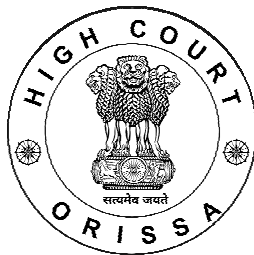


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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.14 of 2002
CNR-ODHC010003972002

(In the matter of an application under Section 374 (2) of the Criminal Procedure Code, 1973)

Smt. Indumati Das & others ***Appellants***
-Versus-
State of Orissa ***Respondent***

For the Appellants : Mr. D.P. Dhal, Senior Advocate

For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 07.07.2026 : Date of Judgment: 30.07.2026

S.S. Mishra, J. The present Criminal Appeal is arising out of the judgment dated 22.07.2002 passed by the learned Sessions Judge, Puri in S.T. Case No.162 of 2001 arising out of G.R. Case No.879 of 1999, whereby although the appellants were tried for the offences punishable under Sections 498-A, 304-B, 302/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, but upon appreciation of the evidence, the learned Sessions Judge acquitted all

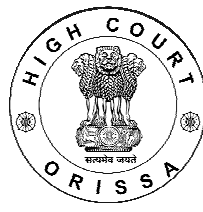


the accused persons of the charges under Sections 498-A, 304-B, 302/34 IPC and Section 4 of the Dowry Prohibition Act. However, by invoking the presumption under Section 113-A of the Indian Evidence Act, convicted them under Section 306 IPC and sentenced each of them to undergo R.I. for four years and to pay a fine of Rs.1000/- in default to undergo R.I. for one month.

2. Heard Mr. D.P. Dhal, learned Senior Advocate appearing for the appellants and Mr. Jateswar Nayak, learned Additional Government Advocate appearing for the Respondent-State.

3. Pursuant to the order dated 08.07.2025, the IIC, Delang Police Station submitted a report dated 23.08.2025 before this Court. As per the said report, the appellant no.2-Jogi Das has expired since 09.02.2019. The said report and the death certificate are already on record. In absence of any motion on behalf of the legal heirs or the next friend of the deceased-appellant no.2-Jogi Das, the Criminal Appeal stands abated.

4. The prosecution case, in brief, is that deceased Manorama Satapathy @ Tikina, aged about twenty-three years, on 30th October, 1998, eloped with appellant No.1 and both of them solemnized their



marriage in the Jagannath Temple at Puri. Thereafter, they started residing together as husband and wife in the house of Kalucharan. The prosecution further alleged that after the marriage, appellant No.1 along with his parents, brother and sister demanded dowry together with "Puani Saja" from the parental family of the deceased. Since the demand could not be fulfilled, the deceased was allegedly subjected to physical torture, mental cruelty and harassment. It was further alleged that on the morning of 11.07.1999 the accused persons assaulted the deceased and ultimately caused her death.

5. On the basis of a written report lodged by the mother of the deceased, Delang P.S. Case No.60 dated 16.07.1999 was registered initially for offences under Sections 498-A, 304-B, 302/34 IPC and Section 4 of the Dowry Prohibition Act. Investigation was undertaken. It is significant to notice that even before registration of the police case on the basis of the above FIR, one Bauribandhu Das had lodged a written report before Harirajpur Police Out Post on 11.07.1999 at about 7.45 P.M. stating that the deceased had committed suicide by consuming poison. On the basis of the said report, Harirajpur Out Post U.D. Case No.1 of 1999 was registered.



6. During investigation, the Investigating Officer examined witnesses, prepared the spot map, collected the post-mortem report and forwarded the viscera of the deceased for chemical examination. On completion of investigation, charge-sheet was submitted against all the accused persons for offences punishable under Sections 498-A, 304-B, 302/34 IPC and Section 4 of the Dowry Prohibition Act.

7. In order to establish its case, the prosecution examined six witnesses out of the seventeen charge-sheet witnesses. P.W.1 is the mother of the deceased and informant. P.Ws.4 and 5 are the younger sisters of the deceased. P.W.2 and P.W.3 were the doctors connected with the post-mortem examination. P.W.6 was the Investigating Officer. The defence was one of complete denial.

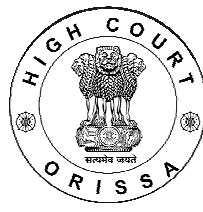
8. The learned trial Court, on analysis of the evidence, held that the prosecution failed to prove beyond reasonable doubt that the accused persons had committed murder of the deceased or that the ingredients constituting offences under Sections 302, 304-B, 498-A IPC and Section 4 of the Dowry Prohibition Act stood established. Consequently, all the accused persons were acquitted of those charges. However, notwithstanding the above findings, the learned



Sessions Judge proceeded to hold that since the death had occurred within seven years of marriage and the evidence disclosed some allegation of ill-treatment, a presumption under Section 113-A of the Evidence Act could be drawn against the accused persons. On that reasoning, all the accused persons were convicted under Section 306 IPC for abetment of suicide. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

“14. In the premises, it is concluded that prosecution has failed beyond all reasonable doubts to bring home the charges u/s 498-A, 304-B, 302/34 I.P.C and 4 of the. D.P. Act against any of the accused persons but has been successful in establishing a case u/s 306 I.P.C against the accused persons Prafulla @ Narayan @ Kalu Charan Das, Jogi Das and Indumati Das. Accordingly when accused persons Ganesh @ Binayak Das and Kamal Kumari Das enjoying benefit of doubt are acquitted of the offence u/s 235(1) Cr.P.C. accused persons Prafulla, Jogi and Indumati are found guilty u/s 306 I.P.C and are convicted thereunder.”

9. Mr. Dhal, Senior Advocate appearing for the appellants, argued that the learned trial Court found the prosecution failed to prove charges under Sections 498-A, 304-B, and 302/34 of the IPC, as well as Section 4 of the Dowry Prohibition Act. Nevertheless, the learned



trial court convicted the appellants under Section 306 IPC using the presumption in Section 113-A of the Indian Evidence Act. He contended that the prosecution case itself was riddled with inconsistencies. The evidence of P.Ws.1, 4 and 5, who are closely related to the deceased, has been disbelieved by the trial court on account of material contradictions and exaggerations, and the trial court itself concluded that the prosecution had failed to prove the allegations of dowry demand and cruelty.

10. Learned Senior Counsel further contended that the conviction under Section 306 IPC is wholly unsustainable in law as the essential ingredients of the offence were never established. Referring to the evidence of P.W.2 and P.W.3, it was contended that the evidence of doctors revealed that in the absence of the Chemical Examiner's report, no definite opinion could be given regarding the exact cause of death and whether the death was homicidal, suicidal or accidental. The learned trial court itself observed that the failure of the prosecution to produce the Chemical Examiner's report reflected the slackness of the investigating agency. In such circumstances, it was argued, the prosecution failed to prove even the foundational fact that



the deceased had committed suicide. It was further submitted that the presumption under Section 113-A of the Evidence Act is discretionary and can't be automatically drawn. He placed reliance on the decisions of the Supreme Court in *Mangat Ram v. State of Haryana*, (2014) 12 SCC 595, *Hansraj v. State of Haryana*, AIR 2004 SC 2790, and *Pinakin Mahipatray Rawal v. State of Gujarat*, (2013) 10 SCC 48, to contend that before the presumption under Section 113-A can be invoked, the prosecution must first establish that the deceased had committed suicide within seven years of marriage and that she had been subjected to cruelty within the meaning of Section 498-A IPC. Since the learned trial court acquitted the appellants of the charge under Section 498-A IPC, the very foundation for invoking presumption under Section 113-A stood demolished.

11. Mr. Dhal lastly contended that the conviction under Section 306 IPC is liable to be set aside on the additional ground that no charge under the said provision had ever been framed against the appellants. Drawing the attention of the Court to Sections 221 and 222 of the Code of Criminal Procedure, learned Senior Counsel



submitted that Section 306 IPC is not a minor offence in relation to Sections 302 or 304-B IPC, as the ingredients of the two offences are entirely distinct. He argued that throughout the trial the appellants defended themselves against allegations of murder and dowry death and were never called upon to meet an accusation of abetment of suicide. Moreover, no question relating to abetment of suicide was put to the appellants during their examination under Section 313 Cr.P.C., thereby causing serious prejudice to their defence. On these premises, learned Senior Counsel prayed that the impugned judgment of conviction and sentence be set aside and the appeal be allowed.

12. This Court has independently re-appreciated the evidence on record. The evidence of P.W.1, P.W.4 and P.W.5. P.W.1, the mother of the deceased, alleged that after the marriage the appellants demanded dowry and subjected the deceased to cruelty, ultimately resulting in her death. P.Ws.4 and 5, the sisters of the deceased, also supported the prosecution case by alleging demand of dowry, cruelty and assault on the deceased. However, on a careful scrutiny, their evidence is found to suffer from material omissions, contradictions and improvements on vital aspects relating to dowry demand, cruelty



and the alleged assault. Besides, P.W.1 had no direct knowledge of the occurrence and her evidence was largely hearsay, while the testimony of P.Ws.4 and 5 regarding witnessing the occurrence does not inspire confidence. Thus, although the evidence establishes the marital relationship between the deceased and appellant No.1, it does not satisfactorily prove the allegations of cruelty or the circumstances leading to the death beyond reasonable doubt.

13. The medical evidence adduced through P.W.2 and P.W.3 also does not advance the prosecution case. The evidence of P.W.2, particularly in paragraphs 9 to 12, and that of P.W.3 in paragraphs 6 to 8, deposed that although poisoning was suspected during the post-mortem examination, both the doctors unequivocally stated that, in the absence of the Chemical Examiner's report, no definite opinion regarding the exact cause of death could be expressed. Extract of P.W.2's deposition is relevant to reproduce herein for ready reference:-

“9. To Court :- The findings of my P.M. Examination were not sufficient medically to opine cause of death.

10. Cross-Examination by the prosecution :-



From The findings suffocation could have been inferred as cause of death but to rule out poisoning examination of Viscera was necessary.

11. Cross-Examination by the defence :-

I have not mentioned about suffocation in my report. The findings were more in favour of suffocation but not conclusive pending chemical examination of the viscera.”

Relevant part of the deposition of P.W.3 is reproduced herein for ready reference:-

“6. To Court :- The findings we got did not lead to any conclusion on the cause of death. On viscera examination the cause of death would have been ascertained. By chemical examination and histo-pathological examination cause of death could have ascertained if due to injection of poisonous material or death due to asphyxia or any diseases process.

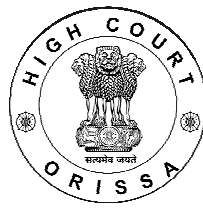
7. Cross-Examination by prosecution :-

Any opinion on cause of death basing on the finding would have been provisional.

8. Cross-Examination by the defence :-

Death due to suffocation could be assessed from viscera examination. In the absence of a ligature mark death due to suffocation cannot be assessed.”

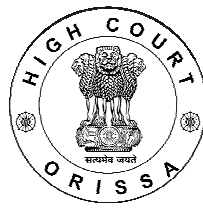
Neither of the doctors opined that the death was homicidal or conclusively suicidal. Their evidence clearly establishes that scientific examination of the viscera was essential to determine the cause of death, but the Chemical Examiner's report was never produced before



the Court. Consequently, the medical evidence remains inconclusive and fails to establish whether the death was homicidal, suicidal or accidental. In the absence of such crucial scientific evidence, and in view of the inconsistencies in the ocular testimony, the prosecution has failed to establish the foundational facts necessary to sustain the conviction under Section 306 IPC.

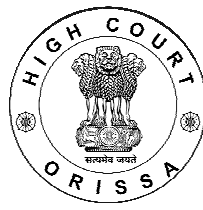
14. More importantly, after considering the entire evidence, the learned trial Court recorded a categorical finding that the prosecution failed to establish the charges under Sections 498-A, 304-B, 302/34 IPC and Section 4 of the Dowry Prohibition Act. That finding necessarily implies that the prosecution failed to prove cruelty connected with dowry demand beyond reasonable doubt.

15. The principal question that arises for consideration is whether the learned trial Court was justified in invoking the presumption under Section 113-A of the Indian Evidence Act to convict the appellants under Section 306 IPC. Section 113-A provides that where a married woman commits suicide within seven years of her marriage and it is shown that she was subjected to cruelty by her husband or his relatives, the Court may presume that such suicide had been abetted



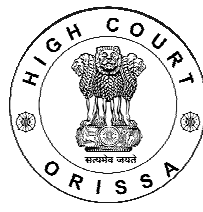
by the husband or such relatives. The use of the expression "may presume" makes it abundantly clear that the presumption is discretionary and not mandatory. The scope of this provision has been authoritatively explained by the Hon'ble Supreme Court in ***Mangat Ram v. State of Haryana***, reported in **(2014) 12 SCC 595**, wherein it was held that the mere fact that a married woman commits suicide within seven years of marriage does not automatically attract the presumption under Section 113-A. The prosecution must first establish that the deceased was subjected to cruelty within the meaning of Section 498-A IPC, and even thereafter, the Court is required to consider all the surrounding circumstances before deciding whether such presumption should be drawn. It was held thus:-

“30. We are of the view that the mere fact that if a married woman commits suicide within a period of 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 IPC, 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. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

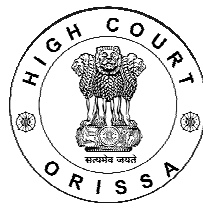
31. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana [(2004) 12 SCC 257 : 2004 SCC (Cri) 217] , wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence 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 to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject 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 IPC.

32. We are of the view that the circumstances of the case pointed out by the prosecution are totally insufficient to hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113-A of the Evidence Act have also not been satisfied.

33. In Pinakin Mahipatray Rawal v. State of Gujarat [(2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] , this Court has examined the scope of Section 113-A of the Evidence Act, wherein this Court has reiterated the legal position that the legislative mandate of Section 113-A of the Evidence Act is that if a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, as per the presumption defined in Section 498-A IPC, the court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband or such person. The court held that, though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. The court held that the burden is on the prosecution to establish the fact that the deceased committed suicide and the accused abetted the suicide. In the instant case, there is no evidence to show whether it was an accidental death or whether the deceased had committed suicide.”



The Honorable Supreme Court, relying upon *Hans Raj v. State of Haryana*, reported in (2004) 12 SCC 257, further held that unlike Section 113-B of the Evidence Act, no statutory presumption arises merely on proof of the foundational facts and that the Court is not bound to presume abetment even where cruelty is established. In *Pinakin Mahipatray Rawal v. State of Gujarat*, reported in (2013) 10 SCC 48, it was reiterated that the burden always remains upon the prosecution to prove not only that the deceased committed suicide but also that the accused had abetted such suicide.

16. Tested on the anvil of the aforesaid principles, if the evidence of the present case is analyzed, the findings of the learned trial Court recording that the prosecution had failed to establish the charges under Sections 498-A, 304-B and 302/34 IPC as well as Section 4 of the Dowry Prohibition Act can't be found fault with. The prosecution failed to prove cruelty and demand of dowry beyond reasonable doubt, one of the essential conditions for invoking Section 113-A stood unfulfilled. Further, the medical evidence of P.W.2 and P.W.3 clearly indicates that, in the absence of the Chemical Examiner's report, no definite opinion could be expressed regarding the cause of



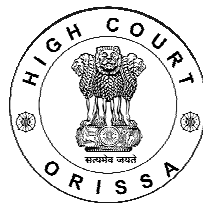
death, leaving even the question whether the deceased had committed suicide inconclusive. In such circumstances, the foundational facts necessary for raising the presumption under Section 113-A are absent. There is also no cogent evidence of any instigation, conspiracy or intentional aid, as contemplated under Section 107 IPC, so as to constitute abetment of suicide.

17. In view of the settled legal position and the evidence on record, this Court is of the considered opinion that the learned trial Court erred in invoking the discretionary presumption under Section 113-A of the Evidence Act merely because the death occurred within seven years of marriage in the absence of established cruelty on demand of dowry. Such an approach is contrary to the law laid down by the Hon'ble Supreme Court. When the prosecution has failed to establish cruelty, has not conclusively proved that the deceased committed suicide, and has failed to prove any act amounting to abetment, the conviction of the appellants under Section 306 IPC cannot be sustained in law, particularly when specific charge was not framed for the said offence.



18. The conviction under Section 306 IPC without framing a specific charge and without putting the necessary incriminating circumstances to the appellants during their examination under Section 313 Cr.P.C. has occasioned serious prejudice to the defence. Criminal jurisprudence requires proof beyond reasonable doubt. Suspicion, however grave, can never substitute legal proof. The prosecution is expected to prove each essential ingredient of the offence by cogent, reliable and legally admissible evidence. In the present case, the evidence on record falls considerably short of the standard required for sustaining a conviction under Section 306 IPC. The deficiencies in the prosecution case are not minor irregularities but go to the very root of the matter.

19. The learned trial Court, having acquitted the appellants of the offences under Sections 498-A, 304-B, 302/34 IPC and Section 4 of the Dowry Prohibition Act, could not have, in the absence of proof of cruelty and in the absence of conclusive evidence of suicide, invoked the discretionary presumption under Section 113-A of the Evidence Act to record a conviction under Section 306 IPC. The impugned



judgment, therefore, suffers from patent legal infirmity and cannot be sustained.

20. The appellants are acquitted of the charge under Section 306 IPC. The judgment of conviction and the order of sentence dated 22.07.2002 passed by the learned Sessions Judge, Puri in S.T. Case No.162 of 2001, convicting the appellants for the offence punishable under Section 306 of the Indian Penal Code, are hereby set aside.

21. For the reasons aforesaid, the Criminal Appeal is accordingly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of July, 2026/ Subhasis Mohanty