

## **Circumstantial Evidence & its Appreciation**

**S.S. Upadhyay**

*Former District & Sessions Judge/*

*Former Addl. Director (Training)*

*Institute of Judicial Training & Research, UP, Lucknow.*

*Member, Governing Body,*

*Chandigarh Judicial Academy, Chandigarh.*

*Former Legal Advisor to Governor*

*Raj Bhawan, Uttar Pradesh, Lucknow*

*Mobile : 9453048988*

*E-mail : ssupadhyay28@gmail.com*

*Website: lawhelpline.in*

**Law regarding appreciation of evidence** : Proper appraisal of evidence (oral & documentary) is the most important part of judicial function of a trial judge or magistrate during the course of trial of a criminal case. The correctness of findings of facts and the quality of judgment depends upon whether or not the trial judge or magistrate is familiar with the law applicable to different sorts of evidence. Apart from the bare provisions contained in the Evidence Act and various other laws regarding appreciation of evidence, direct or circumstantial, oral or documentary, various judicial pronouncements particularly of the Hon'ble Supreme Court have over the years been guiding the trial and appellate courts to properly analyze and evaluate the evidence led by the parties i.e. prosecution and defence during trial of criminal cases. It can be unhesitatingly said that without the knowledge of important and leading judicial pronouncements of the Supreme Court and the High Courts regarding appraisal of evidence, no sound and qualitative judgment can be written by the trial judges and magistrates. For proper and better understanding of the law relating to appraisal of evidence of different nature, some important sub-topics, noted below, are being discussed with the help of leading judicial pronouncements of the Hon'ble Supreme Court and the Allahabad High Court :

**1(A). Principles behind circumstantial evidence** : The Supreme Court has laid down following principles on circumstantial evidence :

- (1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of conclusive nature and tendency,

- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. See :
  - (i) **Bhim Singh Vs. State of Uttarakhand, (2015) 4 SCC 281** (para 23)
  - (ii) **Dhanraj Vs. State of Haryana, (2014) 6 SCC 745** (paras 18 & 19)
  - (iii) **Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509** (para 15).
  - (iv) **Sharad Bridhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** (paras 120 & 121)

**1(B). Circumstantial evidence & requirements for conviction :**

Circumstantial evidence, in order to be relied on, must satisfy the following tests----

- (1) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.
- (2) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused.
- (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by the accused and none else.
- (4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved. See :
  - 1. **Vijay Kumar Vs. State of Rajasthan, (2014) 3 SCC 412**
  - 2. **Vithal Eknath Adlinge Vs. State of Maharashtra, AIR 2009 SC 2067**
  - 3. **State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066**
  - 4. **Prithu Vs. State of H.P., AIR 2009 SC 2070**
  - 5. **State of W.B. Vs. Deepak Halder, 2009(4) Supreme 393 (Three-Judge Bench)**
  - 6. **Baldev Singh Vs. State of Haryana, AIR 2009 SC 963**
  - 7. **Smt. Mula Devi Vs. State of Uttarakhand, AIR 2009 SC 655**
  - 8. **Arun Bhanudas Pawar Vs. State of Maharashtra, 2008 (61) ACC 32 (SC)**
  - 9. **Harishchandra Ladaku Thange Vs. State of Maharashtra, 2008 (61) ACC 897 (SC)**
  - 10. **Reddy Sampath Kumar Vs. State of A.P., (2005) 7 SCC 603**
  - 11. **Vilas Pandurang Patil Vs. State of Maharashtra, (2004) 6 SCC 158**
  - 12. **State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180**
  - 13. **State of Rajasthan Vs. Kheraj Ram, (2003) 8 SCC 224**
  - 14. **Saju Vs. State of Kerala, 2001 (1) JIC 306 (SC).**

**1(C). There should not be any snap in the chain of circumstances :**

When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If

there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The court considers ordinary human probabilities. See : **Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281.**

**1(D). Stricture against ASJ for illegally awarding death sentence to three persons on the basis of incomplete chain of circumstantial evidence :**

Where an Additional Sessions Judge of the Aligarh judgship had convicted and awarded death penalty to three accused persons on the basis of incomplete chain of circumstantial evidence, a Division Bench of the Allahabad High Court not only set aside the judgment of conviction and sentence of death penalty by acquitting all the three accused persons, but also recorded severe strictures against the ASJ concerned by saying that “the presiding officer of the court below who is a senior officer in the rank of U.P. Higher Judicial Services, it cannot be expected from such officer in convicting the accused persons without any evidence and awarding death penalty to all the three accused persons. This shows that there is lack of knowledge of presiding officer regarding provisions of law, who has not paid attention to several decisions rendered by the Apex Court regarding death penalty.” Copy of the judgment of the Division Bench was directed to be sent to the Additional Sessions Judge concerned for guidance and one copy of the judgment was also directed to be pasted in the character roll of the ASJ concerned. See : **Kiran Pal Vs. State of U.P., 2009 (65) ACC 50 (All)(DB).**

**2(A). “last seen together” & its evidentiary value :** Circumstances of “last seen together” do not by themselves and necessarily lead to the inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. The time gap between last seen alive and the recovery of dead body must be so small that the possibility of any person other than the accused being the author of the crime becomes impossible. See :

1. **State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066**
2. **Ramreddy Rajeshkhanna Reddy Vs. State of A.P., 2006 (10) SCC 172**
3. **State of U.P. Vs. Satish, 2005 (3) SCC 114**
4. **Sardar Khan Vs. State of Karnataka, (2004) 2 SCC 442**
5. **Mohibur Rahman Vs. State of Assam, 2002(2) JIC 972 (SC)**

**2(B). "last seen together" shifts the burden of proof of innocence on accused :**

The doctrine of "last seen together" shifts the burden of proof on the accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him. See :

- (i) **Rohtas Kumar Vs. State of Haryana, 2013 (82) ACC 401 (SC) (para 25)**
- (ii) **Prithipal Singh Vs. State of Punjab, (2012) 1 SCC 10**

**2(C). "Proof of "last seen together" by prosecution when leads to conviction of**

**accused ?** : Initial burden of proof is on prosecution to adduce sufficient evidence pointing towards guilt of accused. However, in case it is established that accused was last seen together with the deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106, Evidence Act. But last seen together itself is not conclusive proof but along with other circumstances surrounding the incident like relations between accused and deceased, enmity between them, previous history of hostility, recovery of weapon from accused, etc. non-explanation of death of deceased, etc.etc. may lead to a presumption of guilt of accused. See : **Ashok Vs. State of Maharashtra, (2015) 4 SCC 393.**

**2(D). "last seen together", circumstantial evidence & unusual and suspicious conduct of accused may lead to conviction :**

Deceased girl aged 08 years alongwith her grandmother went to rice mill of the accused. After some time deceased again went alone to enquire whether grain had been ground. Accused took her to backyard of mill and committed rape upon her. Girl died due to neurogenic shock. Next day, dead body was recovered from well situated behind the mill. Employees of the mill having seen the accused taking the girl to the backyard were immediately sent away by the accused for lunch. Two of such employees had seen the accused opening the mill on that day unusually at 10.00 p.m. and one of such employees had also seen the accused throwing something in the well. Shawl of the deceased girl was recovered from mill at the instance of the accused. The accused was convicted by the lower court and his conviction was also upheld by the High Court. Upholding the conviction of the accused for the offences u/s 376, 302 & 201 of the IPC, the Hon'ble Supreme Court held that unusual behaviour of the accused in taking the deceased child to the backyard of the mill, sending of his employees for lunch at the same time and also opening the mill in odd hours of night the very same evening points towards guilt of the accused. Circumstantial evidence as above was found sufficient to establish the guilt of the accused even though the

accused was not named in the FIR but non-mention of his name in the FIR was found inconsequential. See : **Ramesh Vs. State, (2014) 9 SCC 392.**

**2(E). Time gap between last seen & death** : The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. Where prosecution depends upon theory of "last seen together" it is always necessary that prosecution should establish time of death. See :

1. **Niranjan Panja Vs. State of W.B.,(2010) 6 SCC 525**
2. **Vithal Eknath Adlinge Vs. State of Maharashtra, AIR 2009 SC 2067**
3. **Ramreddy Vs. State of A.P., (2006) 10 SCC 172**
4. **State of U.P. Vs. Satish, (2005) 3 SCC 114**

**3(A). Benefit of doubt to extend to the accused for greater offence also if lesser offence not proved beyond reasonable doubt out of circumstantial evidence** : Where the accused was convicted for the offences u/s 304-B, 302, 498-A r/w Section 34 of the IPC, acquitting the accused, the Hon'ble Supreme Court has held that if the lesser offences are not proved beyond reasonable doubt out of the circumstantial evidence led by prosecution, punishment for greater offence on same evidence is not sustainable. See : **Umakant Vs. State of Chhatisgarh, (2014) 7 SCC 405.**

**3(B). I.O. not obliged to anticipate all possible defences and investigate in that angle** : The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions. See : **Rahul Mishra Vs. State of Uttarakhand, AIR 2015 SC 3043 (Three-Judge Bench).**

**4(A). Sec. 106, Evidence Act & murder in house** : The law does not enjoin a duty on prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on prosecution is to lead such evidence which is capable of leading having

regard to the facts and circumstances of the case. Here it is necessary to keep in mind Sec. 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be comparative of a lighter character. In view of Section 106, Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution to offer any explanation. See :

1. **Sandeep Vs. Stat of UP, (2012) 6 SCC 107**
2. **Prithipal Singh Vs. State of Punjab, 2012 (76) ACC 680(SC)**
3. **Jagdish Vs. State of U.P., 2009 (67) ACC 295 (SC)**
4. **Daulatram Vs. State of Chhattisgarh, 2008 (63) ACC 121**
5. **Trimukh Maroti Kirkan Vs. State of Maharashtra, 2007 (57) ACC 938 (SC)**
6. **Chankya Dhibar Vs. State of W.B., (2004) 12 SCC 398**
7. **State of Punjab Vs. Karnail Singh, 2003 (47) ACC 654 (SC)**

**4(B). Circumstantial evidence in the case of dowry death or murder and the presumption of guilt of the accused u/s 106, Evidence Act**

: Where cruelty and harassment by husband or his relative eventually led to murder of bride by poisoning, circumstantial evidence established murder by poisoning even though viscera report from FSL was not brought on record but corroborative evidence of father and brother of deceased was found credible, it has been held by the Hon'ble Supreme Court that the attending circumstances led to irresistible conclusion of guilt of the accused persons as to how the body of the deceased was found in the river was within their special and personal knowledge but burden u/s 106 of the Evidence Act was not discharged by the accused persons and false explanation was given by them u/s 313 CrPC. Drawing adverse inference, the Hon'ble Supreme Court confirmed the conviction of the accused persons for the offences u/s 302/149, 498-A, 201 IPC. See : **Joshinder Yadav Vs. State of Bihar, (2014) 4 SCC 42.**

**5(A). Burden of proof of fact especially within accused's knowledge lies on him u/s 106 of the Evidence Act** : Where the accused was

arrested by police party from the scene of occurrence but the accused had built up a case that he was not present at the scene of occurrence and his version was that the car recovered from the scene, though belonged to his mother, was stolen and, therefore, someone else might have brought it to the place from where it was recovered but no serious effort was made by the accused to satisfactorily prove the theft of car, it has been held by the Supreme Court that the aforesaid facts were especially within the knowledge of the accused and, therefore, the burden of proof that he was not present at the scene of occurrence was on him which he failed to adequately discharge. His conviction for the offence u/s 302/34 and 316/34 of the IPC was confirmed by the Supreme Court. See : **Sandeep Vs. State of UP, (2012) 6 SCC 107.**

**5(B). Recovery of robbed articles from the possession of the accused & circumstantial evidence found incredible for conviction of the accused** : Where recovery of certain stolen/robbed articles from the possession of the accused was found reliable, it has been held by the Hon'ble Supreme Court that the accused could not have been convicted for the offences of Section 302/34, 392, 397 of the IPC merely on the basis of circumstantial evidence as it does not establish that the accused had committed murder and the only admissible fact u/s 27 of the Evidence Act which can be inferred is that the accused was in possession of the stolen goods. Where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft/robbery and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. See : **Dhanraj Vs. Stae of Haryana, (2014) 6 SCC 745.**

**6(A). Abnormal conduct of accused & circumstantial evidence** : A criminal trial is not an inquiry into the conduct of an accused for any purpose other than to determine his guilt. It is not disputed piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or unusual behavior of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material. For example, the presence of the accused for a whole day in a specific place and misleading the PWs to search in other

place and not allowing them to search in a specific place certainly creates a cast iron cloud over the innocence of the accused person. See : **Joydeep Neogi Vs. State of W.B, 2010(68) ACC 227(SC)**

**6(B).Conduct of accused absconding** : where the accused had absconded after committing the murder, it has been held that the conduct of the accused in such cases is very relevant u/s 8 of the Evidence Act. See : **Sidhartha Vashisht alias Manu Sharma Vs. State of NCT of Delhi, 2010 (69) ACC 833 (SC)**

**7. Conviction on circumstantial evidence when blood group of accused not matched with the blood group of the deceased** : In a case of murder based on circumstantial evidence, dead body and blood stained clothes of deceased were found only on disclosure made by accused, there was clear medical evidence that assault by stone was the cause of death and the injuries found could not be caused by fall, the blood found on the clothes of the accused matched with the blood group of the deceased then it has been held by the Supreme Court that non-examination of blood of the accused was not fatal to the prosecution case when the accused had no injury. See : **Barku Bhavrao Bhaskar Vs State of Maharashtra, AIR 2013 SC 3564.**

**8(A).Discovery of dead body only a rule of caution & not a rule of law** : Law is well settled that it is not at all necessary for conviction of an accused for murder that the corpus delicti (dead body) be found. Undoubtedly, in the absence of the corpus delicti there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and the accused are the persons who committed the murder. Discovery of dead body is a rule of caution and not rule of law. Conviction can be recorded even in the absence of recovery of dead body. However, it is not essential to establish corpus delicti but fact of death of victim must be established by any other fact. See :

- 1 **Madhu Vs. State of Karnataka, 2014 (84) ACC 329 (SC)**
2. **Ramjee Rai Vs. State of Bihar, 2007 (57) ACC 385 (SC)**
3. **Prithi Vs. State of Haryana,(2010) 8 SCC 536.**
4. **Sevaka Perumal Vs. State of TN,(1991) 3 SCC 471**

**8(B).Corpus delicti not absolute necessity** : In a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of



without any trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused, in many a case, the accused would manage to see that the dead body is destroyed to such an extent which would afford the accused complete immunity from being held guilty or from being punished. What is, therefore, required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced. See :

- (i) **Madhu Vs. State of Karnataka, 2014 (84) ACC 329 (SC)**
- (ii) **Prithipal Singh Vs. State of Punjab, 2012 (76) ACC 680(SC)**
- (iii) **Mani Kumar Thapa Vs. State of Sikkim, AIR 2002 SC 2920**

**9(A). Death by poisoning & circumstantial evidence :** Where accused doctor made his father-in-law and mother-in-law and their 3 minor children believe that they were suffering from AIDS when it was not so and killed them in order to grab their property by giving poisonous injection under pretext of giving treatment, he was convicted for murder on the basis of circumstantial evidence. See : **Reddy Sampath Kumar Vs. State of AP, AIR 2005 SC 3478.**

**9(B). Dowry death by poisoning—accused not informing parents and cremating the dead body :** conviction u/s 304-B, 201 IPC r/w S. 113-B, Evidence Act, 1872----- Poison was administered to deceased in Prasad and she died within 7 years of marriage. Evidence showing that there was persistent demand for dowry and because of non-fulfillment of said demand there was humiliation, harassment and continuous beating of deceased by accused husband and in-laws. Presumption u/s 113-B, Evidence Act attracted. Unnatural conduct of accused in not sending news of death of deceased to parents of deceased who were living only a few miles away from their village. Accused persons neither took the deceased to any doctor nor any kind of medical treatment was given to her, dead body was secretly cremated without even intimating parents of deceased who were living only a few miles away from their village. Convictions of accused persons u/s 304-B, 201 IPC was upheld by the Supreme Court. See : **Ram Badan Sharma Vs. State of Bihar, AIR 2006 SC 2855**

**10(A). Motive must be proved in a case of circumstantial evidence :** In the criminal trials based on circumstantial evidence only, the Supreme Court has ruled that prosecution should prove motive of the accused if its case is based on circumstantial evidence. See :

1. **Nagaraj Vs. State, (2015) 4 SCC 739 (para 13)**
2. **Wakkar Vs. State of U.P, 2011 (2) ALJ 452 (SC)**
3. **Babu Vs. State of Kerala, (2010) 9 SCC 189**
4. **Ravinder Kumar Vs. State of Punjab, 2001(2) JIC 981 (SC)**
5. **State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370**
6. **Nathuni Yadav Vs. State of Bihar, (1998) 9 SCC 238**
7. **Sakha Ram Vs. State of M.P., 1992 CrLJ 861 (SC)**

**10(B). Motive & its proof not necessary even in a case of circumstantial evidence** : It is true that in a case of circumstantial evidence motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. Absence of motive in a case based on circumstantial evidence is not of much consequence when chain of proved circumstances is complete. See :

1. **G. Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914**
2. **Jagdish Vs. State of M.P., 2009 (67) ACC 295 (SC).**

**10(C). Proof of motive in a case based on circumstantial evidence when not required ?** : It is settled principle of law that to establish an offence (murder) by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused. See : **Sanjeev Vs. State of Haryana, (2015) 4 SCC 387 (para 16).**

**10(D). Proof of motive immaterial when the facts are clear and the links in the chain of circumstances are not broken** : When the facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime. Proof of motive or ill-will is unnecessary to sustain conviction where there is clear evidence. It was a case u/s 304-B IPC r/w Section 113-A and 113-B of the Evidence Act. See :

- (i) **Bhimsingh Vs. State, (2015) 4 SCC 281 (para 21)**
- (ii) **Mulakh Raj Vs. Satish Kumar, AIR 1992 SC 1175**

**11(A). Offence of abetment of suicide u/s 306 IPC when treated to have not been proved ?** : The deceased wife committed suicide within a year of her marriage. Allegations about demand and harassment for dowry made by parents and close relations of deceased were demolished by the facts brought on record through cross-examination of prosecution

witnesses. The prosecution however relied on a letter written by the deceased to her father about 3-4 months before her death. The letter nowhere indicates any demand of dowry having been made by the accused or the deceased having been pressurized by the accused for bringing more dowry. The first thing the letter states is a request to her father to return some of her ornaments given to her father for repairs. There is nothing wrong, unusual or abnormal in deceased reminding her father to bring back the ornaments if they have been repaired' or 'to get them repaired' if not already done. The second thing which the letter suggests is of her having been beaten by her husband and her having been pushed out of the house by the accused and when she wanted to go away from the house then she having been persuaded by her husband to return to house. The accused had also tried to conciliate. Why this happened is slightly indicated in the letter. The cause for the beating as indicated by the letter and evidence of deceased's sister was that the deceased wife forgot that she had invited her sister and her husband for taking food and went away with her husband. This forgetfulness of deceased enraged the accused husband. The manner in which she dealt with the visitors, guests and relations was not to the liking of the accused-appellant is also borne out from a few writings which are in the form of essays written by the deceased which are full of appreciation of the respondent acknowledging the love and affection which the accused-appellant had for her but which also go to state that there was 'some deficiency' in her. Held the reading of the entire evidence shows that the case is of marital mal-adjustment between the deceased and the accused. It is not a case of dowry death". However, teasing by the accused-appellant of the deceased, ill-treating her for her mistakes which could have been pardonable and turning her out of the house, also once beating her inside the house at the odd hours of night did amount to cruelty within the meaning of Section 498-A IPC. Though for a different cause conviction of the accused under Section 498-A of the IPC was therefore proper (*para 7, 8*). The author of the letter namely the deceased wife is not alive. There is no one else in whose presence the letter was written. It is therefore not permissible to read anything in the letter which it is not there. The letter has to be read as it is and inferences have to be drawn therefrom based on the expressions employed therein and in the light of other evidence adduced in the case. (*para 7*) Before the presumption under Section 113-A of the Evidence Act may be raised the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged,

had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression 'may presume' suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn. Before the presumption may be drawn the Court shall have to have regard to all other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression the other circumstances of the case' used in Section 113-A suggests the need to reach a cause and affect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one (*para 12*). What happened on the date of occurrence is very material for the purpose of recording a finding on the question of abetment. The deceased's version of that day's happening constituting the proximate cause provoking her suicide is to be spelled out from what is contained in a diary in the handwriting of the deceased. The deceased wrote in her diary "ashamed of my own faults am committing suicide," In the letter written to her husband in the diary she wrote "you know, you have made me free of the words I had given that I would not commit suicide. Now I would die peacefully". The husband in his statement under Section 313 CrPC stated that on the day of the incident he was preparing to go to his duty but deceased was pressing him to leave her at her sister's house. The accused had asked her to go there alone. When he was getting ready to leave for his duty he heard a cry of his wife from kitchen. He saw her burning. He ran to save her and in doing so he burnt his hands, legs and chest. The deceased in her dying declaration stated that she poured kerosene on herself and set fire. As to the cause she stated that there was a quarrel and her husband told her that you are free. You go wherever you want to go. Held, "presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. This cannot constitute abetment of suicide. (*para 19*) Instigation is to goad, urge forward, provoke,

incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. (*para 20*) The writing in the diary of the deceased-wife clearly states that the cause for committing suicide was her own feeling ashamed of her own faults. She categorically declares - none to be held responsible or harassed for her committing suicide. The writing in the diary clearly suggests that some time earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so. On the date of the incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. The dying declaration corroborates the inference flowing from the two writings contained in the diary. The conduct of the accused trying to put off the fire and taking his wife to hospital also improbably disproves the theory of his having abetted suicide. (*para 22*) Offences u/s 498-A and 306 IPC are separate offences. Merely because an accused has been held liable to be punished under Section 498-A it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. (*para 22*) See : **Ramesh Kumer Vs. State of Chhattisgarh, AIR 2001 SC 3837 (Three-Judge Bench)**

**11(B). Offence of abetment of suicide u/s 306 IPC when treated to have been proved ? :** The abuse and insult hurled on the daughter-in-law usually are not expected to be made public so that the neighbours may have occasion to criticize the improper conduct of the accused and hold them with disrespect and contempt. Doubts about the genuineness of the case of physical torture and abuses made by the husband and the mother-in-law cannot be raised for the absence of any independent evidence given by the neighbours and co-tenants about such physical assault or the abuses hurled on the wife by the accused. We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house. (*para 13*) The Court should be extremely careful in assessing the facts and

circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that victim committing suicide was hyper sensitive to ordinary petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. In the present case there is no material worthy of credence to hold that the victim was hyper sensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that victim was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married bride would reasonably expect love and affection from the in-laws, she was abused by the mother-in-law, by saying that the deceased was a woman of evil luck only because an elderly member in the family had died after her marriage. According to the evidence given by the mother of the deceased, the mother-in-law even suggested that being a woman of evil luck (**alakshmi**) the deceased, should not live and end her life. When deceased conceived for the first time she had the misfortune of abortion. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the mother-in-law, the mother-in-law abused the deceased in the hospital by telling that she was a woman of evil luck. Mother was told that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Held that acts were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide. In the aforesaid circumstance, the offence u/s 498-A IPC is clearly established against both the accused. See : **State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73=AIR 1994 SC 1418** (para 16, 17).

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