquor jug were seized by the police. All the witnesses, including the relations of the accused approved that accused used to loose his character and behave abnormally after taking wine. Prosecution witnesses proved beyond doubt that the accused used to physically torture the deceased after taking wine. All this implies that the victim was subjected to cruelty by the appellant immediately before she took the extreme step of committing suicide.

The cruelty and torture meted out to the victim wife cannot be simplified by interpreting it as quarrel between two good friends, two brothers etc. The evidence laid by the prosecution witnesses do not depict any friendly relationship between the accused and his wife. On the contrary, the accused did not come forward to adduce any evidence to establish a semblance of friendly relationship between the accused and the victim. On top of it, the evidence adduced by the prosecution witness does not reflect that the accused was ever loving, sensitive and emotional to

his deceased wife. Rather, the prosecution evidence reflect a sordid revelation of torture both mental physical upon the deceased wife.

40. Unfortunately in the instant case all the witnesses whosoever spoke about the behavior of the accused did not come forward to say that the accused stopped taking liquor. Rather all such witnesses categorically stated that accused was a drunkard with abnormal behavior.

41. Relying on the judgement of this Hon"ble Court reported in [Smt. Sashi Prabha Devi Vs. State of Assam](#), Smti. Sashi Prava Devi Vs. State of Assam, the learned counsel for the appellant submitted that in the aforesaid case a girl committed suicide since her name was wrongly struck off from the register of student in class X. In the aforesaid case there is absolutely no evidence that the accused appellant had acted at point of time suggested or hinted for commission of suicide. This Hon"ble Court came to a finding that on the facts of the case considering the evidence on record no case for instigating or abatement of suicide is made out against the appellant However, in Smti. Sashi Prabha v. State of Assam (supra), there is no question of petitioner presumption clause in terms of section 113A of the Evidence Act. Therefore, the above decision may not have application in the present case.

42. The appellant herein also relied on a decision of the Supreme Court reported in [Ramesh Kumar Vs. State of Chhattisgarh](#), In the aforesaid case the Supreme Court came to a finding that if an accused is found guilty of Section 498(A) of the Indian Penal Code he should not necessarily be held guilty u/s 306 of the Indian Penal Code on the basis of same evidence. In the aforesaid case the Supreme Court in its judgement in paragraph 12 of the judgement has observed that in order to draw up presumption u/s 113-A of the Indian Evidence Act, 1872, the foundation thereof must exist. The Hon"ble Apex Court further observed that presumption is not mandatory, it is only permissive as the employment of expression may presume suggest

43. That the appellant further relied on the Supreme Court judgement reported in [Chitresh Kumar Chopra Vs. State \(Govt. of NCT of Delhi\)](#), wherein appreciating the requirement of Section 306 of Indian Penal Code the Supreme Court went a step further. The Hon"ble Supreme Court has stated, to apply Section 306 of the Indian Penal Code against a person direct involvement of a person or persons concerned in the commission of offence of suicide is essential to bring home the offence u/s 306 of the Indian Penal Code.

44. However, in the case of Chitresh Kumar Chopra v. State (NCT of Delhi), (Supra) it was alleged that the deceased was a partner with the appellant in this appeal along whit two other persons viz. Jahuruddin and Mahavir Prasad and they were all engaged in the real estate business; he committed suicide on account of the problems created by these three persons; the deceased left behind a suicide note. Therefore, fact situation in the present case, unlike Chitresh Kumar Chopra v. State

(NCT of Delhi), (Supra) referred to above, invites presumption u/s 113A of the Evidence Act. Consequently, Chitresh Kumar Chopra v. State (NCT of Delhi), (Supra) is not applicable in the present case.

45. Section 113-A, of the Evidence Act reveals as follows:

113-A. Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative other husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

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

46. In [Rakhal Debnath Vs. State of West Bengal](#), the Apex Court observed that, when we apply the said principle to the facts of the case, we find that the relevant criteria for application of Section 113-A of the Evidence Act is duly attracted to the facts of this case. The deceased committed suicide within 35 days from the date of her marriage and the allegation of cruelty was also fully established. The evidence thus disclosed that the conduct of the appellant vis-à-vis the deceased coupled with the consequential demand of money from PW 3 the father of the deceased and also the pledging of the jewels of the deceased fully established the case of the prosecution that the deceased was instigated by the appellant to take the extreme decision of committing suicide by pouring kerosene on herself and set herself on fire and thereby the charge of abetment u/s 306 and as well as Section 498-A IPC stood proved.

47. In this respect the subsequent decision in [Thanu Ram Vs. State of M.P.](#), can also be usefully referred to. In paras 26 and 27 this Court has explained the legal position as under:

26. In the Explanation to Section 113-A it has also been indicated that for the purpose of the said section, the expression "cruelty" would have the same meaning as in Section 498(A) IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction u/s 498(A) IPC, the same may be sufficient for a presumption to be drawn u/s 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC.

27. All the decisions on the point cited by Dr. Pandey, deal with the differences in relation to the provisions of Section 498(A) and Section 306 IPC, except in [Sushil Kumar Sharma Vs. Union of India \(UOI\) and Others](#), where the provisions of Section 498(A) IPC had been considered in the context of Section 304-B IPC. In that context, it was sought to be explained that the big difference between Sections 306 and 498(A) IPC is that of intention. The provisions of Section 113-A of the Evidence Act or

its impact on an offence u/s 498(A) IPC or Section 306 IPC vis-a-vis Section 107 IPC was not considered in any of these decisions.

48. In [Vajresh Venkatray Anvekar Vs. State of Karnataka](#), the Apex Court observed that facet of married life, does not mean—"giving one or two slaps to a wife by a husband, just does not matter". It cannot be a right approach. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps the learned Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive Girija to commit suicide. But to make light of slaps given to Girija which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. What effect it will have on a woman depends on the facts and circumstances of each case. There cannot be any generalization on this issue. Our observation, however, must not be understood to mean that in all cases of assault suicide must follow. Our objection is to the tenor of the learned Sessions Judge's observations. We do not suggest that where there is no evidence the court should go out of its way, ferret out evident and convict the accused in such cases. It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of the court to see that perpetrators of heinous crimes are brought to book. The above quoted extracts add to the reasons why the learned Sessions Judge's judgment can be characterized as perverse. They show a mindset which needs to change. There is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitised towards women's problems.

49. In the ultimate analysis the Apex Court opined that the appellant has not been able to rebut the presumption u/s 113-A of the Evidence Act. Girija committed suicide within seven years from the date of her marriage inner matrimonial home. Impact of this circumstance was clearly missed by the trial court. The evidence on record establishes that Girija was subjected to mental and physical cruelty by the appellant in their matrimonial home which drove her to commit suicide. The appellant is guilty of abetment of suicide.

50. Moreover, a perusal of Section 498(A) IPC would show that cruelty would mean any willful conduct which was of such a nature as was likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical to the woman. We find no evidence on this score and it has been so found by the High Court.

51. The fact that the appellant had been misbehaving with his wife has been clearly depicted in the evidence of PW 1, PW 6, PW 7, PW 8, PW 10, PW 14, PW 15 and PW 17. It has come in their statements that she was being harassed and assaulted by the appellant for various reasons under the influence of liquor. Nevertheless,

evidence on record clearly revealed that the deceased was subjected to harassment and cruelty physical and menial in matrimonial home. Therefore, a presumption u/s 113-A of the Evidence Act, 1872 must be raised against the appellant, as admittedly the accident happened within six months after the marriage.

52. Obviously, each case, however, is required to be determined on its own facts. The prosecution having established the ingredients of offences falling both under Sections 498(A) and 306 of the Penal Code, the burden shifted on the accused which he failed to discharge.

53. Considering the law laid down by the Apex Court as well as our High Court and bearing in mind the factual matrix of the instant case also keeping in view the elaborate submissions made by the learned counsel, this Court is of the view that there is evidence in abundance in the record to establish that the deceased was subjected to physical and mental cruelty by the appellant husband, which compelled and instigated the victim wife to choose the extreme path of escaping the trauma. In the facts and circumstances discussed above, this Court is of the opinion that it is not a case where interference with the impugned judgment is called for. The appeal is dismissed accordingly.