Misuse of Feminine Laws & Role of Police & Courts to Check it

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1. **Supreme Court upheld constitutional validity of dowry laws**: Supreme Court has long back in 2005 held that the dowry laws like Sections 498-A , 304-B IPC, Section 113-B of the Evidence Act and Section 3/4 of the Dowry Prohibition Act, 1961 are constitutionally valid laws. See: Sushil Kumar Sharma Vs. Union of India, AIR 2005 SC 3100.

2. **Mere possibility of misuse of a law does not make it unconstitutional and invalid:** Supreme Court has held that mere possibility of misuse of a law does not make it unconstitutional and invalid. To rectify the statutory abuse of a law or framing new law lies within the domain of the legislature rather than with the judiciary. See: Sushil Kumar Sharma Vs. Union of India, AIR 2005 SC 3100.

3. **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 Chhattisgarh, (2014) 7 SCC 405.

4. **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. **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 him 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 improbabilises 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).

6. **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).*

7. **Meaning of "cruelty" u/s 113-A Evidence Act same as in Section 498-A IPC**: Section 498-A IPC reads thus: Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
Explanation- For the purpose of this section, "cruelty" means-
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." "113-A. Presumption as to abetment of suicide by a married woman. See: Atmaram Vs. State of Maharashtra, 2013 (81) ACC 345 (SC).

8. **Meaning of the words "any relative of her husband" occurring in Section 304-B IPC & meaning of the words "relative of the husband" occurring in Section 498-A IPC are identical and mean such person related by blood, marriage or adoption:** Meaning of the words "any relative of her husband" occurring in Section 304-B IPC & meaning of the words "relative of the husband" occurring in Section 498-A IPC are identical and mean such person related by blood, marriage or adoption. A person who is not relative of husband cannot be prosecuted for offence u/s 304-B IPC but that does not mean that such person cannot be prosecuted for any other offence viz Section 306 IPC in case allegations constituted offence other than Section 304-B IPC. An accused who is brother of husband's aunt by marriage (Chachi i.e. wife of brother of husband's father) cannot be said to be a relative of the deceased's husband. A panel statute should be strictly construed. The expression "any relative of her husband" occurring in Section 304-B IPC should be limited to persons related by blood, marriage or adoption. See: State of Punjab Vs. Gurmit Singh, (2014) 9 SCC 632.

9. **Distant relations not to be ordinarily summoned for offences u/s 498-A & 406 IPC :** Distant relations cannot be ordinarily summoned for offences u/s 498-A & 406 IPC. See **:** Kailash Chandra Agarwal Vs. State of UP 2015 (88) ACC 602 (SC).

10. **Dowry death, murder or suicide :** criminal trial u/s 302, 304-B, 306, 498-A IPC-- Death of wife and her two daughters aged 7 and 1½ years had taken place due to burning. Acquittal of husband u/s 302 IPC was recorded by High Court. The Supreme Court found that since the door of the flat was bolted from inside, husband could not have set the deceased on fire inside the room and then escaped from there. Letter written by wife also indicating a case of suicide, and not of murder. Marriage having taken place more than 7 years earlier to the incident and therefore S. 113-B, Evidence Act was found not attracted. Acquittal of the husband for the offences u/s 304-B and 302 IPC was recorded but since the husband was found constantly teasing and harassing his wife as he was wholly dissatisfied with the dowry given at the time of marriage, demanding more money and some other articles from her parents, his conviction u/s 498-A IPC was upheld by the Supreme Court. Since the letter written by the deceased wife prior to her death was also found admissible in evidence u/s 32, Evidence Act and the same also disclosed the cause of her death or circumstances which resulted in her death, the husband was convicted u/s 306 IPC as well even when no charge u/s 306 IPC was framed. See : Dalbir Singh VS. State of U.P., (2004) 5 SCC 334 (Three-Judge bench)
Other important cases on the subject are :
(i) Harjit Singh Vs. State of Punjab, 2006(54) ACC 282 (SC)
(ii) T. Aruntperunjothi Vs. State through SHO Pondicherry, 2005 Suppl) ACC 472 (SC)
(iii) Kamlesh Panjiyar Vs. State of Bihar, (2005)2 SCC 388
(iv) Ramesh & others Vs. State of Tamil Nadu, 2005 (2) SCJ 622
(v) Satbir Singh Vs. State of Haryana, 2005(53) ACC 512 (SC).

11. **Dowry death or murder ? :** Where cruelty and harassment by husband on 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 person for the offences u/s 302/149, 498-A, 201 IPC. See : Joshinder Yadav Vs. State of Bihar, (2014) 4 SCC 42.

12. **Offence of abetment of suicide u/s 306 IPC when treated to have 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 remanding 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, guest 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 he 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 S. 498-A of IPC. Though for a different cause conviction of accused under S. 498-A was therefore proper.*(para 7, 8)* …..The author of 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 S. 113-A may be raised the foundation thereof must exist. A bare reading of S. 113-A shows that to attract applicability of S. 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 S. 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 S. 313 Criminal P.C. 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 him 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 takes 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 improbablises the theory of his having abetted suicide. (para 22) …. Penal Code (45 of 1860), S. 498-A, S. 306-Offences under-Are separate offences-Merely because an accused has been held liable to be punished under S. 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)

13. **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 occasions 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 reasonable 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)*

14. Offence of abetment of suicide u/s 306 IPC when treated to have been proved ? : A presumption u/s 113-A, Evidence Act as to offence of abetment of suicide u/s 306 IPC can be drawn when it is established that the person has committed suicide and the suicide was abetted by the accused. Where woman committed suicide within 7 years of her marriage and her husband or his near relative subjected her to cruelty in term of

Section 498-A of IPC, it has been held that the Court may presume that such suicide was abetted by the husband or such person. See:
(i).Gurcharan Singh Vs State of Punjab, (2020) 10 SCC 200 (Three-Judge Bench)
(ii).Pinakin Mahipatray Rawal Vs State of Gujarat, 2014 (84) ACC 348 (SC).

15. **"Relative of husband" & persons covered thereunder** : Relative of husband as mentioned u/s 498-A IPC includes person related with the husband by blood, marriage or by adoption. But a girl friend or a concubine would not be a relative of the husband u/s 498-A IPC. See : U. Suvetha Vs. State, 2009 (67) ACC 903

16. **Parliament suggested to amend dowry law & to prevent abuse :** The Supreme Court has expressed concern regarding abuse of Section 3/4 DP Act, 1961 & 498-A IPC and has held that it is the duty of bar & bench to exercise restraint in dowry related matters. It has also been held that the allegations regarding harassment for dowry should be scrutinised with great care & circumspection specially against husband's relatives who are living in different cities & never visit or rarely visit the matrimonial home of the complainant. Parliament has also been suggested to have a serious relook at entire dowry related laws. In Preeti case, Supreme Court also requested the Law Commission to examine these penal laws and suggest the Parliament to make it compoundable. See :
(i) Dara Lakshmi Narayana Vs. State of Telangana, (2025)3 SCC 735 (Paras 31-35)
(ii). Preeti Gupta Vs. State of Jharkhand, (2010) 7 SCC 667
(iii) Dara Lakshmi Narayana Vs. State of Telangana, (2025) 3 SCC 735 (Para 30)

17. **Supreme Court suggests Parliament to amend Section 498-A of IPC and Sections 85 & 86 of BNS, 2023:** The Supreme Court has observed that exaggerated versions of the incident are reflected in a large number of complaints and tendency of over-implication is also reflected in a very large number of cases and the criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of sufferings of ignominy. Such complaints have led to enormous social unrest affecting peace, harmony and happiness of the society. The Legislature must take into consideration the pragmatic realities and make suitable changes in the existing law relating to Sections 498-A of the IPC and the analogous new provisions for the same as now made in Sections 85 and 86 of the BNS,2023. The Supreme Court has requested the Parliament to look at the abuse of the provisions of Section

498-A of the IPC (Sections 85& 86 of the BNS, 2023) before the new provisions of Sections 85 and 86 of the BNS come into force w.e.f. 01.07.2024 as was already suggested by the Supreme Court in the case of Preeti Gupta Vs. State of Jharkhand, (2010) 7 SCC 667. See:
(i) Achin Gupta Vs. State of Jharkhand, (2025) 3 SCC 756 (Paras 38-39, 41 & 50)
(ii) Rinku Baheli Vs. Sandesh Sharda, (2025) 3 SCC 686 (Para 67)

18. **Parents-in-laws living separately held not guilty of the offence u/s 498-A IPC:** In the case noted below, parents-in-laws living separately were held not guilty of the offence u/s 498-A IPC. See:
(i) R. Natrajan Vs State of Tamil Nadu, (2021) 7 SCC 204
(ii) Dara Lakshmi Narayana Vs. State of Telangana, (2025) 3 SCC 735 (Paras 31-35)

19. **Evidence in connected cases :** In the cases noted below, it has been repeatedly held that every criminal case has to be decided on the basis of evidence adduced therein. The evidence adduced in one case would not be relevant in other case. See :
(i) Km. Rinki Vs. State of U.P., 2008 (63) ACC 476 (All—D.B.)
(ii) Rajan Rai Vs. State of Bihar, 2006 (54) ACC 15 (SC)
(iii) K.G. Premshanker Vs. Inspector of Police, 2002 (45) ACC 920 (SC)
(iv) S.P.E. Madras Vs. K.V. Sundaravelu, AIR 1978 SC 1017
(v) Karan Singh Vs. State of M.P., AIR 1965 SC 1037

Note: In the case of **Km. Rinki Vs. State of U.P., 2008 (63) ACC 476 (All—D.B.),** in all 10 accused were named in the FIR and a common charge-sheet against them all was submitted by the I.O. for the offences u/s 498-A, 304-B IPC & u/s 3/4 D.P. Act, some of the accused were tried together and acquitted and some were being separately tried when they filed a petition under Art. 226 of the Constitution for quashing the proceedings of on going sessions trials against them on the ground that some of the accused were already acquitted and it would be only futile exercise to continue with the separate trial of the remaining accused persons on the basis of the same witnesses or their evidence already led in the case of co-accused persons who were already acquitted. Rejecting the argument the Hon'ble Allahabad High Court held that in view of the provisions contained u/s 40, 41, 42, 43, 44 of the Evidence Act and the law laid down by the Supreme Court in the cases noted above, the judgment of acquittal delivered by the trial court in one criminal case in relation to some of the accused of the same occurrence/charge-sheet would not be relevant in the case of other remaining co-accused persons even if they do belong to the same occurrence or charge-sheet. It has further been

observed by the Allahabad High Court that each case has to be decided on the basis of evidence led therein even if it may be a connected case or having arisen out of the same occurrence or from split charge-sheet.

20. **Application seeking permission to attend marriage of sister in police custody rejected by High Court**: Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad)(DB).

21. **No short-term bail to attend marriage etc :** Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short-term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad)(DB).

22. **Bail in altered session triable offences :** Where the accused was initially granted anticipatory bail u/s 438 CrPC by the Sessions Judge for the offences u/s 498-A, 406, 306 IPC and after investigation of the matter and receipt of charge sheet against the accused from I.O. for the offence u/s 302 IPC, the Magistrate issued NBW against the accused for appearance and the accused was again directed by the Sessions Judge u/s 438 CrPC to appear before the Magistrate and the Magistrate then granted bail to the accused for altered graver offence u/s 302 IPC, the Supreme Court has held thus : "With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. In cases where the offence is punishable with death or imprisonment for life which is triable exclusively by a court of sessions, the Magistrate may, in his wisdom, refrain to exercise the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence

punishable with death or imprisonment for life." See: Prahlad Singh Bhati Vs. N.C.T., Delhi, 2001 (42) ACC 903 (SC).

23. **Illegal remand, illegal custody or detention of accused & Bail :** In the case noted below, the accused was into illegal judicial custody for the offences u/s 498-A, 304-B IPC as the Magistrate had not granted further remand of the accused u/s 167 CrPC, cognizance of the offence was not taken by the Magistrate on receipt of charge sheet from the I.O., no remand order was passed u/s 209(b) CrPC, no order was passed remanding the accused to judicial custody, case was committed by the Magistrate to Court of Sessions ordering the production of the accused before the Court of Sessions, no order by the Magistrate was passed even on that date u/s 209(b) CrPC, there was no remand order though case was pending before the Sessions Court but custody of the accused was continuing, then it has been held by the Allahabad High Court that the custody/detention of the accused without there being any remand order was naturally illegal but no law recognizes grant of bail to accused on the basis of such illegal custody/detention and the bail was consequently refused. Custody includes both legal and illegal imprisonment and court can rectify its mistake and transform the illegal custody/imprisonment of the accused into legal custody/imprisonment. See :
(i) Sheo Kumar Vs. State of U.P., 2001 (1) JIC 7 (All)
(ii) Surjit Singh Vs. State of U.P., 1984 ALJ 375 (Allahabad) Full Bench)

24. **Directions / guidelines of the Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 on arrest and bail for offences u/s 498-A IPC and Section-4 Dowry Prohibition Act, 1961:** In the said case, the Supreme Court has held that due to the rampant misuse of the provisions of Section 498-A IPC read with Section -4 of the Dowry Prohibition Act, 1961, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to geniuses of allegations. In paragraph 12 of the judgment, the Supreme Court has further held that besides the offences u/s 498-A IPC and Section-4 of the Dowry Prohibition Act, 1961, the directions in the Arnesh Kumar case shall apply to all those cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine. See: **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.**

25. **Who can move application for cancellation of bail?**: It is settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can

be tested on merits also and the complainant can question the merits of the order granting bail. Either State or any aggrieved party (in the instant case father of the deceased for offences u/s 498-A, 304-B IPC) can move application for cancellation of bail granted earlier to the accused. See:

1. Brij Nandan Jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
2. Puran Vs. Ram Bilas, (2001) 6 SCC 338

26. **ASJ terminated for granting bail to co-accused on parity basis:** Shri Naresh Singh was posted as Addl. Sessions Judge, Muzaffarnagar and had granted bail to an accused (husband) on 18.05.2006 for the offences u/s 498-A, 304-B IPC and u/s 3/4 Dowry Prohibition Act, on the ground of parity as the other co-accused persons (father-in-law & mother-in-law of the deceased wife) were already granted bail by the Hon'ble Allahabad High Court. Shri Naresh Singh was already transferred to the Allahabad High Court to join as OSD (Inquiries) but he had delayed in handing over his charge at Muzaffarnagar by 20 days and meanwhile when the District Judge, Muzaffarnagar had gone to High Court, Allahabad, and Shri Naresh Singh was acting as Incharge Sessions Judge, Muzaffarnagar, granted bail to the accused/husband on the ground of parity. A complaint was made against him to the High Court and on final inquiry conducted against him, he was found guilty for the charge of having granted the said bail to the accused/husband on artificially created ground of parity with the co-accused persons and was terminated by the Full Court on 16.05.2009. Shri Naresh Singh challenged his removal before the Lucknow Bench of the Hon'ble Allahabad High Court which partly allowed his petition and set aside the Full Court resolution dated 16.05.2009 regarding his removal from service. See: Naresh Singh Vs. State of UP & Others, 2013 (1) ESC 429 (All)(LB)(DB).

27. Expressing concern over misuse of Section 3/4 of the Dowry Prohibition Act, 1961 and Section 304-B IPC, Supreme Court has advised Parliament to amend Sections 498-A and 304-B of the IPC to prevent its misuse. See: Satbir Singh Vs. State of Haryana, 2021 SCC OnLine SC 404.

28. **No corroboration of testimony of the victim of rape/prosecutrix required :** Where a girl child was the victim of offence of rape punishable u/s 376 IPC, it has been held by the Supreme Court that a victim of rape has to be given same weight as is given to an injured witness and her evidence needs no corroboration. See : Ganga Singh Vs. State of MP, AIR 2013 SC 3008.

29. **Questions on consent of prosecutrix not permissible to be put to her for offences u/s 376 IPC etc (Proviso to Section 146, Evidence Act as**

amended w.e.f. 03.02.2013) : "Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, or such victim with any person for proving such consent or the quality of consent."

30. **Evidence of character or consent of rape victim when not relevant ? (Section 53-A, Evidence Act w.e.f. 03.02.2013)** : In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376-A, section 376-B, section 376-C, section 376-D or section 376-E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

31. **Consent of prosecutrix u/s 114-A for having sexual relationship upon false promise of marriage, fear or misconception not to absolve accused of liability of rape u/s 376 IPC :** Consent of prosecutrix obtained by the accused u/s 114-A of the evidence Act for having sexual relationship with her upon false promise of marriage, fear of injury or misconception is no consent in the eye of law and does not absolve the accused of his liability of rape u/s 376 IPC. See:
(i).Maheshwar Tigga Vs State of Jharkhand, (2020) 10 SCC 108 (Three-Judge Bench)
(ii). Anurag Soni Vs. State of Chhattisgarh, AIR 2019 SC 1857.

32. **How to appreciate the evidentiary value of dying declaration:** Courts have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. The Court has to weigh all the attendant circumstances and come to the independent circumstances and come to the independent finding whether the dying declaration was properly recorded

and whether it was voluntary and truthful. Once the Court is convinced that the dying declaration is so recorded, it may be acted upon and can be made a basis of conviction. The Courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned. See : State of Gujarat Vs. Jayrajbhai Punjabhai Varu, AIR 2016 SC 3218 *(para 10 & 11)*.

33. **Dying declaration & its appreciation --Whether conviction can be recorded on DD alone?**: A dying declaration is an important piece of evidence **u/s 32(1), Evidence Act** and if a dying declaration (DD) is found to be true and voluntary and is not a result of tutoring or prompting or a product of imagination then there is no need for corroboration by any witness and conviction can be recorded on its basis alone. See :

1. Jayabalan Vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
2. Bijoy Das Vs. State of West Bengal, (2008) 4 SCC 511
3. Muthu Kutty Vs. State of U.P., (2005) 9 SCC 113
4. Ravi Vs. State of Tamilnadu, (2004) 10 SCC 776
5. P.V. Radhakrishna Vs. State of Karnataka, (2003) 6 SCC 443

34. **Reasons behind holding DD reliable**: A DD made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding the circumstances leading to his death. But at the same time the DD like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The DD, if found reliable can form the base of conviction. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Matthew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an

obligation equal to that which is imposed by a positive oath administered in a court of justice." See :

(i) Narain Singh Vs. State of Haryana, (2004) 13 SCC 264
(ii) Babulal Vs. State of M.P., (2003) 12 SCC 490
(iii) Sharda Vs. State of Rajasthan, 2010(68) ACC 274 (SC)

35. Whether corroboration of DD is required? : if a DD is found to be reliable then there is no need for corroboration by any witness and conviction can be sustained on its basis alone. See :

(i) Jayabalan Vs. U.T. of Pondicherry, 2009 (7) Supreme 270
(ii) Bijoy Das Vs. State of West Bengal, (2008) 4 SCC 511
(iii) Bapu Vs. State of Maharashtra, (2006) 12 SCC 73
(iv) Ravi Vs. State of Tamilnadu, (2004) 10 SCC 776).

36. DD by gestures and writings admissible : DD by gestures and writings is admissible. Such DD is not only admissible but possesses evidentiary value. See : Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)

37. Recording of DD by magistrate not required : Recording of DD by Magistrate is not mandatory and the same can be recorded by any person. See—

(i) Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)
(ii) Balbir Singh Vs. State of Punjab, AIR 2006 SC 3221)

38. Presence of Magistrate at the time of recording of DD not required: Presence of Magistrate is also not necessary, although to assure authenticity it is usual to call a Magistrate, if available to record DD. Person who records a DD must essentially be satisfied that the deceased was in a fit state of mind. See: Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench).

39. Verbal dying declaration: A DD can be made by the declarant even verbally. Reducing the DD to writing is not mandatory. See : Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench).

40. Dying declaration by signs & gestures etc. : A DD can be made verbally or in writing and by any method of communication like signs, words or otherwise provided the indication is positive and definite. See : Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench).

41. **Certificate of doctor regarding mental fitness of declarant of DD not required :** Certificate by doctor as to mental fitness of the deceased not necessary because certificate by doctor is only a rule of caution. Voluntary and truthful nature of the declaration can be established otherwise also. See: Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench).

42. **Mere absence of certificate of doctor would not render the DD unreliable :** Mere absence of certificate of doctor would not render the DD unreliable particularly when the doctor was not present in the hospital at the relevant time. See : Raju Devade Vs. State of Maharashtra, AIR 2016 SC 3209.

43. **Dying declaration when made u/s 161 CrPC & its appreciation :** Statement u/s 161 CrPC of victim of Section 302 IPC—Victim lodged FIR and got his statement recorded u/s 161 CrPC. before his death. Victim and witness recognized the accused in night. Accused was grandson of deceased. DD was corroborated by ocular witness, investigating officer and constable. Statements of victim u/s 161 CrPC was found worthy to be relied on as DD. See : Gulab Singh Vs. State of U.P., 2003(47) ACC 161 (All)(DB).

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