

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.738 OF 2013

BETWEEN:

MR MOHAMMED SALEEM
S/O ABDUL BASIN,
AGED ABOUT 36 YEARS
R/AT TAJ MANJIL HAJI ASLAM
8TH MAIN, BISMILLA NAGAR,
B.C. ROAD, BANGALORE-560032
(UNDERGOING IMPRISONMENT)

...APPELLANT

(BY SRI. SHAIKH SAOUD, ADV.)

AND:

THE STATE BY MICO LAYOUT
POLICE STATION, BANGALORE,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BANGALORE-560001

...RESPONDENT

(BY SRI. LAKSHMAN B, HCGP)

CRL.A. FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE
THE JUDGMENT AND ORDER OF CONVICTION DATED
09.04.2013 PASSED BY THE P.O., F.T.C.-9, BANGALORE IN
S.C.NO.1583/2011 - CONVICTING THE APPELLANT/ACCUSED
FOR THE OFFENCE P/U/S 498A AND 306 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 02.02.2026 AND COMING ON FOR
"PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 09th April, 2013 passed in SC No.1583 for 2011 by the Presiding Officer, Fast Track Court-IX, Bengaluru City (for short "the trial Court").

2. Parties are referred to as per their rank before the trial Court.

3. The brief facts leading to this appeal are that, the Police Inspector, MICO Layout Police Station, Bengaluru submitted charge sheet against the accused for the offence under Sections 498A and 306 Indian Penal Code. It is alleged by the prosecution that, deceased-Jabeena Khan is the daughter of CW.11-Smt.Majhar Khan and CW.7-Fyroz Khan; CW.8-Farook Khan, CW.9- Imthiyaz Khan are the elder brothers of the deceased and CW.10-Afroz Khan is the younger brother of the deceased and the complainant-Mohammed Naveed is the son of the deceased; and the accused is the husband of the deceased. After marriage, accused and deceased were residing in the rental house of one Haji Aslam in 8th cross Bismillah Nagar, MICO Layout, Bengaluru. The accused was an Autorikshaw driver by profession. He was

addicted to bad vices, was doubting fidelity of deceased, he was picking up quarrel with the deceased in inebriated state and he did not heed to the advice of relatives and elders. CW.12-Noushad, CW.13-Nahimunnisa and the neighbours had also seen the ill-treatment given by the accused to the deceased. It was alleged that accused was forcing the deceased to bring money from her parents house and the brothers of the deceased had also given an Autorickshaw to him for their livelihood. About 2 to 3 years prior to the incident, the accused had beaten the deceased and she was treated in a private hospital and in that regard he was advised by elders to lead a peaceful life, but in vain. That being so, on 12.09.2011 at about 02.30 p.m., while the complainant-Mohammed Naveed had returned home from school due to ill-health, the accused came in an inebriated state and picked up quarrel with the deceased and assaulted her and the deceased being fed up with ill-treatment given by the accused, sent the Complainant under the guise of purchase of coconut oil, comb etc. and committed suicide by hanging herself to the ceiling fan with the help of mantle by closing the doors of the house. The Complainant who returned home at about 03.30 p.m. saw the deceased through the window, telephoned to relatives, called the neighbours and then opened the door of the house. Then, he

took the deceased to Shekhar Hospital with the help of relatives and neighbours. In the meanwhile, accused ran away from the house and deceased was shifted to Jayadev Hospital. There she was declared dead. Thus, the accused has committed the offence under Sections 498-A and 306 IPC.

4. The accused was arrested by the police on 14.09.2007 and he was released on bail on 07.07.2012. After filing the charge sheet, case was registered in CC No.334/2011. The case was committed to the Court of Sessions and was registered in SC No.1583/2011.

5. Upon hearing on charges, the trial Court has framed the charges against the accused for the commission of alleged offence. Same were read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, the prosecution has examined 10 witnesses as PW1 to PW10; 14 documents were marked as Exhibits P1 to P14; 4 material objects were marked as MOs.1 to 4. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. The accused has totally denied the evidence of prosecution

witnesses. The accused did not choose to lead any defence evidence on his behalf.

7. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Sections 498A and 306 of Indian Penal Code and passed a sentence for a period of 5 years and to pay a fine of ₹5,000/- for the offence under Section 306 of Indian Penal Code and further to undergo imprisonment for 2 years and to pay a fine of ₹2,000/- for the offence under Section 498A of Indian Penal Code. Being aggrieved by the judgment of conviction and order on sentence, the appellant has preferred this appeal.

8. The learned counsel for the appellant would submit that, the Judgment of conviction and Order on sentence passed by the trial Court is contrary to law and probabilities of the case. The independent witnesses-CW12 and CW13, staying in the upper floors of the same building where the accused and deceased were staying, who would speak about the day-to-day events between the accused and deceased, were not examined by the prosecution. So the version of interested witnesses remain uncorroborated. The trial Court was wrong in not considering this important factor. Hence, the conviction is liable to be set aside.

9. He submitted that, PW.6-Naushad is cited as spot mahazar witness in the charge sheet. But the prosecution illegally made improvement and elicited through him in the examination-in-chief itself that he is staying in the upstairs of the same building where the accused and deceased were staying and projected them as eyewitness, which is wrong. The trial Court did not even notice these important circumstances and wrongly convicted the appellant.

10. Learned counsel for the appellant further submitted that the prosecution has failed to prove the most important document viz. Exhibit P1. The conviction based on such a document is liable to be set aside. Exhibit P1 is not in the handwriting of PW1-Complainant. He has deposed before the Court that he narrated the incident to the Police in Hindi and the Police has translated it to Kannada and written the same. Admittedly, Ex.P1 is not reduced into the writing by PW.9-Police Inspector. The prosecution has not examined the Police Officer who actually wrote Exhibit P1 i.e., the scribe of the said document. Hence, Exhibit P1 remains legally unproved. The trial court did not even notice this important legal issue and has wrongly convicted the appellant. Hence, the conviction is liable to be set aside.

11. Learned counsel for the appellant further submitted that, PWs3, 7 and 8 are brothers of deceased and PW1 is the son of the deceased now staying with them. PW6 is the close friend of the above witnesses. So all of them are interested witnesses. Their version remained uncorroborated with any independent witnesses. In spite of that, the trial Court has wrongly convicted the appellant.

12. Learned counsel for the appellant further submitted that, the prosecution has relied upon totally 18 witnesses as shown in the charge-sheet, but the prosecution has chosen to examine and rely only on interested witnesses, which is wrong. Admittedly, the appellant was married to the deceased 18 years back and having 4 children. During the course of entire marital life of 18 years, admittedly, no case was filed either by the deceased or by any of her brothers or other relatives against the appellant. After the suicide of the deceased, all of a sudden, the prosecution has come up with a story of alleged circumstances of harassment which has resulted in compelling her to commit suicide, which is wrong. PW6 has clearly and specifically stated in his cross-examination that accused used to quarrel when he was intoxicated, otherwise he used to behave normally and none of the essential ingredients to constitute

offence under Section 306 and 498A of Indian Penal Code are made out. However, the trial Court has convicted the accused for the alleged offences which is not sustainable under law. To substantiate his argument he relied on the decision in the case of **KASHIBAI & ORS. v. STATE OF KARNATAKA** reported in 2023 LIVELAW (SC) 149.

13. As against this, Sri B Lakshman, learned High Court Government Pleader appearing for the respondent-State, would submit that the trial court has properly appreciated the material on record and absolutely there are no grounds to interfere with the impugned judgment of conviction and order on sentence and accordingly, sought for dismissal of the appeal.

14. Having heard the arguments on both sides and on perusal of material placed before this court, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting the accused for the offence punishable under Section 306 IPC?
2. Whether the trial Court is justified in convicting the accused for the offence punishable under Section 498A IPC?

3. Whether the appellant is entitled for modification of sentence passed by the trial court for offence under Section 498A IPC?
4. What order?

Regarding Points 1 and 2:

15. I have examined the materials placed before this court. The investigating officer has submitted charge-sheet against accused for commission of offence punishable under Sections 306 and 498A of Indian pin code. The trial court has convicted the accused for the aforestated offences. Before appreciating the evidence on record, it is necessary to mention as to the essential ingredients to constitute the offence punishable under Section 306 of Indian Penal Code, which is as under:

"The Prosecution has to prove.-

- (i) the deceased committed suicide;*
- (ii) the accused instigated or abetted for committing suicide (committing suicide by itself is a crime);*
- (iii) direct involvement by the accused in such abetment or instigation is necessary."*

16. The Hon'ble Supreme Court in the case of KASHI BAI AND OTHERS (supra), by referring to the decision of M MOHAN v. STATE REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE reported in (2011)3 SCC 626, at paragraphs 5 to 9, has observed as follows:

"5. At this juncture, it would be beneficial to reproduce the relevant provision contained in Section 306IPC pertaining to abetment of suicide:

"306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

6. What is "abetment of a thing" has been described in Section 107 which reads as under:

"107. Abetment of a thing.—A person abets the doing of a thing, who—

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

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

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

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

7. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306IPC, the basic constituents of the offence, namely, where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107IPC have to be established.

8. In *M. Mohan v. State of T.N. [M. Mohan v. State of T.N., (2011) 3 SCC 626 : (2011) 2 SCC (Cri) 1]*, this Court has elaborately dealt with the provisions contained in Section 306 read with Section 107IPC, and after discussing various earlier

decisions has observed as under : (SCC pp. 637-38, paras 41-45)

"41. This Court in SCC para 20 of Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of "instigation". Para 20 reads as under : (SCC p. 629)

'20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.'

In the said case this Court came to the conclusion that there is no evidence and material available on record wherewith an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn.

42. In State of W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

43. This Court in Chitresh Kumar Chopra v. State (NCT of Delhi) [Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "gloating". The Court opined that there should be intention to provoke,

incite or encourage the doing of an act by the latter. Each person's suicidality pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 306IPC 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."

9. *In view of the above, it is quite clear that in order to bring the case within the purview of "abetment" under Section 107IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide."*

17. In the case on hand PW1-Mohammed Naveed, brothers of the deceased PW3-Fairoz, PW7-Afroz Khan, PW8-Shah Rukh Khan and neighbours PW6-Naushad, PW2-Afzal, have all stated that the marriage of the deceased with the accused was performed about 18 years back and they have got four children and they were residing in Bismillah Nagar. The accused in an inebriated state used to abuse and assault the deceased and used to force her to bring money from parents house and would subject her to cruelty and also did not heed to the advice of elders. He was also doubting her character and

hence the deceased committed suicide by hanging herself to the ceiling fan with her mantle. They have further stated that the brothers of the deceased were taking care of her family and accused was not maintaining his family. They had also purchased an autorickshaw for the accused. The complainant has stated that on 12th September 2011, he was in the house, and the accused came at about 2.00 pm in an inebriated condition and started to abuse his mother for money and doubted her character and abused her in indecent words. Thereafter, deceased had sent him to kirana shop in the guise of bringing Coconut oil and comb and committed suicide by 2:30 pm. The complainant saw the deceased through the window returning from the shop and knocked the door and called the neighbours. Accused opened the door and ran away from the spot and thereafter, PW3-Fairoz Khan came and took her to Shekhar Hospital in an autorickshaw and later shifted to Jayadev Hospital. The complainant has stated about filing the complaint as per Exhibit P1 and drawing of the spot panchanama and identifying the material objects.

18. PW3-Firoz Khan has stated that he has received the phone call at 3:45 pm and came to the house of his sister and saw that the neighbours had laid his sister on the floor after

removing the mantle from the ceiling fan and he took his sister to Shekhar Hospital and later to Jayadev Hospital, where Doctors declared she was dead and there was ligature mark on the neck of his sister. He had also filed another complaint earlier stating that accused assaulted his sister.

19. PW6-Naushad has also stated that the accused was forcing her to bring money from her parents house and used to assault her. He has further stated that he had also pacified the quarrel 2 to 3 times and saw that the deceased committed suicide by hanging herself to the ceiling fan. He has also stated as to drawing of panchanama as per Exhibit P2 and he has identified the material object MO3 and also photos at Exhibits P3 to P5.

20. PW7-Afroz Khan and PW8-Farooq Khan, brother of the deceased have stated that they have given dowry of ₹20,000/- at the time of marriage, and after marriage, the accused was treating their sister and subjected her to cruelty for bringing money and they were helping the family of the deceased by paying rent, school fees and purchasing groceries and they had also purchased an autorickshaw for him. Further, they have advised the accused to lead better life, which went in

vain. Further, they have deposed as to the suicide committed by the deceased.

21. PW4-Dr. Suresh has deposed as to conducting of postmortem and issuance of postmortem report.

22. PW5-Cheluva Murthy, Police Constable, has stated as to tracing out of the accused and producing him before the investigating officer and the report submitted as per Exhibit P10.

23. PW10-Puttamadaiah, Head Constable and PW9-Mohan Kumar, Investigating Officer have deposed as to their respective investigation.

24. On careful examination of the entire materials on record, I do not find any material to constitute the offence punishable under Section 306 of Indian Penal Code. However, the trial court has convicted the accused for offence punishable under Section 306 of Indian penal code, which is not sustainable, under law. Accordingly, I answer point No.1 in the negative.

25. With regard to offence punishable under Section 498A of Indian penal code is concerned, the complainant who is

the son of the accused has clearly deposed as to the ill-treatment given by the accused to the deceased and the same was substantiated by other witnesses also. The accused has not placed any materials to discard the evidence of prosecution witnesses pertaining to commission of offence under Section 498A of Indian Penal Code. The trial court has appreciated the evidence on record in accordance with law and facts. I do not find any legal or factual error in interfering with the conviction of the accused for offence punishable under Section 498 of Indian Penal Code. Accordingly, I answer Point No.2 in the affirmative.

Regarding point 3:

26. The trial Court has convicted the accused for the offence punishable under Section 498A of Indian Penal Code and passed sentence to undergo imprisonment for a period of two years and to pay a fine of ₹2,000/- for the offence under Section 498A of Indian Penal Code. The trial Court has convicted the accused for the offence under Section 498A of Indian Penal Code and passed sentence to undergo imprisonment for a period of two years and to pay fine of ₹2,000/- for offence punishable under Section 498A of Indian Penal Code. The commission of offence under Section 498A is

punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine. In the case on hand, accused was arrested on 14th September, 2011 and was released on bail on 7th February, 2012. Accordingly, he was in judicial custody for a period of 4 months 23 days. The trial court has passed judgment on 9th April, 2013, and on that day accused was taken to custody. This court vide order dated 13th December, 2013, suspended the sentence and released the accused on bail. Accordingly, accused was in judicial custody for a period of 8 months 4 days. On 8th October 2025, the learned Counsel for the appellant has stated that he does not know as to whether the appellant is alive or not, and he does not have any contact details of the appellant. Hence, at request of learned counsel for the appellant, this court has issued notice to the appellant through concerned Police. The court notice was not served to accused and the same was also not returned. Again, this court, on 4th November 2025, issued court notice to the appellant through Commissioner of Police. Despite the same, police have not served notice to the accused. Thereafter, on 25 November 2025, Police submitted a report stating that the appellant has vacated the premises long back. On 19th November, 2025 a Mahazar was conducted. Thereafter, this court issued non-bailable warrant to the accused through

concerned police. The same was executed on 26th December, 2025. Thereafter, this court passed an order on 6th January, 2026 to release the accused on bail. Since the accused has not furnished security and deposited the fine amount till this date, the accused is in judicial custody. Considering the relationship between the accused and the deceased, the age of the accused and the period of detention already undergone by the accused in custody for a period of 9 months and 20 days. It is just and proper to release the accused. Accordingly, Point No.3 is answered, partly in the affirmative.

27. For the reasons and discussions aforestated, I proceed to pass the following:

O R D E R

- i) Appeal is partly allowed;
- ii) Judgment of conviction and order on sentence dated 9th April 2013, passed in SC No.1583 of 2011 by the Presiding Officer, Fast Track Court-IX, Bengaluru City for the offence punishable under Section 306 of Indian Penal Code, is set aside.
- iii) Accused is acquitted of the offence punishable under Section 306 Indian Penal Code;

- iii) The judgment of conviction dated 9th April 2013, passed in SC No.1583 of 2011 by the Presiding Officer, Fast Track Court-IX, Bengaluru City for the offence punishable under Section 498A of Indian Penal Code, is confirmed;
- iv) The sentence imposed by the trial court for the offence punishable under Section 498A of Indian Penal Code is modified as under:
 - a. The accused shall undergo imprisonment for a period of nine months and twenty days , instead of two years and to pay a fine of ₹2,000/-. It is submitted by the learned Counsel for the appellant that the fine amount is already deposited by the accused;
- v) The period of sentence already undergone by the accused shall be given set off under Section 428 of Code of Criminal Procedure.

Registry to send the intimation along with a copy of this order to the Jail Authority to release the accused forthwith, if he is not required in any other case.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn/rs