

**(2013) 08 CAL CK 0071**

**Calcutta High Court**

**Case No:** CRA No. 215 of 2004

Prova Banerjee and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Aug. 16, 2013

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 106, 113A, 8
- Penal Code, 1860 (IPC) - Section 107, 306, 498, 498A

**Citation:** (2013) 3 CALLT 499 : (2014) 1 DMC 387

**Hon'ble Judges:** Tapen Sen, J; Mrinal Kanti Sinha, J

**Bench:** Division Bench

**Advocate:** Prabir Mitra, for the Appellant; Saswata Gopal Mukherjee and Ms. Sukanya Bhattacharya, for the Respondent

**Final Decision:** Partly Allowed

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**Judgement**

Mrinal Kanti Sinha, J.

This appeal has been directed against the Judgment and Order dated 17.03.2004 and 18.03.2004 passed by Sri. P.K. Das, learned Additional Sessions Judge, 2nd Court, Asansol in Sessions Case No. 49 of 2000 whereby the appellants Nirmal Banerjee, Prova Banerjee, Benu Banerjee, Bhanu Banerjee and Sanu alias Kanu Banerjee have been found guilty and convicted for the offence u/s 498A of the Indian Penal Code and have been sentenced to suffer Rigorous Imprisonment for 2 years each and to pay a fine of Rs. 1,000/-, each in default to suffer Simple Imprisonment for 3 months, and appellant Sanu alias Kanu Banerjee has also been found guilty and convicted for the offence u/s 306 of the Indian Penal Code and has been sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs. 5,000/- in default to suffer Simple Imprisonment for 1 year. The prosecution case, in short, is this that one Bipad Baran Chatterjee lodged a written complaint

before the Officer-in-Charge, Kulti P.S., alleging thereby that his daughter Babli was married with the appellant Sanu alias Kanu Banerjee, son of Nirmal Banerjee, at Chalbalpur according to Hindu rites on 28th Falgoon, 1394 B.S. After marriage Babli was living in her husbands house and gave birth to two daughters. Then her husband Sanu alias Kanu Banerjee, father-in-law Nirmal Banerjee, mother-in-law Provabati Banerjee, husband's elder brother Bhanu Banerjee, husband's brother Benu Banerjee used to assault and torture upon her. The informant or de-facto complainant tried several times to settle the matter between them by discussion with them and the people of Chalbalpur, but to no effect. The informant's youngest son Tapas was working in "Mama ply-wood shop" at Barakar since 4/5 months and he used to stay at night in the house of informant's son-in-law at Chalbalpur. On the day before lodging of the F.I.R. Tapas returned back home at about 4/5 p.m. and informed the informant that he found the burnt dead body of Babli, which was lying in the house of his son-in-law on 02.11.1996 at about 5 a.m. The informant's son-in-law threatened Tapas not to disclose that fact to any body and in case Tapas disclose the same then he would be murdered. On arrival at Chalbalpur on 03.11.1996 at about 10 the informant inquired from the neighbours of his son-in-law and the people of their house regarding the cause of death of his daughter, when the neighbours apprehended that the cause of death was probably due to the torture of his son-in-law, father-in-law, mother-in-law elder brother and brother of his son-in-law, and the informant also apprehended that the cause of death of his daughter was due to their torture.

2. After receiving the written complaint police of Kulti P.S. started Kulti P.S. case no. 245 of 1996 dated 03.11.1996 under Sections 498A /306 of the Indian Penal Code and investigated into same. During investigation police held inquest over the dead body, visited the P.O., prepared rough sketch, sized some articles under seizure list, recorded statement of the witnesses u/s 161 of Criminal Procedure Code, collected post-mortem report, arrested accused persons sent viscera to the F.S.L., and after completion of investigation submitted charge-sheet against five accused persons under Sections 498 /306 of the Indian Penal Code.

3. Thereafter the case was committed to the Court of Sessions. The case was transferred to the learned Trial Court, which framed charges under Sections 498A /306 of the Indian Penal Code against the accused persons. The charges were read over and explained to the accused persons, who pleaded not guilty and claimed to be tired.

4. In support of its case the prosecution examined 10 witnesses and submitted some documents, which have been marked Exhibits 1 to 6/2 and MAT Exhibit. Thereafter the accused persons were examined u/s 313 of the Code of Criminal Procedure, wherefrom it also appears that the defence case is the denial of the prosecution case and the accused persons pleaded their innocence, but the defence neither examined any defence witness nor submitted any document in support of its

case.

5. It was also the case of the defence that the appellant/accused persons are innocent and the sustaining of burn injury by the deceased was accidental in nature and in the night Babli and Tapas slept in the room and the appellant/accused Sanu slept in the verandah returning back home at 10 p.m. on 01.11.1996.

6. The learned Trial Court after taking evidence and hearing arguments of the parties passed the aforesaid judgment and order convicting all the accused/appellants u/s 498A of the Indian Penal Code and convicting the accused/appellant Sanu alias Kanu Banerjee u/s 306 of the Indian Penal Code also and sentenced them in the above noted manner.

7. Mr. Prabir Mitra, learned counsel for the appellants submits that the impugned judgment and order of conviction is against the weight of evidence and is based on surmise and conjecture and so is liable to be set aside and the learned Trial Judge has illegally refused to consider the defence case in its proper perspective which has caused serious prejudice to the appellant and has thereby resulted in gross miscarriage of justice. Learned counsel has also contended that the day to day affair between husband and wife cannot be proximate cause for committing suicide and as per medical evidence of P.W.-4 death of the victim could have been caused by accidental fire. As per evidence of P.W.-3 applicant 5 slapped the victim 15 days before the date of occurrence and as per the evidence of P.W.-9, brother of the victim, he could not say how his elder sister, the deceased died, and as such it cannot be said that any torture of the husband was the proximate cause of her committing suicide and the learned Judge did not consider the statements of the appellants made u/s 313 of the Code of Criminal Procedure in its true and proper perspective.

8. It has also been submitted by the learned counsel for the appellants that the occurrence allegedly took place in the night of 1st/2nd November, 1996, but the F.I.R. was lodged at the P.S. on 03.11.1996, though as per the F.I.R. the place of occurrence is only 8 kilometers away from the Police Station, but no sufficient explanation has been given by the prosecution regarding such long delay in lodging the F.I.R. and such unexplained delay in lodging the F.I.R. at the P.S. is fatal to the prosecution. But in this regard it appears that in view of sudden shock and mental condition of the informant father it cannot be said that the delay in lodging the FIR has not sufficiently been explained.

9. Learned counsel for the appellant has further contended that there was no eyewitness to the alleged incident and the prosecution case has been based upon circumstantial evidence only and the link of the chain is not complete and the alleged victim died about 9 years after her marriage and as such the provisions of Section 113A of the Evidence Act is not attracted in this case, and brother of the deceased has been examined in this case as P.W.-9, was allegedly present in the

same house where Babli was allegedly sleeping with her husband, but he could not say how Babli died, and as per the evidence of the Medical Officer concerned P.W.-4 in his opinion the burn injuries on the dead body of Babli were sufficient to cause death, which were ante mortem in nature, but he has also deposed that possibility of accidental fire cannot be ruled out, and no viscera report was received by him, and there was a probability of causing of burn injury of Babli by accidental fire and as per the evidence of P.W.-10, Investigating Officer he could not come to any conclusion as to whether that was a suicidal case or murder, or homicidal or accidental from the witness as well as from the Post Mortem Report, and so he sent viscera for report and he did not try to collect any evidence to ascertain as to whether the death was not due to accident and as such there was possibility of accidental fire also, and when two views are possible regarding the same incident, then the view supporting the defence should be accepted and in such case the guilt of the appellants are to be proved beyond all reasonable doubt and it is to be proved that there was no hypothetical matter regarding the guilt of the appellants, and it has also to be proved that alleged torture upon the deceased was the proximate cause of her committing suicide or there was abetment or instigation to the commission of suicide by the deceased but that allegation has not been proved by sufficient reliable evidence beyond all reasonable doubt.

10. Learned counsel for the appellant has also contended that the proximity between the torture, suicide and abetment or instigation to commit suicide is to be proved but that has not been proved and in support of his contention learned counsel for the appellant has relied upon the decision reported in [Praveen Pradhan Vs. State of Uttranchal and Another](#), in the case of Praveen Pradhan Versus State of Uttaranchal and another.

11. On the other hand Mr. Mukherjee, learned counsel for the respondent/State of West Bengal has argued that as per the evidence of the Investigating Officer P.W.-10 on 02.11.1996 accused Sanu himself went to Kulti P.S. and lodged written complaint on the basis of which a U.D. case bearing no. 80 of 1996 dated 02.11.1996 was started, but the F.I.R. was lodged at the P.S. on 03.11.1996 by the father of the deceased as he had to come from a distant place of Jharkhand after receiving information about the death of his daughter and due to his mental disturbance he could not lodge the F.I.R. earlier and thereby the delay in lodging the F.I.R. has sufficiently been explained.

12. Learned counsel for the respondent/State has further submitted that admittedly the husband alone was sleeping with his wife in the room but he raised no shout nor called on any neighbour even after seeing that his wife sustained burn injury and the subsequent conduct of the husband in this regard is relevant u/s 8 of the Evidence Act, and his subsequent conduct to the incident was not reasonable and as per the provisions of Section 106 of the Evidence Act he had the special knowledge as to how his wife sustained burn injury, but no reasonable explanation is

forthcoming from the husband as to how his wife sustained burn injury. Rather as per the evidence of P.W.-9, a younger boy of 15/16 years, who is the brother of the deceased, was stunned seeing the burnt dead body of his sister, and P.W.-9 has stated about continuous torture and cruelty upon his elder sister Babli by the appellant Sanu alias Kanu and also torture on that very date also and there is no evidence that the victim ran away or shouted for help and her burn injury was unusual and if that was accidental in nature, then it was incumbent upon the appellant/husband to take proper step for her medical treatment or dousing the fire, but no such step was taken by the husband and this conduct of the husband shows that due to his abetment or instigation the deceased Babli died sustaining burn injury on her whole body.

13. It is to be considered in this case as to whether the learned Trial Court was legal, correct and justified in passing the impugned judgment and order of conviction and sentence in the said case or not.

14. It appears that in support of its case the prosecution has examined as many as 10 witnesses and has also submitted some documents, which have been marked Exhibit and MAT Exhibit, while the defence neither examined any defence witness nor submitted any document in its support. The evidence of the Prosecution witnesses is to be considered.

15. P.W.-1 is the de-facto complainant himself according to whose evidence his daughter Babli was married with the appellant/accused Sanu on 28th "Falgun", 1394 B.S. and Babli gave birth to two daughters out of their wedlock and P.W.-1 gave gold ornaments, cash and other articles as per the demand of the accused persons at the time of her marriage and when Babli used to visit his house from her husband's house then she used to tell them that she is being tortured and assaulted by the accused persons, and when he went to the house of Babli about 15 days before her death then Babli stated to him that she was assaulted by her husband. P.W.-1 has also stated that his son Tapas informed him about death of Babli by sustaining burn injury and then he along with his son Tapas, Sukdev Garai and Maheswar Mukherjee went to the house of the accused persons on 02.11.1996 at 5 p.m., and Maheswar Mukherjee wrote out the complaint as per his dictation and Sukdev Garai arranged for their stay at Chalbapur in their club room.

16. P.W.-2 Maheswar Mukherjee has stated that on 02.11.1996 at about 8/8.30 a.m. he came to know about the death of Babli by sustaining burn injury and entering into the house of accused/appellant Sanu, he found the dead body of Babli near the stair case without having any clothing while her face was to the down wards. P.W.-2 found that the house of the accused was locked and police was informed and police came and opened the lock of the house and he along with others could not find anyone of the accused persons entering into the house and he was present at the time of inquest of the dead body and signed on the inquest report, and he has stated that compromise meetings were held several times in the house of the

accused person in present of the villagers, but to no effect.

17. P.W.-3 Sukdeb Gorai has also stated that Babli died on 02.11.1996 and he got that news at 8 a.m. on that date, and went to the house of the accused and found that the house was locked and police came and opened the lock and then he along with others entered into the house and found that the dead body of Babli with burn injuries was lying on the floor facing towards the earth.

18. P.W.-4 Dr. Shyamal Kr. Rudra held post-mortem examination over the dead body of Babli and submitted his reports, which have been marked Exhibits 4 and 5, and P.W.-4 found that whole of the body from head to leg of that dead body except sole of the feet was burnt and he opined that the burn injuries, which were on the dead body of Babli were ante mortem in nature and were sufficient to cause her death, but he has also opined that possibility of accidental firing cannot be ruled out.

19. P.W.-5 Kanailal Gorai went to the house of accused persons in the morning on 02.11.1996 hearing hue and cry and found that the main gate was locked from outside and Police came and entered into house opening lock and he also entered there and found the burnt dead body of Babli, which was lying on the floor of the house under the stair case.

20. P.W.-6 Tapan Gorai being a resident of Chalbalpur went to the house of the accused persons on 02.11.1996 in the morning and found that the gate was locked and police came there and opened the gate and he found the dead body Babli there, but the accused persons or their relations were not present there and Police seized wearing apparels of the victim in his presence under a seizure list where he signed and he signed on the inquest report also.

21. P.W.-7 Uttam Bhandari is also a resident of Chalbalpur and on 02.11.1996 he went to the house of accused persons and came to know that Babli died out of burn injury and the main door of the house of the accused persons was locked, which was opened by police and he saw the dead body from outside of the house and none of the accused persons was present there.

22. P.W.-8 being a resident of Chalbalpur came to know in the morning of 02.11.1996 that Babli died sustaining burn injury and he went to the house of the accused persons and found that the same was locked from outside and Police came there and entered into their house opening the lock and he found that Babli has died out of fire burn but he did not see anyone of the accused persons there.

23. P.W.-9 is the younger brother of Babli who used to live with Babli at Chalbalpur, and as per his evidence other accused persons used to live there occasionally and on 01.11.1996 while he was living in the house of Babli's husband, then at about 8 p.m. of that date his elder sister told him that her husband Sanu had quarrel with her and he assaulted her, and then in the night after taking meal he slept on the road side varandah and woke up at 7 a.m. in the morning of 02.11.1996 and found

that the entrance door of the attached room of the varandah was closed from in side and when he started calling on his elder sister, then the door of that room was opened by his "Jamaibabu" (elder sister's husband) and not by his "Didi" (elder sister) and he entered into the room and when he reached the "Sirighar", then he found that his elder sister was lying dead there sustaining burn injury without having any clothing on her body and was lying there in "upur" position with burn injuries or facing down wards and he also found that the saree, petty-coat and blouse of his elder sister by the side of her bed and when seeing that he was trying to leave the house through that door as he was too young at that time, then his sister's husband caught hold of his hand and told him that "Ja Habar Hoe Gacche, Akhan Chup Kar" and also told him that he should not disclose that fact to any other person and asked him to inform the matter to his father at Sanctoria and his "Jamaibabu" left him on a bus of Sanctoria, but getting down from that bus he went to his own house at Jagannathpur and narrated the whole incident to his father.

24. P.W.-10 is the Investigating Officer of the case, who has proved the F.I.R., inquest report, which have been marked Exhibits, he also held another inquest and has also stated that during investigation he visited the P.O. seized articles under seizure list, recorded statement of the witnesses u/s 161, Cr.P.C., collected P.M. report and after completion of investigation submitted charge-sheet against all the five accused persons under Sections 498A /306 of the Indian Penal Code.

25. It is not disputed that the informant's daughter Babli was married with the appellant accused Sanu and while she was living in her husband's house she gave birth to two daughters there and she died in her husband's house in the night on 01.11.1996 sustaining burn injury but while it is the case of the Prosecution that said Babli died sustaining burn injury due to torture of the appellant accused persons then it is the case of the defence that her death was accidental in nature.

26. It appears that in the present case, it is the case of the prosecution that the daughter of the P.W.-1 named Babli was married with the appellant Sanu Banerjee of village Chalbalpur under Kulti P.S. and after marriage on 28th Falgoon, 1394 B.S., the daughter of the P.W.-1 Babli was living with her husband in his house and gave birth to two daughters there, and while she was living in her husband's house then her husband and other family members used to torture her and at the instigation of appellant/accused persons Babli died due to their torture in the night of 01.11.1996, and it also appears that it has been found by the learned Trial Court in his Judgment that "Considering this aspect, there cannot be any doubt that Babli committed suicide under the instigation of Sanu. Therefore, Sanu is found guilty of the offence u/s. 306 IPC by abetting its commission of suicide by Babli subjecting mental or physical torture on her. There is no evidence from the side of the prosecution that other accused persons abetted such offence on the previous night. It is admitted fact that all other accused persons used to reside at Sanctoria and they used to visit the house at Chalbalpur occasionally. There is no evidence on record that on the

previous date i.e. on 01.11.96 either of the other accused persons attended the house of Babli and instigated her in committing suicide. Therefore, accused Sanu, Benu, Bhanu, Nirmal and Shova are found guilty of the offence u/s. 498A IPC and accused Sanu is found guilty of the offence u/s. 306 IPC"

27. Apparently other appellant/accused persons besides the appellant Sanu, being the husband of said Babli, have been found guilty for the offence u/s 498A of the Indian Penal Code only, and appellant/accused Sanu only has been found guilty for the offence u/s 306 of the Indian Penal Code. When it appears from the evidence of P.Ws. 1 and 9 that generally other appellant/accused persons reside at Mihijam in Jharkhand and Sanctoria, and only appellant Sanu used to reside at Chalbalpur under Kulti P.S. with his wife, and other appellant/accused persons besides Sanu used to visit their house at Chalbalpur occasionally, then it was not possible for them to torture Babli at Chalbalpur in anyway, and it cannot also be said that their torture of any kind was the proximate cause of committing suicide by the said Babli. But it is to be considered as to whether the appellant/accused Sanu or Kanu being the husband of deceased Babli and permanently residing with her at chalbalpur used to torture said Babli and whether he instigated Babli to commit suicide or the committing of suicide by Babli was the consequence of any instigation of her husband Sanu or not.

28. It is not disputed rather admitted that the de-facto compliant or P.W1's daughter Babli died due to burn injury in the house of her husband appellant Sanu while she was living there with her husband and at the relevant time Babli's brother Tapas P.W.-9 was also residing in the house of appellant Sanu, but the door of the room where they were sleeping was opened by the appellant husband Sanu. It is also not disputed that Babli's husband gave information at the P.S. keeping the place where the dead body of Babli was lying in his house under lock and key, and the door was opened by the appellant/husband or by Police and as per the evidence of P.W.-10 on 02.11.1996 accused Sanu himself went to Kulti P.S. and lodged written complaint, on receipt of which a U.D. case bearing no. 80 of 1996 was started.

29. It has been argued by the learned counsel for the State that in view of the provisions of Section 8 Explanation 2 Illustration (e) of the Indian Evidence Act where the accused himself lodged the written complaint, which may be treated as First Information Report, at the P.S. regarding the death of his wife, then his such information to Police is relevant and is admissible against him as evidence of his subsequent conduct u/s 8 Explanation-2 and Illustration (e) of the Indian Evidence At.

30. In this regard it appears from the Illustration (e) to the Explanation 2 of Section 8 of the Indian Evidence Act that the written complaint or First Information Report lodged by the appellant husband at the P.S. immediately after the death of Babli shows that the appellant husband Sanu tried to provide evidence thereby, which would tend to give to the facts of the case an appearance favourable to himself,



which is relevant and admissible against him as an information to Police and as evidence of his subsequent conduct as per the provision of Section 8 Explanation 2 Illustration (e) of the Indian Evidence Act, 1872.

31. More over it appears that instead of trying to extinguish or douse fire the appellant husband rushed to the Police Station keeping his burnt wife at home under lock and key and after giving information at the P.S. and returning back therefrom with Police either he opened the lock or Police opened the lock in his presence and such subsequent conduct of the appellant/husband was much relevant fact to the revelation of the truth. The conduct of the appellant husband in not making effort to extinguish fire or to take care of his burnt wife at the time of the said incident or to take or accompany her to the Hospital for her treatment is much relevant in this case, and as per the prosecution case there is no such evidence that he took any such step for her treatment or called on any neighbour or sought for their help seeing that his wife sustained burn injury, rather he rushed to the Police Station locking the door from out side and opening the same after Police came there with him. This conduct does not show that he took appropriate step then as a reasonable or prudent man or a responsible husband, but this shows that said conduct of the appellant accused/husband was not normal, and had he not any intention to instigate his wife to commit suicide by burning herself, then surely he would have taken proper step for dousing or extinguishing fire or treatment of his wife, who was sustaining burn injuries, which as per the evidence of P.W.-4, the medical officer concerned, the whole body from head to leg except the sole of the feet was burnt and as per whose opinion the burn injuries on the dead body of Babli Banerjee were sufficient to cause her death and the burn injuries were ante-mortem in nature.

32. Though it has been suggested to the P.W.-4 at the time of cross-examination by the defence that possibility of accidental firing cannot be ruled out, yet there is no evidence as to how and by which accident Babli sustained burn injury. Even for the sake of argument it is presumed that Babli sustained burn injury by an accident, then also as a prudent and responsible husband the appellant Sanu was duty bound to take proper care of his wife, so that she sustained no further burn injury or she was treated properly so that her burn injury could have been healed, but instead of taking any care for the burn injury of his wife the appellant accused husband Sanu let her sustain burn injury up to her death, and after her death he went to the P.S. to inform the matter there keeping his dead wife in the house under lock and key only to show that he was not responsible for the sustaining of burn injury by his wife, and death of his wife thereby and this may be treated as a clear case of instigation or abetment by the husband to the wife to commit suicide by burning, or in other words the appellant Sanu did not take any step even seeing his wife to sustain burn injury and intentionally allowed her to burn up to end and thereby instigated or abetted in the committing of her suicide or death by sustaining burn injury.

33. Learned counsel for the State has also submitted that as per the provisions of Section 106 of the Indian Evidence Act the burden of proving a fact especially within the knowledge of any person is upon him, and in this case the incident occurred while the husband and wife were sleeping in a room of the husband's house in the dead hours of the night and so it was incumbent upon the husband to explain as to how the said incident of burning happened and non-explanation to this also proves that the husband intentionally instigated or abetted in the commission of suicide by his wife Babli.

34. It appears that as per the evidence of P.W.-9, who was residing and sleeping in the same house where the appellant Sanu and his wife Babli were sleeping in a room closing the same from inside and which was opened by the appellant/accused Sanu himself and there was none other in the said room except appellant Sanu and Babli only, and when appellant Sanu opened the door then Babli was found lying dead in that house, then it was within the especial knowledge of the appellant Sanu and in that case it was incumbent upon the appellant Sanu to explain as to how the death of his wife Babli was caused by sustaining burn injury and if that remains unexplained by him, then there can be an inference of his guilt as per the provisions of Section 106 of the Indian Evidence Act. Though the accused is not under any obligation to disprove the prosecution case, yet when the prosecution has proved that death of the wife in a closed room with husband only has been caused in some unnatural way, then the husband is bound to explain such death and if not explained properly then an inference may be made regarding his guilt as per the provisions of 106 of the Indian Evidence Act.

35. It has been held by the decision reported in [Praveen Pradhan Vs. State of Uttranchal and Another](#), onwards that:-

15. In [Chitresh Kumar Chopra Vs. State \(Govt. of NCT of Delhi\)](#),

"16.....instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction".....to keep irritating

or annoying somebody until he reacts.....

(emphasis in original)

16. This Court in Ramesh Kumar v. State of Chhattisgarh while dealing with a similar situation observed that what constitutes "instigation" must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided u/s 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh, Surender v. State of Haryana, Kishori Lal v. State of M.P. and Sonti Rama Krishna v. Sonti Shanti Sree)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

36. In view of the aforesaid decision of the Hon"ble Supreme Court it appears that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred and to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction".....to keep irritating or annoying somebody until he reacts....." and it is also apparent that instigation has to be gathered from the circumstances of a particular case and no straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide, and in such a case an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and

committed suicide.

37. In this case some of the such proved circumstances which compelled the deceased Babli to take ultimate decision of committing suicide may be noted:-

i. The deceased Babli died an unnatural death for which a U.D. case was initiated as per the information of the husband.

ii. The deceased died out of burn injuries as her whole body was burnt as observed by the post mortem examination doctor, P.W. 4, who also opined that the said injuries were ante mortem in nature and were sufficient to cause death of the deceased in normal course.

iii. The deceased sustained burn injury while she alone was staying in the night with her husband in a room of her husband's house, which was closed from inside as per the evidence of P.W.-9, and door of which was opened by none other than the appellant husband as per the evidence of P.W.-9 after hearing his knock at the door. Surely there was some kind of instigation then on the part of the appellant husband to the deceased wife which prompted her to commit suicide as there was none other there at that time except the husband.

iv. The appellant husband is a driver and had petrol business and kerosene was seized from the house of the appellant's house by the I.O., P.W.-10.

v. Though the deceased sustained burn injury all over her body as per the evidence of P.W. 4, yet she did not shout or cry or run away for help, which fact fortifies the probability of her committing suicide, as otherwise she would not have endured the pain of burn injuries.

vi. The deceased was found in naked condition. Sustaining burn injuries all over the body while there was no wearing apparel on the body was unusual, and the case of accidental fire while cooking there at night can be ruled out as no house wife would go to the kitchen at night in naked condition keeping her wearing apparels on the cot, which was found by the P.Ws. 9 and 10.

vii. The husband instead of dousing or extinguishing the fire on the body of his wife let her die, and instead of taking her to the Hospital or making arrangements for her treatment while she was burning let her die without giving any information to her brother, who was sleeping in the same house, or calling any neighbour for help or giving any information to her father's house. Instead he went to the P.S. in the dead hours of the night just to inform the matter in a routine manner with the intention to create a circumstance or evidence in his favour that he had no role to play in the sustenance of burn injuries by his wife.

38. An irresistible inference can be drawn from the aforesaid circumstances that while "enjoying their conjugal night", as observed by the learned Trial Court in his Judgment, in a closed room of the house of the appellant husband Sanu would

either have assaulted her or told her some insulting words by which Babli committed suicide in the same condition. Definitely, there was provocation of suicide to Babli by Sanu on that night. We get from the evidence of P.W.-9 that Sanu told him, "Ja Habar Hoy Gacche Akhan Chup Kar". Considering this aspect there cannot be any doubt that Babli committed suicide under the instigation of Sanu. Therefore, Sanu is found guilty of the offence u/s. 306 IPC by abetting its commission of suicide by Babli subjecting mental or physical torture on her, as observed by the learned Trial Court in his Judgment. As such it appears that the learned Trial Court was not wrong in his finding in this regard and he was not also wrong in his finding that there is no evidence from the side of the prosecution that other accused persons abetted such offence on the previous night or in the night of 01.11.96 for which reason he has not found them guilty u/s 306 of the Indian Penal Code.

39. Learned counsel for the appellants has relied upon the decisions reported in [Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh](#), in the case of [Ramesh Kumar Vs. State of Chhattisgarh](#), in the case of Ramesh Kumar Vs. State of Chhattisgarh in support of his contentions that the deceased might have committed suicide as a frustrated woman and the appellant accused persons never instigated or abetted in the commission of her suicide and her death was accidental in nature, But the said decisions cannot be of any help to the defence inasmuch in the instant case it has already been found that the circumstances of the present case lead us to the irresistible conclusion that the deceased Babli was compelled to commit suicide being instigated by the conduct of the appellant husband Sanu and that the appellant husband Sanu abetted in the commission of her suicide, which took place in a closed room, where only the husband and wife were staying in the dead hours of night.

40. Having regard to the submissions of the learned counsel for the parties, evidence, facts and circumstances of the case and other materials on record, it appears that the allegation of assault and torture upon the deceased Babli by other inmates of her in-laws house except her husband Sanu and their abetment to the commission of suicide by said Babli has not been proved by the prosecution by sufficient reliable evidence, but it has been proved by the evidence of the P.Ws. as well as the documents of the prosecution beyond all reasonable doubt that the appellant husband Sanu tortured his wife both mentally or physically and due to his torture and humiliation and instigation, the deceased Babli was compelled to commit suicide in his house in a closed room in the dead hours of night where only she and her husband stayed and as such, while the other appellants should be found not guilty and should be acquitted from the alleged offence under Sections 498A /306 of the Indian Penal Code, the accused Sanu has to be and has rightly been found guilty and convicted by the learned Trial Court for the offences under Sections 498A /306 of the Indian Penal Code on proper consideration of the evidences and other materials on record. The learned Trial Court was not incorrect

and unjustified in passing the impugned judgment and order of conviction and sentence regarding appellant Sanu alias Kanu. Thus the impugned Judgment and Order should be confirmed with slight modification. The sentence imposed upon the appellant husband Sanu by the learned Trial Court does not appear to be improper or unjust and as such, the same is ordered to be maintained.

41. As a result the impugned Judgment and Order is modified to this extent only as noted above. The appeal is thus disposed of. The other appellants except appellant husband Sanu are found not guilty for the alleged offences u/s 498A /306 of the Indian Penal Code. Accordingly they are acquitted and are ordered to be set at liberty forthwith, but the orders of conviction and sentence passed upon the appellant husband Sanu, which do not appear to be unjust or excessive, are affirmed and if on bail, he is directed to surrender for serving out the sentence.

42. The appeal is thus partly allowed.

43. A copy of the this Judgment and Order along with the Lower Court records be sent to the learned Trial Court as early as possible. Urgent Photostat certified copy of this Judgment and Order be given to the parties, if applied for, on compliance of necessary legal formalities.

I agree.