

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on: 07.05.2024  
Pronounced on: 05.06.2024

**CRA No. 17/2015**

1. Rakesh Singh, Age 37 years, S/o .....Appellant(s)/Petitioner(s)  
Major Singh, R/o Mangloor,  
Tehsil Hiranagar, District Kathua,  
presently lodged in District Jail  
Kathua.

Through: Mr. Rohan Nanda, Advocate

**Vs**

- ..... Respondent(s)
1. State of Jammu and Kashmir through  
SHO, Police Station, Hiranagar.
2. Superintendent, District Jail, Kathua.

Through: Mr. Dewakar Sharma, Dy. AG

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. The appellant has been convicted vide judgment dated 21.04.2015 for commission of offences under Section 306/498-A RPC and vide order dated 23.04.2015 passed by the court of learned Principal Sessions Judge, Kathua (hereinafter to be referred as 'the trial court'), the appellant has been sentenced to undergo imprisonment for a period of five years and fine of Rs. 10,000/- for commission of offence under Section 306 RPC and imprisonment for one year and fine of Rs. 1000/- for offence under Section 498-A RPC. In default of payment of fine, the appellant has been ordered to undergo further imprisonment for a period of six months under Section 306 RPC and one month for commission of offence under Section 498-A RPC.

2. The appellant has impugned the judgment and order of sentence on the ground that the learned trial court has not properly appreciated the evidence and convicted the appellant without there being any evidence on record against the appellant in respect of commission of offences under Section 306/498-A RPC.
3. The learned counsel for the appellant has argued that the witnesses examined by the prosecution have not only made contradictory statements to each other but have also made improvements and the learned trial court ought to have rejected the evidence of these witnesses. He has further submitted that the learned trial court has wrongly invoked Section 113-A and 113-B of the Evidence Act, while convicting the appellant. The learned counsel has also laid much stress that in view of the weak evidence led by prosecution, the appellant could not have been convicted by the learned trial court.
4. *Per contra*, Mr. Dewakar Sharma, learned Dy. AG has argued that the deceased used to reside in her parental home for almost whole of the week and would reside in her matrimonial home only for two days i.e. Saturday and Sunday, as she was working as a ReT Teacher. He further submitted that during the summer vacations and Amarnath Yatra agitation, the deceased resided with her husband in her matrimonial home and during that period, she was treated in such a manner that she took extreme step of ending her life by hanging herself. He has vehemently argued that the learned trial court, after due appreciation of evidence, has convicted the appellant and there is no infirmity in the judgment passed by the learned trial court.

5. Heard learned counsel for the parties and perused the record.

**Prosecution Case:**

6. The prosecution case is that on 24.09.2008, an information was received at Police Station, Hiranagar that one lady, namely, Raj Kumari W/o Rakesh Singh had died under suspicious circumstances. On receipt of that information, the proceedings under Section 174 Cr. P.C. were initiated and Babu Ram, ASI, was deputed to conduct the inquest proceedings. During inquest proceedings, the statements of the witnesses under Section 175 Cr. P.C. were recorded and even the statements of the witnesses were also recorded under Section 164-A Cr. P.C. before JMIC, Hiranagar. The mother of the deceased in her statement recorded under Section 164-A Cr.P.C stated that marriage of her daughter, namely, Raj Kumari was solemnized with Rakesh Singh-accused, eight months prior to her death and she was a ReT Teacher, serving in her village only. She used to go to her matrimonial home on Saturday only and return on Monday. After spending the summer vacations in her matrimonial home, when she came back, she stated that the accused was harassing her for not bringing dowry. Her marriage was solemnized without dowry. The basic items like Refrigerator, Cooler were given but valuable items were not given. She also stated that Rakesh-accused had asked her about her salary for the last 3/4 years. He had also demanded a car. One month ago, Rakesh called Anuradha on mobile phone at night around 08:00 PM, and informed that her daughter-Raj Kumari had suffered an attack and was admitted in the Kathua hospital. He asked them to come immediately. She along with her daughter-Anuradha and son-Mohan went to hospital but Rakesh and his

associates told them that they could not meet her as she was being administered glucose but as a matter of fact, she had already died. After conducting the post-mortem on the second day, the deceased was taken to her matrimonial home. They took the clothes for the deceased. The body of the deceased was kept in a separate room, and they were not permitted to see her face and were not even permitted to dress the dead body in the clothes brought by them. Her daughter had either been killed by Rakesh or had died because of him. The occurrence had taken place in the house of accused-Rakesh. Based on this statement, FIR No. 137 of 2008 was registered at Police Station, Hiranagar against the appellant for commission of offences under Section 306/498-A RPC. The statements of brother and sister of the deceased were also recorded under Section 164-A Cr. P.C. The post-mortem report was obtained and the statements of the other witnesses were also recorded. The charge-sheet for commission of commission of offences under Section 306/498-A RPC was laid against the appellant with the JMIC, Hiranagar on 03.12.2008, which was committed to the learned trial court and the learned trial court vide order dated 29.01.2009, charged the appellant for commission of offences under Section 306/498-A RPC. As the appellant did not plead guilty to the charge, the prosecution was directed to lead evidence. Out of 15 witnesses, 14 witnesses were examined by the prosecution. The statement of the appellant was recorded under Section 342 Cr. P.C and he was directed to lead evidence in his defence but he did not opt to do so. After hearing the parties, the learned trial court convicted the appellant and sentenced him in the manner as mentioned above.

7. Since this is an appeal against the conviction, evidence is required to be appreciated to find out whether the learned trial court has rightly come to conclusion in respect of commission of offence by the appellant. In other words, it is to be examined as to whether the prosecution has proved its case beyond reasonable doubt. In order to undertake the above exercise, it is necessary to have a brief resume of the evidence led by the prosecution.

**Prosecution Evidence:**

8. **PW Urmila Devi (Sister-in-law of the deceased)** stated that marriage of the deceased-Raj Kumari was solemnized with the accused in the year 2007. The deceased, being a teacher, used to reside in her parental home and would go to her matrimonial home on Saturday and come back on Monday for performing duties. The deceased had resided in her matrimonial home during summer vacations and Amarnath Yatra Agitation in the year 2008. The appellant was a teacher in his own Village. After the summer vacations, when the deceased came to her parental home, she met with her once and told her that she was in tension, as accused-Rakesh and his family members were harassing her that she was working as a teacher, but had brought less dowry. The employed girls bring more dowry. They would also ask about the salary earned by her prior to her marriage. The deceased further cautioned her (witness) not to disclose the same to her mother and brother. One evening in the year 2008, the phone call was received that Raj Kumari had suffered an attack and was admitted in Kathua hospital. The mother, brother and sister of the deceased had gone to the hospital, and she also accompanied them. When they went to the hospital, they came to know that Raj Kumari was being

administered glucose and no one was permitted to go inside. Thereafter, they came to know that she had died, and they were told to go back to their home and return in the morning. The ladies and gents of the Village had come in the morning. They along with the residents of their Village had gone to the house of the appellant for cremation of the deceased and she also accompanied them. The body of the deceased was kept in one room and when they opened the door, they found that there was none along with the body of the deceased. They were turned out of the room and were not permitted to dress the body of the deceased in the clothes brought by them. They were not even permitted to see the face of the deceased. The cremation of the deceased was not conducted in the cremation ground but in their own land. The deceased had died due to harassment of the accused. During cross-examination, she stated that the deceased had told her about the harassment by the accused in the year 2008 but she did not remember the date and month of the year. She had not disclosed that fact to anyone. She had not received any phone call that the deceased was taken to the hospital, but Anuradha had told her that Raj Kumari had suffered an attack. They went to the hospital in an auto-rickshaw. When they came to know about the demise of Raj Kumari, the police personnel were also present in the hospital. She did not tell the police personnel about the harassment caused to the deceased by the accused. On 30.10.2008, for the first time, she disclosed that fact to the police and on the same day, her statement was recorded by the Police. Prior to her statement, she had submitted an application in the office of Superintendent of Police, and had stated therein that the accused was

harassing the deceased on account of dowry. The accused had never teased the deceased in her presence. She did not confirm the fact that whether the accused used to harass the deceased or not. A child was born to the deceased at her in-laws' house in Rehani Village. The baby was healthy like normal babies. 10-15 days prior to the death of the deceased, she came to her house. There were 400-500 people at the time of cremation and the police personnel were also there. Neither she nor anyone else told the police that they were not allowed to see the face of the deceased and to dress the deceased in the clothes brought by them.

9. **PW Pushpa Devi (Mother of the deceased)** in her examination-in-chief stated that marriage of her daughter was solemnized with Rakesh. Her daughter was serving in Village Mehtabpur. She used to go to her matrimonial home on Saturday and return to her paternal home on Monday. During summer vacations, she had resided at her matrimonial home. After vacations when there was strike, she came to her house and stated that she was harassed and was asked about her salary for the last 2/3 years. She was also told that she had brought less dowry. Thereafter, she went to her matrimonial home. The accused-Rakesh assaulted her due to which, she died. One day, accused-Rakesh at 08:00 PM called her younger daughter on phone that Raj Kumari had suffered attack and was admitted in Kathua Hospital. She, along with her son, Urmila (daughter-in-law) and Anuradha (daughter) when to hospital but they were not allowed to meet her. She was told that glucose was being administered to her. When they came to the hospital next day, post-mortem of the deceased was conducted, and the dead body was handed over to her in-

laws. When they went to the matrimonial home of her daughter, her dead body was kept in one closed room. They were not permitted to go inside. They were also not permitted to dress the body of the deceased in the clothes brought by them. They did not even see the face of the deceased. They were told to go away. The body of the deceased was not cremated in the cremation ground but in their own land. They were told that she suffered an attack but in fact she was killed by the accused-Rakesh. During cross-examination, she stated that Urmila Devi was her daughter-in-law and resided in her home only and she resided along with her husband Shalu Ram and other family members. This is correct that Shalu Ram resided in his home and not in their home. She stated that 10-12 days prior to death of the deceased, she had told her that Rakesh was harassing her. She only, was told about the same and no one else was present there. After the demise of her daughter, she disclosed the same to her children. She did not remember as to whether she disclosed to Police or not that Rakesh was harassing the deceased for bringing less dowry. This is correct that she was making that statement for the first time in the court. When she went to the hospital for the first time, the accused was present there. Besides him, others were also present but were not known to her. When the deceased died, her son was two months old. She could not say as to whether her son was weak or not. This is wrong that at the time of delivery, her daughter was ill, and she was taken to Jammu hospital. Her son-in-law, Rakesh used to visit her house occasionally. He used to spend nights as well, in her house. The deceased was harassed by the accused and the deceased disclosed the same to her. The accused did not make any



demand in her presence. The accused did not harass her daughter in her presence. He used to come in the morning and return in the evening. He used to harass the deceased in his home. She never disclosed the same to the Police. Her statement was recorded by the Police at Hiranagar Police Station one/two days after the occurrence. She could not say as to how the accused killed the deceased. She had not seen herself, the deceased told her on phone that the accused used to harass her. She could not say as to when there was a telephone call. She had not disclosed that to the Police and for the first time, she disclosed the same in the court.

10. **PW Anuradha (Sister of the deceased)** in her examination-in-chief stated that on 14.09.2008, in evening, the accused-Rakesh called her on phone that Raj Kumari had suffered an attack and was unconscious. She was not talking and was being taken to Kathua Hospital. She along with her mother and brother-Mohan Singh went to the hospital at Kathua. When they reached hospital, they were not permitted to meet Raj Kumari and were told that glucose was being administered to her. Thereafter, they came to know that Raj Kumari had died. They had come to know about the demise of Raj Kumari in the hospital only. The Police asked them to come in the morning and they were not permitted to see the deceased. When they went to the hospital next day, even then they were not permitted to see the deceased on the ground that postmortem was being conducted and the Police officials were also with the accused. The accused who was accompanied by Police did not call them to participate in the cremation. The body of the deceased was taken to their residence. They also went to the matrimonial home of the deceased. Her dead body

was kept in one closed room and the door was locked from outside. They were told that no one would weep or cry. They were not even permitted to dress the deceased in the clothes which they had brought. Her body was not cremated by her in-laws in cremation ground but in their own land. Her sister was a ReT Teacher and was posted at Village Mehtabpur. After the solemnization of marriage, the deceased used to spend most of the time in her parental home only. She used to go to her matrimonial home on Saturday and return on Monday. During the summer vacations of the year 2008, she remained in her matrimonial home. She had stated that during summer vacations, the accused harassed her for bringing less dowry. He would also say that substandard furniture was brought by her, and she had not brought the vehicle for him. The big sofa was also not brought. He would also ask about the salary earned by her prior to her marriage. Her statement was recorded under Section 164-A Cr. P.C. During cross-examination, she stated that her statement was recorded by the Police on 30.10.2008, whereas the occurrence took place on 24.09.2008 but during that period, her statement was not recorded by the Police. They had not received any phone call from the deceased on the day of occurrence. She had also not received any phone call, but her mother had received a phone call. She was not at home at that time, as she had gone to her duties in the school. She told her mother on the phone that she was going to join the School on Monday, but she had not told that she was being harassed. She had not disclosed any demand or harassment by the accused. The male child was born to her sister on 31.05.2008. The son was residing with his father. In the month of September, the deceased

resided in her matrimonial home only. She used to talk to her on phone. She talked to her last time four days prior to the occurrence. She had told her that the accused was harassing her. She had not disclosed the same in her statement recorded under Section 164-A Cr. P.C and for the first time, she was making such a statement in court. She had only received a phone call from the accused at 7-8 PM that the deceased had suffered an attack and was admitted in the hospital at Kathua. She had gone to the matrimonial home of the deceased for her last rites. The women do not participate in cremation, as such, she did not go to the cremation ground. She could not say about the day and month when the deceased had informed her that the accused was demanding a vehicle, sofa and salary of 3 ½ years. She had not disclosed that fact to anyone. The accused never demanded any article from the deceased in her or mothers' presence. The accused never assaulted the deceased in her presence. She was never told by the deceased that she was assaulted by the accused at any time. She used to say that the accused used to harass her only by demanding dowry. The deceased had never told her that she was harassed or kept without food for meeting the dowry demands.

11. **PW Uttam Singh** stated that on 24.09.2008, when he reached home as he had gone out to bring planks for his personal use, he found that the ladies were crying. He came to know that Raj Kumari had committed suicide. The mother-in-law of the deceased, her sister-in-law and one Magar Singh were holding the deceased so that throat of the deceased could not suffer pressure of dupatta, which was tied around her neck. He immediately brought Drathi and cut the dupatta. She was given water, but she could

not drink. He called the doctor at home, who came on spot and advised them to take her to hospital. **Accused-Rakesh and Major Singh** were not present there. They hired a vehicle and took the deceased to the hospital. The accused-Rakesh was called telephonically, and he was told that she had suffered fits but he met them on the way and thereafter, they proceeded towards the hospital, where the deceased was declared brought dead. The Police seized the Dharati and Dupatta (EXT-P4). The seizure memo was prepared. He proved the same. Next day, he went to the hospital and seizure memo of the dead body (EXT-P4/1) was prepared. He also proved the same. He also proved the seizure memo of apparel worn by the deceased (EXT-P4/1). He also proved the receipt of the dead body (EXT-P4/3) and the memo of personal search of the accused (EXT-P4/4). He also proved the seizure memo (EXT-P4/5). During cross-examination, he stated that he was having cordial relations with the accused. A child was born to the deceased in the hospital at Jammu, who was a premature baby. The child was weak, due to which, family members of the accused were upset. The deceased Raj Kumari was also upset. The accused and his family never harassed the deceased, but the deceased was herself worried about the health of the child.

12. **PW Chaggar Singh** did not support the prosecution and was declared hostile. Despite being cross-examined at length, no incriminating material could be extracted by the learned P.P.
13. **PW Major Singh** stated that on 24.09.2008, he had gone to his field to harvest the maize crop. One person told him that his daughter-in-law had suffered an attack. He insisted him to come to home. When he was about

to reach home, he saw his daughter-in-law being taken in a Sumo vehicle to the Kathua Hospital for treatment. Rakesh Singh met him on the way. He was asked to board the vehicle. His family members had not told him about the occurrence. His daughter-in-law expired that very evening. He came to know that she had died because of hanging herself. The Police handed over the dead body of the deceased the next day after conducting the post-mortem. He proved the receipt of the dead body (EXT-P4/3). During cross-examination, he stated that the deceased used to reside at her paternal village generally and she used to come to his residence every holiday. Due to delivery of the premature baby, the deceased used to remain upset.

14. **PW Dr. Mohinder Lal** stated that on 25.09.2008, he was posted as Assistant Surgeon, District Hospital, Kathua and during his posting, he along with Dr. Anil Gupta and Dr. Ritu Sharma, being members of the Board constituted to conduct postmortem of deceased Raj Kumari W/o Rakesh Singh R/o Mangloor, Tehsil Hiranagar, District Kathua, found the following injuries on her dead body:-

1. Abrasion 1 X 1.5 cm at sub mental region reddish brown in colour;
2. Ligature mark 05 cm (minimum size) to 1 cm maximum size in breadth;
3. Maximum size is on right side. Encircling whole of neck except nape of neck. Ligature mark is at sub mental area at the front. It is purplish in colour;
4. Subcutaneous tissue below ligature mark is pale in colour with few patechial marks. Neck bones and cartilage are intact.

In their opinion, as per autopsy findings and FSL report attached, the deceased died due to sudden asphyxia due to hanging leading to cardiopulmonary arrest. Time since death was within 12 to 24 hours of conducting autopsy. The postmortem report bears his signature. It is

correct and is exhibited as EXT-P-12. No question was put in cross-examination.

15. **PW Dr. Ritu Sharma and PW Anil Kumar Gupta** also proved the postmortem report Ext-P-12. During cross-examination, PW Dr. Ritu Sharma stated that since the viscera was sent for chemical examination, they did not open the stomach of the deceased to find out whether she had taken any food. She cannot say whether the deceased was on any medication prior to her death. During cross-examination PW Dr Anil Kumar Gupta stated that since the viscera was sent for chemical examination, therefore, they did not open the stomach of the deceased to find out whether she had taken any food. He cannot say whether the deceased was on any medication prior to her death.
16. **PW Vishal Dogra** proved the seizure memo of the file of the proceedings under Section 174 Cr. P.C. (EXTP-9).
17. **PW Mohd. Shafi** stated that on 31.10.2008, FIR bearing No. 137 of 2008 under Section 306/498-A RPC was registered and on the same day, the file of the proceedings conducted under Section 174 Cr. P.C. was seized by SHO. He proved the seizure memo (EXTP-9). Besides that, SHO prepared the seizure memo of Dupatta and Dhandal. He proved the seizure memo (EXPT-9/1). During cross-examination, he stated that he did not know from where the Dupatta and Dhandal were seized.
18. **PW Sushil Kumar (Photographer of Crime Branch)** stated that on 25.09.2008, he had gone to the hospital at Kathua and clicked three photographs of the body of the deceased and the same were handed over to the Investigating Officer. He identified the photographs, which were

clicked by him. They were marked as SK, SK-1 and SK-2. During cross-examination, he stated that the negatives of the photographs may be in the Crime Branch.

19. **PW Surinder Singh** stated that on 24.09.2008, he had gone to perform his official duties at Kirian and when in the evening, he returned, he came to know that Raj Kumari had hanged herself and was admitted in Kathua Hospital. He also went to the hospital. When he reached there, she had already died. Police had taken custody of the dead body of the deceased. He proved the seizure memo of the dead body (EXT-P4/1). He also proved the seizure memo of the clothes of the deceased (EXT-P4/2). Thereafter, the dead body of the deceased was handed over to his father for performance of last rites. He proved the receipt of the dead body (EXT-P4/3). He also identified his signatures on the Fard Surat Hal (EXT-P7). He also proved the arrest memo of the accused (EXT-P4/4). During cross-examination, he stated that the deceased used to remain in tension as she had delivered a premature baby, who was very weak.
20. **PW Babu Ram (Investigating Officer)** stated that on 24.09.2008 at about 2010 hours, a call was received from Kathua Hospital that the dead body of Raj Kumari was lying in the hospital. He went to the hospital and took custody of the dead body. The postmortem of the body was conducted other day. The clothes of the deceased were seized in the office of the Medical Officer. Thereafter, the same were handed over to the legal heirs of the deceased for performance of last rites. The seizure memo of Dandhal and yellow Dupatta was also prepared. The site plan of the place of occurrence was also prepared. On 30.09.2008, the entire file was

handed over to SHO, Police Station, Hiranagar for further proceedings. The documents bearing EXT-P9/1, EXT-94/1, EXT-P4/2, EXT-P4/3 and EXT-P14 were prepared by him and bore his signatures. During cross-examination, he stated that he could not say whether the accused was near the body of the deceased or not.

21. This is the whole of the evidence led by the prosecution. The charge against the appellant is that he was harassing the deceased and making demands of dowry, as such, the deceased due to harassment, on 24.09.2008 committed suicide. Out of all the witnesses examined by the prosecution, only three witnesses have made statements against the appellant and they are Pushpa Devi (mother of the deceased), Anuadha Devi (sister of the deceased) and Urmila Devi (sister-in-law of the deceased).
22. The FIR under section 306, 498-A RPC was registered on 30.10.2008 pursuant to the statement of the PW Pushpa Devi recorded before the Magistrate on 30.10.2008, whereas, the deceased committed suicide on 24.09.2008. Thus, it is evident that FIR was registered after 36 days of the commission of suicide by the deceased. Prior to registration of FIR, inquest proceedings were being conducted. This court has not come across the statements of the witnesses recorded during the inquest proceedings.
23. It has come in the evidence of all the three witnesses mentioned above that the deceased used to reside in her parental home during week days as she was serving as a RET teacher in the school of her parental village and would go to her matrimonial home only on Saturday. Thereafter, she used



to come back to her parental home on Monday. Thus, it is evident that most of the time, she used to reside in her parental home only. It is also proved by these three witnesses that she spent summer vacations and period of Amarnath Yatra agitation in the year 2008 at her matrimonial home. PW Pushpa Devi has stated that after the vacations when there was strike, she came to her house and told that she was being harassed and was asked about her salary for the last 2/3 years. She was also told that she had brought less dowry. Thereafter, she went to her matrimonial home. The accused-Rakesh assaulted her due to which, she died. She has admitted in her cross-examination that she had stated for the first time in the court that Rakesh was harassing the deceased for bringing less dowry. She has also stated that 10-12 days prior to her death, the deceased told her about the harassment made to her but at the same time she stated that the accused never harassed her and made any demand from the deceased in her presence. She has further stated that she had disclosed to her children only after the death of her daughter that the accused was harassing and humiliating the deceased. PW Urmilla Devi has stated that after holidays of summers in the year 2008, the deceased when came back to her parental house, she disclosed to her that she was in tension as accused and his family members had been harassing her for bringing less dowry and she was being asked about her salary earned before marriage. If her statement is read in light of the statement of PW Pushpa Devi then she has gone a step further by implicating not only the appellant but other members of his family as well. PW Urmila Devi has expressed ignorance about the day and month of the year 2008, when the deceased told her that

she was being harassed. She also stated that she did not disclose this fact to anyone. She further admitted that she never disclosed to the Police in the hospital that the accused was harassing her and for the first time on 30.10.2008, she told the Police about harassment of the deceased by the accused. She also admitted that the accused used to visit his in-law's house and he never teased or harassed the deceased in her presence. PW Anuradha has stated that during the summer vacations of the year 2008, the deceased remained in her matrimonial home. She told her that during summer vacations, the accused harassed her for bringing less dowry. He used to say that substandard furniture was brought by her, and she had not brought the vehicle for him. The big sofa was also not brought. He would also ask about the salary earned by her prior to her marriage. No other witness has stated in respect of harassment of the deceased for not bringing a vehicle & big sofa and for bringing substandard furniture. During cross-examination, she stated that the deceased had told her mother on phone that she was going to join her duty on Monday, but she had not told her that accused was harassing her. She stated that four days prior to the occurrence she had told her on phone about humiliation and harassment by the accused but this fact was not mentioned in the statement recorded under Section 164-A Cr.P.C. She also expressed ignorance about the date and month when the deceased told her that accused was demanding vehicle, sofa set and salary from the deceased. She also admitted that the deceased was never teased, harassed and beaten by the accused in her presence. She has stated that after the first week of September 2008, she resided in her matrimonial home. She has also

admitted that from 24.09.2008 till 30.10.2008, they went to the Police Station but their statements were not recorded. This witness has made improvements in her statement recorded before the court vis-à-vis statement recorded under section 164-A Cr.P.C. No other witness has deposed in respect of specific demand made by the accused but PW Urmila never made any reference to such demands in her statement recorded under section 164-A Cr.P.C.

24. The prosecution cannot derive any benefit from the statement made by the witness for the first time in court during the trial but not made during the investigation. Reliance is placed upon the decision of the Hon'ble Supreme Court of India in '**Darshan Singh v. State of Punjab**', [2024 **Legal Eagle (SC) 17**], it has been held as under:

26. If the PWs had failed to mention in their statements under Section 161CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. **Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance.** [See : (i) *Rohtash v. State of Haryana* [(2012) 6 SCC 589], (ii) *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* [ (2010) 13 SCC 657] , (iii) *Rudrappa Ramappa Jainpur v. State of Karnataka* [(2004) 7 SCC 422and (iv) *Vimal Suresh Kamble v. Chaluverapinake Apal S.P.* [ (2003) 3 SCC 175] ]

(emphasis added)

25. In '**Geo Varghese v. State of Rajasthan**', (2021) 19 SCC 144 has observed as under:-

12. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to commit suicide is considered to be an offence under Section 309IPC. The abetment of suicide by anybody is also an offence under Section 306IPC. It would be relevant to set out Section 306IPC, which reads as under:

**“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 fine.”

**13.** Though, IPC does not define the word “suicide” but the ordinary dictionary meaning of suicide is “self-killing”. The word is derived from a modern Latin word “*suicidium*”, “sui” means “oneself” and “*cidium*” means “killing”. Thus, the word suicide implies an act of “self-killing”. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

**15.** The ordinary dictionary meaning of the word “instigate” is to bring about or initiate, incite someone to do something. This Court in *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618] has defined the word “instigate” as under :

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”.”

**16.** The scope and ambit of Section 107IPC and its correlation with Section 306IPC has been discussed repeatedly by this Court. In *S.S. Chheena v. Vijay Kumar Mahajan* [(2010) 12 SCC 190] , it was observed as under :

“25. 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. The intention of the legislature and the ratio of the cases decided by the Supreme Court is 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 that act must have been intended to push the deceased into such a position that he committed suicide.**”

(emphasis added)

26. In ‘**M. Arjunan v. State**’, (2019) 3 SCC 315, the Apex Court has held as under:

**7.** The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. **The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.**

(emphasis added)

27. In ‘**Ude Singh v. State of Haryana**’, (2019) 17 SCC 301, The Hon’ble Supreme Court of India has held as under:

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. **As explained and reiterated by this Court in the decisions aboveresferred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide.** But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. **The question of mensrea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.**”

(emphasis added)

28. From the above judicial pronouncements, it is evident that there must be direct or indirect cogent evidence that the act on the part of the accused is capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Mere allegation of harassment is not enough but the act/omission of the accused must be of such nature having the potential of encouraging or goading the victim to commit suicide and also proximate to the act of suicide by the victim. If the prosecution case is examined on the parameters of law laid down by the Hon'ble Apex Court, the prosecution has miserably failed to prove the same. Even the allegations of harassment are general in nature and there is no evidence as to when the deceased was harassed by the accused. Rather it has come in the prosecution evidence that the accused used to visit her in law's house and he never harassed the deceased in the presence of any of the three related witnesses as mentioned above.
29. In view of lack of convincing and cogent evidence with regard to harassment/cruelty meted out to the deceased and also because of material improvements made by the prosecution, it can be safely inferred that the prosecution has failed to prove its case beyond reasonable doubt for convicting the appellant under sections 306,498-A R.P.C.
30. After examining the judgment passed by the learned trial court, this court finds that the learned trial court has placed much reliance upon section 113-A and 113-B of the Evidence Act, for the purpose of convicting the appellant. It needs to be noted that the learned trial court has relied upon the provisions contained in Indian Evidence Act, whereas in the Evidence Act as was applicable in the erstwhile state of J&K, there is section 114-C

only which is *pari materia* to section 113-A of the Evidence Act, as is now applicable in the whole of India. The presumption cannot be drawn merely because the death of wife has been caused within the seven years of a marriage but the foundational facts of subjecting a wife to cruelty must be established. In this context, it would be proper to take note of the observations of the Hon'ble Supreme Court of India in '**Naresh Kumar v. State of Haryana**', (2024) 3 SCC 573, which are as under:

**31.** In this appeal, we are concerned with Section 113-A of the Evidence Act. The mere fact that the deceased committed 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 had subjected her to cruelty, the presumption under Section 113-A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**32.** What is important to note is that the term "the court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband" would indicate that the presumption is discretionary, unlike the presumption under Section 113-B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113-A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

**33.** The court should be extremely careful in assessing evidence under Section 113-A for finding out if cruelty was meted out. If it transpires 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 would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

**34.** Section 113-A has been interpreted by this Court in *Lakhjit Singh v. State of Punjab* [1994 Supp (1) SCC 173], *Pawan Kumar v. State of Haryana* [(1998) 3 SCC 309] and *Shanti v. State of Haryana* [1991 SCC (Cri) 191].

**35.** This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words "may presume". It must take into

account all the circumstances of the case which is an additional safeguard.”

31. In view of what has been said and discussed above, the judgment dated 21.04.2015 of conviction of the appellant under sections 306,498-A RPC and the order of sentence dated 23.04.2015 passed by the court of learned Principal Sessions Judge, Kathua in challan titled “State versus Rakesh Kumar” arising out of FIR No. 137/2008 of Police Station, Hiranagar are not sustainable in the eyes of law and are accordingly set aside. The appellant is acquitted and the challan is dismissed. The bail and personal bonds are discharged.
32. Record of the trial court be sent back forthwith alongwith a copy of this judgment.

**Jammu**  
05.06.2024  
*Neha-II*

