IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947

CRL.REV.PET NO. 1767 OF 2006

AGAINST THE JUDGMENT DATED 14.02.2006 IN CRL.A NO.103 OF 2001 OF ADDITIONAL SESSIONS COURT (ADHOC)-III, THALASSERY AGAINST THE JUDGMENT DATED 05.03.2001 IN SC NO.46 OF 1998 OF ADDITIONAL ASSISTANT SESSIONS JUDGE, THALASSERY

REVISION PETITIONERS/APPELLANT/ACCUSED:

1 P. SHAJI,
S/O. RAGHAVAN, AGED 35 YEARS,
COOLIE, VELLONNI, KELAKAM,
KANNUR DISTRICT.

2 THANKAMMA,
W/O. RAGHAVAN,
AGED 68 YEARS, VELLONNI, KELAKAM,
KANNUR DISTRICT.

BY ADV P.SHEEBA

RESPONDENT/ RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

SMT. SEETHA S., SR. PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04.04.2025, THE COURT ON 09.04.2025 PASSED THE FOLLOWING:

O R D E R

The petitioners are the accused in S.C.No.46/1998 on the files of the Additional Assistant Sessions Judge, Thalassery, who were convicted and sentenced by the said court for the commission of offence under Section 306 I.P.C and Section 498A I.P.C. The sentences awarded were rigorous imprisonment for five years and fine Rs.50,000/- under Section 306 I.P.C and rigorous imprisonment for two years under Section 498A I.P.C. A default sentence of rigorous imprisonment for two years was also prescribed for non payment of fine. Though the petitioners preferred appeal before the Sessions Court, Thalassery, the learned Additional Sessions Judge (Adhoc) III, Thalassery confirmed the conviction and sentence awarded by the Trial Court. It is against the aforesaid judgment dated 14.02.2006 of the Appellate Court in Crl.A.No.103/2001, that the petitioners are here before this Court with this Revision Petition.

2. The prosecution case relates to the suicide of one Mrs. Shyla @ Reena, the wife of the first petitioner herein, on 05.03.1996 due to the alleged cruelty meted out to her by the petitioners. The second petitioner is the mother of the first petitioner. It is alleged that ever

since the marriage of the deceased Shyla with the first petitioner on 03.05.1993, the petitioners had been subjecting her to cruelty demanding more dowry. It is stated that the parents of the deceased Shyla were not able to honour their commitment to purchase 50 cents of land in the name of the first petitioner as promised at the time of marriage of the deceased with the first petitioner. According to the prosecution, the petitioners had been humiliating deceased Shyla by inflicting physical and mental torture upon her due to the failure of her parents to purchase 50 cents of land as agreed at the time of marriage of the deceased with the first petitioner. Unable to bear the tortures allegedly inflicted by the petitioners, the deceased Shyla, along with her 1½ year old male child, jumped into the well of the house of the petitioners at about 7:00 a.m on 05.03.1996. Though the local people who rushed to the spot retrieved the deceased lady as well as her baby from the well, the said lady is said to have breathed her last while being taken to hospital. However, the 1 ½ year old male child of the deceased survived due to the timely medical treatment given to him. Thus, the petitioners are alleged to have committed the aforesaid offences.

3. In the trial conducted before the learned Additional Assistant Sessions Judge, Thalassery, 15 witnesses were examined from the part of the prosecution as PW1 to P15 and sixteen documents were marked as Exts.P1 to P16. Five material objects were identified as MO1 to MO5. To the questions put to the petitioners by the learned Trial Judge under Section 313 Cr.P.C., the petitioners took up a plea of total denial. From the part of the petitioners, six witnesses were examined as DW1 to DW6 and two documents were marked as Exts.D1 and D2. After an evaluation of the aforesaid evidence, and hearing both sides, the learned Additional Assistant Sessions Judge found that the prosecution has successfully established the charge levelled against both the petitioners. Accordingly, the petitioners were awarded the sentence as stated above. In the appeal, the learned Additional Sessions Judge made a reappraisal of the entire evidence, and found that there is absolutely no reason to interfere with the findings of the Trial Court. Accordingly, the appeal was dismissed, confirming the conviction and sentence awarded by the Trial Court. Aggrieved by the above verdict of the Appellate Court, the petitioners have filed this revision petition before this Court.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State of Kerala.

5. Among the witnesses examined from the part of the prosecution, PW3, PW4 and PW5 are the witnesses relied on by the prosecution to establish the allegation that the deceased was being subjected to cruelty by the petitioners. PW4 and PW5 are respectively the mother and brother of the deceased, and PW3 a neighbour of the deceased at the place where she had been residing at the house of her husband. PW3 was declared hostile by the prosecution during re-examination since she testified before the Trial Court in cross-examination, that the deceased was found to be in a depressive mood right from the very beginning when she came to the residence of the petitioners after the marriage with the first petitioner. PW3 had also stated during cross-examination that the mother of the deceased had told her that the deceased was having a previous history of attempt to commit suicide, before her marriage with the first petitioner. However, PW3 had stated in chief examination that the deceased had told her that the petitioners were subjecting her to cruelty. It is also stated by PW3 during chief examination that she had the occasion to talk to the deceased two days prior to her suicide, and that on that

occasion, the deceased was found to be in a pensive mood due to some issue regarding some glass tumblers taken away by the brother of the first petitioner. PW4 and PW5, the mother and younger brother of the deceased, had stated that the deceased used to tell them whenever she came back to their residence that the petitioners were treating her with cruelty due to the failure of her parents to purchase the landed property, as agreed, at the time of her marriage with the first petitioner. PW4 and PW5 also deposed before the Trial Court about two letters which they received from the deceased in which the cruelty suffered by her at the hands of the petitioners were said to have been narrated. Among the above two letters which are marked as Exts.P4 and P6 respectively, one of those letters, i.e. Ext.P6, was said to have been written by the deceased on the day prior to the date of her suicide. In Ext.P6 letter addressed to PW5, the deceased had stated her resolve to commit suicide along with her toddler by jumping into the well at the house of the petitioner. In Ext.P4 letter, the deceased had stated that, even though she did all the work at the house of the petitioners, the second petitioner always maintained animosity with her. In addition to the above, the doctor who conducted the autopsy (PW10) had noted that when he unfolded the clenched left

hand fingers of the dead body, he could find an inscription there, in blue ink as *"Ammayum makanum koodi enne konnu… ammayanu"* (The mother and son have killed me.. It is the mother..). It is based on the aforesaid evidence that the prosecution has set up the case that the cruelty meted out to the deceased at the hands of the petitioners was the cause of her suicide committed on 05.03.1996.

6. It is true that the evidence tendered by PW3, PW4 and PW5 contained indications that the deceased had told those witnesses about the matrimonial cruelty meted out to her at the instance of the petitioners. But the law is trite that every act of cruelty by the husband and in-laws will not constitute the offence under Section 498A IPC. Since the deceased had committed suicide, it could be said that the cruelty so meted out to her at the instance of the petitioners, was of such a nature as to drive her to suicide. However, if there are reasons to think, from the evidence on record, that there were other causative factors for the suicide of the victim, then it would be highly unsafe and improper to fasten the accused with the criminal liability under Section 498A IPC for the sole reason of suicide of the victim. In the case on hand, there is evidence pointing to the fact that the victim who was depressive in nature, had developed paranoid schizophrenia pursuant to

the delivery of her child. The evidence in the above regard will be dealt with hereafter while discussing the scope and applicability of Section 306 IPC.

7. While coming to the question whether there was abetment of suicide as envisaged under Section 306 I.P.C, it is to be looked into whether the harassment meted out to the deceased was of such imminent nature as to instigate her to commit suicide. True that there is the presumption under Section 113A of the Indian Evidence Act that when a woman had committed suicide within a period of seven years from the date of her marriage, and it is shown that her husband or the relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or such relative of the husband. But the provisions contained in the aforesaid Section will not absolve the responsibility of the prosecution to establish that the facts and circumstances of the case revealed that the cruel conduct on the part of the husband or such relative were of such a nature as to instigate the deceased to commit suicide.

8. While dealing with the presumption under Section 113A Evidence Act, the Hon'ble Supreme Court, in ***Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618**, held as follows:-

> **"***This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption 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 abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. 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 abovesaid 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 the*

> *other circumstances of the case". A consideration of all the 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-effect 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. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says — "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."*

9. Thus, the presumption under Section 113A is not mandatory, but only permissive. A consideration of the whole facts and circumstances of the case may compel the Court to invoke the presumption, or may dictate the conscience of the Court to abstain from drawing the presumption. In short, the presumption under Section 113A Evidence Act is dependent on the natural and logical impact of the peculiar facts and circumstances of each case.

10. For a conviction under Section 306 I.P.C, there must be clear evidence of direct or indirect acts of incitement to commit suicide. The

cause of suicide, especially in the context of abetment, involves complex attributes of human behaviour and reactions, requiring the Court to rely on cogent and convincing proof of the role of the accused in instigating the act. Mere allegations and harassment are not enough unless the actions of the accused were so compelling that the victim perceived no alternative but to take her own life. It is also very important that such actions must be proximate to the time of suicide. The law in this regard has been settled by a plethora of decisions of the Hon'ble Supreme Court. Very recently, the Apex Court in ***Jayedeepsinh Pravinsinh Chavda v. State of Gujarat*** **[(2025) 2 SCC 116]** held as follows in paragraph Nos.29 and 30 of the judgment in the said case.

> *"**29.** The act of abetment must be explicitly demonstrated through actions or behaviours of the accused that directly contributed to the victim's decision to take their own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation. Furthermore, these actions must be proximate to the time of the suicide, showcasing a clear connection between the accused's behaviour and the tragic outcome. It is only through the establishment of this direct link that a conviction under Section 306 IPC can be justified. The prosecution bears the burden of proving this active involvement to hold the accused accountable for the alleged abetment of suicide. The*

> *same position has been laid down by this Court in several judgments, such as:*
> *(i) M. Mohan v. State [M. Mohan v. State, (2011) 3 SCC 626 : (2011) 2 SCC (Cri) 1] ;*
> *(ii) Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] ;*
> *(iii) Kamalakar v. State of Karnataka [Kamalakar v. State of Karnataka, 2007 SCC OnLine Kar 824] .*
> ***30.*** *Therefore, for a conviction under Section 306IPC, there must be clear evidence of direct or indirect acts of incitement to commit suicide. The cause of suicide, especially in the context of abetment, involves complex attributes of human behaviour and reactions, requiring the court to rely on cogent and convincing proof of the accused's role in instigating the act. Mere allegations of harassment are not enough unless the accused's actions were so compelling that the victim perceived no alternative but to take their own life. Such actions must also be proximate to the time of the suicide.*"

11. Thus, it is imperative to look into the aspect whether the alleged acts of harassment attributed to the petitioners were of such a serious and proximate nature as to instigate the suicide which the deceased had committed on 05.03.1996. It is in this context that the evidence adduced by the accused through the oral testimony of DW1, a Psychiatrist who treated the deceased and issued the prescriptions which are marked as Exts.D1 and D2, assumes significance. It could be seen from the evidence of DW1 that the above Psychiatrist of the

Government Medical College Hospital, Kozhikode had the occasion to treat the deceased on 15.01.1995 and 13.03.1995 for the mental disease by name Postpartum Paranoid Schizophrenia. It is stated by DW1 that the deceased had been brought by her husband for treatment before him, with the aforesaid disease of four months duration. It requires no reference to medical authorities to say that the disease, 'Paranoid Schizophrenia' is a very serious mental disease which has to be medically managed by continuous treatment. Delusions, hallucinations, depression, suicide tendency etc. are common features of those suffering from Paranoid Schizophrenia. The above aspect has been spoken by DW1 in his testimony before the Trial Court. But, unfortunately, the Trial Court is seen to have brushed aside the evidence of DW1, stating that the period when the deceased approached the above Psychiatrist for treatment was about one year prior to the suicide, and hence the evidence in the above regard is not having any significance. The stand taken by the Trial Court in the above regard is patently erroneous since it could be seen from an overall appreciation of the evidence of DW1 that the mental ailment suffered by the deceased was of such a nature that continuous medication was absolutely necessary, though the symptoms could be

controlled within a period of few months. It appears that after two consultations done by the deceased by approaching DW1, the treatment prescribed by the above Psychiatrist had not been continued by the deceased thereafter. Therefore, the chances of the above mental ailment contributing the instinct for suicide, cannot be ruled out. Neither the Trial Court, nor the Appellate Court, had taken into account the above aspect of paramount importance while deciding the issue of abetment of suicide in the case on hand. It is really disgusting to note that the Appellate Court had misunderstood the statement of DW1 about the duration of the mental ailment of the deceased, which he stated as four months. The Appellate Court seems to be of the fallacious view that the maximum period during which the aforesaid mental ailment subsists is four months. The observation in the above regard in the concluding portion of paragraph No.38 in the judgment of the Appellate Court, is patently erroneous. Having regard to the above evidence of DW1 on the basis of the prescriptions which he had issued as Exts.D1 and D2, and also the evidence tendered by PW3 during cross-examination that the mother of the deceased had told her that there was a previous history of attempted suicide on the part of the deceased before her marriage, I am of the view that it would be highly

unsafe and improper to fasten the petitioners with the criminal liability under Section 306 I.P.C. When there are reasons to believe that the suicide of the victim was related to the mental ailment suffered by her, it would not be possible to link that suicide with the offence of cruelty as envisaged under Section 498A IPC. Therefore, I find that the findings of the Trial Court as well as the Appellate Court that the petitioners committed the offences under Sections 306 and 498A I.P.C, are liable to be set aside.

In the result, the revision stands allowed. The conviction and sentence awarded by the Trial Court and Appellate Court upon the petitioners for the commission of the offences under Sections 498A and 306 IPC stand set aside. The petitioners are acquitted of the aforesaid offences. Their bail bonds stand cancelled and they are set at liberty.

(Sd/-)
G. GIRISH, JUDGE

jsr