

**IN THE HIGH COURT OF ANDHRA PRADESH:
AT AMARAVATI**

Criminal Appeal No.201 of 2016

Between:

Shaik Hussain Bee, W/o. Late Mohammed Ali, Aged about 41 years, R/o. Penchikalapadu Village, Gudur Mandal, Kurnool District.

.... Appellant/Accused

And

The State of Andhra Pradesh through S.H.O. K. Nagalapuram Police Station, represented by its Public Prosecutor, High Court at Hyderabad.

....Respondent/Complainant

Date of Judgment pronounced on : 14.08.2023.

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

JUSTICE T. MALLIKARJUNA RAO

*** THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

+ Criminal Appeal No.201 of 2016

% 14.08.2023

Shaik Hussain Bee, W/o. Late Mohammed Ali, Aged about 41 years, R/o. Penchikalapadu Village, Gudur Mandal, Kurnool District.

.... Appellant/Accused

And

\$ The State of Andhra Pradesh through S.H.O. K. Nagalapuram Police Station, represented by its Public Prosecutor, High Court at Hyderabad.

....Respondent/Complainant

! Counsel for the Appellant : Sri K. Rathangapani Reddy.

Counsel for the Respondent/ : Addl. Public Prosecutor.
State

<Gist :

>Head Note:

? Cases referred:

- 1) 2020 (0) A.I.R. (SC) 4714
- 2) (2004) 13 SCC 129: 2005 S.C.C. (Cri) 56
- 3) (2007) 10 SCC 797: (2007) 3 S.C.C. (Cri) 701
- 4) (2001) 9 SCC 618
- 5) 2002 (5) SCC 371
- 6) (2011) 11 SCC 542
- 7) 2023 S.C.C. OnLine SC 575

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**CRIMINAL APPEAL No.201 of 2016****JUDGMENT :**

1) Accused, in Sessions Case No.32 of 2015 on the file of the learned IV Additional District and Sessions Judge, Kurnool [for short, "the trial Court"], is the appellant herein. She was tried for the offence punishable under Section 304-B of the Indian Penal Code, 1860 [for short, "**I.P.C.**"].

2) *Vide* Judgment, dated 26.02.2016, the learned Sessions Judge convicted the Accused under Section 235(2) of Cr.P.C. Instead of convicting her for the offence under Section 304-B I.P.C. the trial Court convicted the accused for the offence under section 306 I.P.C. Accordingly, she was sentenced to undergo Rigorous Imprisonment for Five (5) Years for the offence punishable under Section 306 I.P.C.

3) For the sake of convenience, the parties will be referred to as arrayed before the trial Court.

4) The facts, as culled out from the evidence of prosecution witnesses, are as under:-

(a) P.W.1-Shaik Sali Bee is the mother of the deceased/Reshma. Reshma was given in marriage to the accused's son, who is deaf and dumb. P.W.1 gave the accused Rs.50,000/- cash and two tulas of gold towards dowry. Her son-in-law used to look after her daughter well, but

the accused used to harass her, directing her to do agricultural work and business work of selling fruits on a push cart. As such, her daughter agreed to do agricultural work but used to refuse the work of selling fruits on a push cart. On her refusal, the accused used to beat her daughter as well as her son-in-law.

(b) P.W.1 further stated that on 23.12.2013, she received a phone call from one villager of PENCHIKALAPADU. She was informed that her daughter poured kerosene on her body, and P.W.1 rushed to the Government Hospital, Kurnool and found her daughter sustained burnt injuries. On being enquired, her daughter stated about the harassment made by the accused earlier, even though her daughter requested the accused give them the house. They will live by doing work, but the accused did not accept her request and stated that she go and live anywhere with her husband or else go and die; vexed with the accused's attitude, her daughter decided to commit suicide and poured kerosene on her body. On 24.12.2013 at 2.00 A.M., her daughter died due to unbearable harassment made by the accused. Police recorded the statement of her daughter at Government Hospital, Kurnool.

(c) P.W.8-J. Ramesh Kumar, Sub-Inspector of Police, stated that on 23.12.2013 at about noon, he received M.L.C intimation from Government Hospital, Kurnool; immediately, he went to the Government Hospital at 12.30 noon and recorded the statement of the deceased/Reshma and

obtained her thumb impression on her statement. Based on the statement, he registered the case in Crime No.85 of 2013 under Section 498-A of I.P.C. and Sections 3 and 4 of the D.P. Act. Ex.P5 is the statement of the victim, and Ex.P6 is the F.I.R. He further stated that he again visited the Government Hospital and recorded the victim's statement under section 161 Cr.P.C., and visited the scene of the offence, prepared observation panchanama, and seized the Material Objects from the scene of the offence. Ex.P7 is the observation panchanama.

(d) P.W.9-K.G. Eswaraiah, A.S.I. of Police, stated that on 24.12.2013, he received M.L.C. death intimation through a doctor intimating the death of the deceased/Reshma. He altered the Section of Law from Section 498-A I.P.C. and 3 & 4 of D.P. Act and Women Burns to Section 304-B I.P.C. in Crime No.85 of 2013 of K. Nagalapuram Police Station. Ex.P8 is the M.L.C. death intimation, and Ex.P9 is the altered F.I.R. Later, he sent a requisition to P.W.5-MRO to conduct an inquest over the dead body of the deceased. After completing the inquest, he handed over the dead body to the deceased's blood relatives.

(e) P.W.5-Bala Ganeshiah, Tahsildar, stated that on 24.12.2013, he received a requisition to conduct an inquest over the dead body of the deceased through Sub Divisional Police Officer, Kurnool. Later, he led an inquest over the dead body of the deceased and recorded the statements of

P.Ws.1 to 3 and L.W.4 at Government General Hospital, Kurnool. He further stated that the deceased died due to burnt injuries.

(f) P.W.6-Dr.K. Sai Sudheer, Associate Professor, Department of Forensic Medicine, Kurnool Medical College, stated that on 24.12.2013, on the requisition of P.W.5, he conducted a post-mortem examination over the dead body of the deceased/Reshma, and found the burnt injuries on the body of the deceased and the percentage of burnt injuries are about 90% of the body surface area. He opined that the death of the deceased was due to shock resulting from anti-mortem mixed-degree burn injuries, and the time of death was on 24.12.2013 at 2.00 A.M, and he issued Ex.P2-Post Mortem examination certificate.

(g) P.W.10-N. Sreenivasa Rao, Judicial Magistrate of First Class, Kurnool, stated that on 23.12.2013 at about 12.15 P.M., he received a requisition from C.M.O., Government Hospital, Kurnool, and recorded the statement of Reshma (Ex.P.11).

(h) P.W.11-Y.V.Ramana Rao, Sub-Divisional Police Officer, stated that on 24.12.2013, he took up investigation in this case from P.W.9-A.S.I. of Police, examined and recorded the statements of P.Ws.1 to 3 and L.W.4, visited the scene of offence at Penchikalapadu and drafted the scene observation report and prepared Ex.P12-Rough Sketch of the scene of the offence. Then, he arrested the accused on 04.01.2014 at Penchikalapadu

and sent the accused to judicial custody, and he handed over the investigation to his successor.

(i) P.W.12-P. Manohar Rao, Deputy Superintendent of Police, stated that after he assumed charge, he took up further investigation and filed a charge sheet in Cr. No.85/2013 under Section 304-B I.P.C.

5) The Additional Judicial Magistrate of First Class, Kurnool, has taken on file as P.R.C. No.90 of 2014. On appearance, furnished the copies of the documents to the accused under Section 207 Cr.P.C. and committed to the Sessions Court. Based on the material available on record, a Charge under Section 304-B I.P.C. has been framed against the accused, read over and explained to the accused. She pleaded not guilty and claimed for trial.

6) To prove the case, the Prosecution examined P.Ws.1 to 12 and got marked Exs.P1 to P12 and M.Os.1 to 4 were marked. On behalf of the accused, no oral evidence was adduced, but Exs.D1 to D3 documents were marked. After completing the prosecution evidence, learned Sessions Judge examined the accused under Section 313 Cr.P.C. concerning the incriminating circumstances appearing against her in the evidence of prosecution witnesses, which she denied. The defence was of total denial and false implication.

7) After considering the necessary material available on record, the learned Sessions Judge found the guilt of the accused/appellant and

convicted her as stated *supra*. Aggrieved by which, the present appeal has been preferred.

8) I have heard the arguments of learned counsel for the appellant and also the Additional Public Prosecutor, for the State, at length.

9) Sri K. Rathangapani Reddy, learned counsel representing the appellant put forth an argument that based on the evidence available in the records, the essential elements of Section 306 r/w 109 I.P.C. are not established. In order to establish the appellant/accused's guilt, the pre-requisites of section 107 I.P.C must be met, requiring intentional aiding in the commission of suicide. However, the situation at hand merely involves a quarrel, which does not amount to intentional instigation or aiding in the commission of suicide. He further asserts that no charge was framed under Section 306 I.P.C.

10) On the other hand, the learned Additional Public Prosecutor for the State contended that the trial Court had convicted the appellant after considering the evidence available on record, as there was no error or irregularity in the Sessions Court judgment. She contended that the Prosecution had proved the ingredients punishable under Section 304-B of I.P.C. and prayed to dismiss the appeal.

11) Now, the point that arose for determination is:

Whether the Prosecution can establish and prove the circumstances relied on by it, and, if so, whether they are sufficient to connect the accused for the offence punishable under Section 306 of I.P.C.?

POINT:

12) In a decision reported in ***Gurucharan Singh vs The State of Punjab***¹, the Hon'ble Apex Court, while dealing with a case of suicide in ***Amalendu Pal alias Jhantu vs State of West Bengal [(2010) 1 SCC 707]***, explained the parameters of Section 306 I.P.C., which is as under:

“The Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

13) I advert to the facts of the case to test whether the appellant's conviction for the offence under Section 306 I.P.C. is sustainable or not.

14) At the outset, I intend to address the issue regarding the applicability of Section 306 I.P.C. in the facts of the present case. “Section 306 deals with abetment of suicide, and Section 107 deals with abetment of a thing. They read as follows:

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

¹ 2020 (0) A.I.R. (SC) 4714

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 willful misrepresentation or by willful 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.

Explanation 2.—Whoever, either before or at the time of the commission of an act, does anything to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

15) The legal position as regards Sections 306 IPC, which is long settled, was reiterated by Hon'ble Apex Court in ***Randhir Singh v. State of Punjab***² as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing a thing. In cases of conspiracy also, it would involve the mental process of entering into a conspiracy for the doing of that thing. The more active role, which can be described as instigating or aiding the doing of a thing, is required before a person can be said to be abetting the commission of an offence under Section 306 IPC.

² (2004) 13 SCC 129; 2005 S.C.C. (Cri) 56

13. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 S.C.C. 73: 1994 S.C.C. (Cri) 107], this Court has observed that the courts 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 the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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."

16) Further, in ***Kishori Lal v. State of M.P.***³, the Hon'ble Apex Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6:

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in I.P.C. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109

³ (2007) 10 SCC 797: (2007) 3 S.C.C. (Cri) 701

means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

17) Coming to the facts of the present case, the defacto complainant, i.e., the mother of the deceased/Reshma, is examined as P.W.1. P.W.1's brother-in-law, Shaik Vali, is examined as P.W.2. P.W.3-Shaik Saleem is the son of P.W.1. Admittedly, the marriage between the deceased and Ameer Basha, who is the son of the accused, took place within seven years of the demise of the deceased. The date of the deceased's marriage, as stated by P.W.1, which is 28.10.2012, is undisputed. P.W.1 stated in her chief examination that she provided Rs.50,000/- in cash and two Tulas of gold to the accused and her son during the deceased's marriage. Subsequently, the accused had harassed the deceased to engage in fruits selling business, to which she objected, but she agreed to do agricultural activities. Upon scrutinizing P.W.1's testimony, the trial Court pointed out the absence of any reference to a demand for additional dowry. It is highlighted by the trial Court P.W.1's assertion that her daughter's death resulted from harassment for additional dowry appeared to be only an afterthought. P.W.2 on the other hand testified that the deceased's death was due to the accused's demand for Rs.50,000/- not being met. However, during cross-examination, P.W.2 testified that he learnt from P.W.1 that the deceased told her she set herself on fire due to the accused's harassment.

18) P.W.3 testified that he refrained from approaching his sister, even in the hospital, due to fear of burn injuries. Still, he learned from both his mother and aunt that his sister had set herself on fire by pouring kerosene on her body due to harassment by the accused. However, he did not withstand the said version in the cross-examination.

19) The Prosecution examined P.W.5-Tahsildar, Kurnool, to establish that he conducted an inquest over the deceased's dead body. The Prosecution examined P.W.4 to establish his presence during the inquest. P.W.6 examined to establish that he conducted Post Mortem examination over the dead body of the deceased on 24.12.2013. His evidence shows that the deceased died due to shock resulting from antemortem mixed-degree burn injuries, and the time of death was on 24.12.2013 at 2.00 A.M.

20) P.W.7 is examined to prove his presence during scene observation panchanama, but he did not support the prosecution case. P.W.9-ASI of Police examined to prove that he received M.L.C. death intimation; based on the same, he altered the section of law.

21) The defence has not disputed the prosecution case that the deceased committed suicide by pouring kerosene herself and setting her blaze, and immediately her husband took the deceased to G.G.H., Kurnool, by 108 Ambulance and admitted to the hospital for treatment; while undergoing treatment, the deceased succumbed to burn injuries on the same night at 2.00 hours of 24.12.2013. Admittedly, the Judicial Magistrate of First Class, Kurnool [P.W.10], recorded the deceased's Dying Declaration [Ex.P11].

Ex.P11 shows the learned Magistrate reached the Government General Hospital, Kurnool, by 12.30 P.M. on 23.12.2013 and proceeded to record the statement of the deceased and concluded the proceedings by 1.10 P.M. on the same day.

22) It is also the prosecution case that on the same day, P.W.8- Investigation Officer arrived at the Government General Hospital, Kurnool, around 12.30 P.M. and proceeded to record the statement of deceased (Ex.P5) at 12.40 hours. It is implausible for both PW.8 and P.W.10 to have simultaneously recorded the statement of the deceased at the same time. However, the trial Court ignored the discrepancy by observing that a mistake in noting the time could have occurred. Ex.P11 indicates that the deceased stated that her aunt engaged in daily quarrels with her, her husband does not work, and her aunt asked her to return to her mother's house along with her husband, claiming that she would not allow them to stay there. She also stated that the quarrel with her mother-in-law persisted throughout the previous night, so she poured kerosene on herself and set herself on fire.

23) After careful analysis of the evidence, the trial Court concluded that testimonies of P.Ws.1 to 3 establish no harassment regarding additional dowry. P.W.1's evidence illustrates that the conflict arose when the accused insisted that the deceased engaged in a fruit-selling business using a push cart rather than participating in agricultural work. P.W.1 also testified that during the deceased's ninth month of pregnancy, she brought her daughter to her home for delivery, but the child was stillborn. P.W.1 further indicated

that during the delivery at her home, both she and the deceased would visit the accused's house. Based on these accounts, the trial Court observed that the accused and the deceased maintained a positive relationship. It appeared that the accused, wishing to help her son and daughter-in-law improve their lives, urged the deceased to venture into business. P.W.1 admitted in her evidence that her family had no connection with the accused before the deceased's marriage. She also acknowledged that the accused was a widow by the time of the deceased's marriage, that her husband had passed away soon after the birth of her son and daughter, and that the accused had no other agricultural lands. PW.1 does not know only one month before the deceased's death, the accused and her son-in-law resided at Panchikalapadu Village. P.W.1 revealed that it is a second marriage to her daughter/Reshma with the accused's son, and she informed the same to the accused before the wedding; Talak ended the first marriage of Reshma; no disputes had arisen between PW.1 and the accused before the deceased's death. P.W.1 also admitted that she knew the accused's son was deaf and mute. During cross-examination, P.W.1 disclosed that her husband was murdered six to seven years before Reshma's second marriage. She denied the suggestion that she compelled the marriage between Reshma and the accused's son due to her vulnerable situation, despite having no capacity financially to support the marriage.

24) The trial Court pointed out that the deceased did not speak about harassment of dowry while giving Ex.P11-Dying Declaration before the

learned Magistrate. After evaluating the evidence on record, the trial Court found the accused not guilty of the offence under Section 304-B I.P.C. The State did not prefer an appeal against the trial Court judgment acquitting the accused for the offence under Section 304-B I.P.C., but the trial Court convicted the accused for the offence under Section 306 I.P.C. The trial Court primarily relied on Ex.P11-Dying Declaration, wherein the deceased stated that there was a quarrel between her and the accused concerning the transfer of house in the name of Reshma/deceased before the occurrence.

25) After a comprehensive assessment of the evidence placed, it is evident to this Court that the root of the conflict between the deceased and her mother-in-law (the accused) stemmed from a disagreement concerning transferring a house property registered in the accused's name. During cross-examination, P.W.1 affirmed that she was aware, even before Reshma's marriage, that the accused possessed the house and a vacant site measuring 2 ½ cents. A house was constructed on half of the site, and the remaining part was registered in the name of the accused's son. This fact was also confirmed by the accused in her statement under Section 313 of the Code of Criminal Procedure. Copies of the Sale Deeds were provided by the accused, which demonstrated the property ownership in both her name and that of her son, Ameer Basha. P.W.1 did not dispute this version presented by the defence. The trial Court, having considered this aspect, noted that although some property was held in the name of the accused's husband, the deceased remained dissatisfied and engaged in quarrels with the accused. The

deceased's actions led to the accused's statement urging the deceased to go and die and even suggesting that she should instigate her own death.

26) Before I advert further, at this stage, I may notice a few decisions of the Hon'ble Apex Court and the High Court relevant to the purpose of disposal of this case.

27) In ***Ramesh Kumar v. State of Chhattisgarh***⁴, the Hon'ble Apex Court was considering the charge framed and the conviction for an offence under Section 306 IPC based on a dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been a quarrel between the deceased and her husband. On the day of the occurrence, she quarreled with her husband, who had said that she could go wherever she wanted to go and that, thereafter, she had poured kerosene on herself and had set herself on fire. In the said facts of the case, while acquitting the accused, it is observed that:

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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 for abetting the offence of suicide should be found guilty.”

⁴ (2001) 9 SCC 618

28) In **Sanju Alias Sanjay Singh Sengar vs. State of M.P.**⁵ reported in 2002 (5) SCC 371, the Hon'ble Apex Court observed that even where a person stated that his death would not make any difference or that he could go and die. That itself would not amount to instigation in the absence of *mens rea*.

29) In **Nachhattar Singh and others vs State of Punjab**⁶, the Hon'ble Apex Court observed that the wilful conduct referred to above should be of such a nature as would provoke a person of common prudence to commit suicide, and a difference of opinion within a family on everyday mundane matters would not fall within that category. It is further observed that merely because the appellants were of the opinion that the deceased, as a good daughter-in-law, should look after them in old age could not be said to be an abetment of suicide. The presumption against the appellants raised under Section 113-A of the Evidence Act, 1872 cannot thus be drawn.

30) In **Kashibai & Others vs The State of Karnataka**⁷, the Hon'ble Apex Court observed that:

“14. xxx It is true that as per Section 113A of the Evidence Act, when the question arises as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and when it is shown that she had committed suicide within 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 can presume, having regard to the other circumstances, that such suicide has been abetted by her husband or such

⁵ 2002 (5) SCC 371

⁶ (2011) 11 SCC 542

⁷ 2023 S.C.C. OnLine SC 575

relative of her husband. However, the mere fact of the commission of suicide by itself would not be sufficient for the Court to raise the presumption under Section 113A of the Evidence Act and to hold the accused guilty of Section 306 IPC.

15. *In Mangat Ram v. State of Haryana (2014) 12 SCC 595, this Court considering the provisions of Section 498A and 306 of I.P.C. in the light of the presumption under Section 113A of the Evidence Act, observed as under:—*

“30. We are of the view that the mere fact that if a married woman commits suicide within seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage, and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption, as defined under Section 498-A I.P.C. may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary.

31. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana, [(2004) 12 SCC 257: 2004 S.C.C. (Cri) 217], wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the Prosecution has first to establish that the woman concerned committed suicide within seven years from the date of her marriage and that her husband has subjected her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide

has been abetted by her husband. Section 113-A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A I.P.C."

31) The trial Court noted that the deceased was adamant about pressuring the accused to transfer the property in the accused's name. As mentioned, the accused's husband passed away shortly after the birth of their two children. The accused was responsible for raising them and even arranged for her daughter's marriage. Apart from her share in the 2 ½ cents of land, she possessed no other property. In such a scenario, it would be inappropriate for the deceased to insist that her mother-in-law/accused transfer her share of the property, especially since her husband had been given a share in the house property. Given these circumstances, expecting the accused to transfer her property share is not reasonable. Furthermore, Ex.P11, the Dying Declaration, does not indicate that the accused encouraged her daughter-in-law to commit suicide. The mere fact that a dispute arose due to the deceased's demand for the accused's property share and the accused's refusal does not automatically translate into instigation or aiding in suicide. Upon careful consideration of the case facts, it becomes evident that the accused's refusal to transfer her property share cannot be considered unreasonable. The deceased should not have insisted on the transfer, especially considering that the accused possessed no other property.

32) To convict an accused under Section 306 I.P.C., the State of mind to commit a particular crime must be visible concerning determining the culpability. The present one is not a case where the accused has, by her 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 instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences actually to follow cannot be said to be instigation.

33) Given the aforesaid legal position, I find not an iota of material on record, even assuming the evidence of P.Ws. 1 to 4 to be correct, which could lead to a conviction in a case of abetment as there was the absence of the necessary ingredients to make the offence. The trial Court speculated on the unnatural death and, without any evidence, concluded only through conjectures that the appellant was guilty of abetting the suicide of his daughter-in-law. The Prosecution had failed to adduce any clinching evidence to enable the Court to conclude that the appellant/accused had abetted the deceased to commit suicide. In the absence of any satisfactory evidence having been brought on record, in my opinion, the trial Court had committed a grave error in holding the appellant guilty of the offence under Section 306 I.P.C. Because of the preceding discussion, I am persuaded to conclude that the impugned judgment cannot be legally sustained.

34) Having considered the facts above of the case in juxtaposition with the judgments referred to above and upon the appreciation of evidence of the

eyewitnesses and other material adduced by the Prosecution, I am of the view that Trial Court wrongly convicted the appellant under Section 306 I.P.C.

35) In the result, the Criminal Appeal is ***allowed***, the conviction recorded for the offence under Section 306 I.P.C. in Sessions Case No.32 of 2015 dated 26.02.2016 on the file of learned IV Additional District and Sessions Judge, Kurnool, is *set aside*, and the accused is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith if she is not required in any other case or crime. The fine amount, if any, paid by the appellant/accused shall be refunded to her.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 14.08.2023
MS

**Note: LR copy to be marked.
B/o. MS**

THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL APPEAL NO.201 OF 2016

DATE: 14.08.2023

MS