IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION NO. 20 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.V.ANJARIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUHAN KANUJI JIVANJI & 1....Applicant(s)

Versus

STATE OF GUJARAT....Respondent(s)

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Appearance:
R C JANI & ASSOCIATE, ADVOCATE for the Applicant(s) No. 1 - 2
MR LR PUJARI APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE N.V.ANJARIA**

Date :31/01/2013

CAV JUDGEMNT

Applicants are original accused No.1 and accused No.2 respectively. They came to be convicted for the offences under section 498A read with section

114 of the Indian Penal Code, 1860, (hereinafter referred to as `IPC') and sentenced to undergo imprisonment for two years and to pay fine of Rs.500/- each, and in default of payment of fine to undergo further imprisonment for one month by judgment and order dated 23.10.2003 of learned Additional Sessions Judge, Mehsana, in Reference Case No. 92 of 2002. The said conviction and sentence came to be confirmed by the learned Additional Sessions Judge, Mehsana, Third Fast Track Court in Criminal Appeal No. 36 of 2003 decided on 11.11.2005. The present Revision Application under section 397 read with section 40 of the Code of Criminal Procedure, 1973, (hereinafter referred to as `the Code') is directed against the said judgment and order of the learned Additional Sessions Judge.

2. One Jiluji Keshaji Solanki of village Hebuva, Taluka and District Mehsana, who was father of the deceased, filed a complaint (Exh.22) on 25.10.2001 against the applicants, who were the husband and mother-in-law of complainant's daughter Hetal. The prosecution case based on that complaint was that the accused persons used to harass his daughter, which led her to commit suicide by burning herself. According to the complaint, marriage of Hetal with accused No.1 was solemnized about two years back. Deceased used to be taunted for not doing household work by accused persons, and therefore, she committed suicide at the matrimonial place, alleged the complainant. The complaint was registered with Vasai Police Station at C.R. I-110/2001 for the offences punishable under section 498A, 306 and 114 IPC.

3. After investigation of the case, police filed the charge sheet. As the offences were triable exclusively by court of session, the case was committed to District Court, Mehsana, and Sessions Case No. 93 of 2002 was registered. Charge (Exh.4) was framed. According to the charge, accused No.2 – mother-in-law used to taunt the deceased after passage of one year of marriage, and also used taunt the deceased and used to instigate accused No.1 against the deceased. Both used to harass the deceased mentally and physically, and often used to

drive her out of the house. It was alleged that by exerting such cruelty, the accused committed offence under section 498A, and further that they abetted and instigated the deceased to commit suicide, as a result of which, on 25.08.2001, the deceased tried to burn herself. At the end of the trial, trial court convicted the applicants-accused under section 498A read with section 114 IPC. It was held that offence under section 306 was not proved.

4. Learned advocate Mr. Pratik Barot for the applicant submitted that the conviction under section 498A read with section 114 IPC recorded against the applicants-accused was not sustainable in law because there was no evidence of cruelty having been meted out to the deceased by the accused persons. It was submitted that the concept of cruelty for the purpose of making out offence under section 498A IPC has a definite requirement in law. According to him, where the conduct is harrasive, persistent and grave in nature, then only it would amount to cruelty. Referring to the evidence on record, he submitted that what was coming out was only a single incident, and at the most few solitary incidents of the alleged harassment, and the same could not be treated as sufficient to sustain the charge and conviction for the offence under section 498A. He also submitted that evidence on record indicated that the deceased was sensitive lady, that she was not keeping well and was also getting treatment. It was submitted that the attendant circumstances were suggestive that the deceased might have committed suicide as she was wary of life and tired off person.

4.1 He relied on decision of this court in **Indrasing M. Raol v. State of Gujarat [(1999) 2 GLH 596]** to bring his point home that every act of cruelty or harassment is not one contemplated under section 498A IPC. Regarding the standard of proof to be applied, he relied on apex decision in **Rajbabu v. State of Madhya Pradesh** [**(2008) 17 SCC 526]**.

4.2 On the other hand, learned A.P.P. Mr. L.R. Pujari submitted that the marriage span of the deceased was barely two and half years. It was submitted

by him that the evidence of the mother, father and the relatives of the deceased regarding harassment by her in-laws was required to be appreciated in that context and keeping the said factor in view. It was submitted by him that from the cumulative reading of evidence it could be made out that the deceased was subjected to harassment, and that she used to frequently come to her parental house because of cruel and harrasive conduct in the matrimonial home. It was submitted that on a careful reading of the evidence of the parents and the relatives of the deceased, it was possible to infer that she committed suicide because of ill treatment meted out to her. He submitted that even though she was not keeping well, she was forced and required to do the entire household work along at her matrimonial house. He relied on section 113A of the Indian Evidence Act, 1872, to submit that presumption was required to be drawn when married women had committed suicide within a period less than three years of marriage. He submitted that cruelty would mean any willful conduct, which is of such nature as is likely to drive the woman to commit suicide. He submitted that since the physical condition and health of the deceased was not good, the conduct on the part of the accused amounted to willful conduct of the nature contemplated in sub-clause (a) of the Explanation of section 498A IPC.

5. The accused persons were originally charged for the offence under section 498A and section 306 read with section 114 IPC. However, finally they came to be convicted for the offence under section 498A read with section 114 IPC. For the offence under section 306 IPC, the accused were acquitted. Therefore, the point of focus is whether the evidence brought on record by the prosecution meets with the parameters necessary for making out the offence under section 498A, and whether the ingredients for the said offence stood satisfied.

5.1 Section 498A IPC deals with the offence where the husband or relative of husband of a woman subjects her to cruelty. The section reads as under:

"498A. 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.
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> **Explanation**.- For the purposes 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."

5.2 As could be seen from the bare reading of the section above, the necessary ingredient for the offence is that husband or relative of a husband subjects the wife to cruelty. The Explanation says that cruelty means 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. Clause (b) of Explanation is related to cruelty in respect of unlawful demand for any property or valuable security in the nature of dowry.

6. Adverting to the evidence on record, which amongst other evidence, included the testimony of Jiluji Keshaji (PW-1, Exh.21), who was the complainant, and also father of the deceased, as well as the evidence of Antarben, the mother of the deceased (PW-2, Exh.23). Their evidence counted importance for the prosecution. According to PW-1, the married life of his daughter with accused No.1 proceeded smooth for the first year, however, thereafter she was subjected to harassment. He deposed that her daughter used to tell them about harassment in the matrimonial home when she came to the parental house. PW-2 also stated on the same lines. Both PW-1 and PW-2 stated that they used to persuade the daughter and sent her back. They stated that lastly accused No.1 left their daughter at the outskirts of their village, and she came to their house and complained that since her in-laws did not like her work,

she was being harassed, and therefore, left her. It was stated that it was the last occasion when she had come to the parental house. As regards the time when the deceased had lastly come, PW-1 deposed that it was before five days prior to the date of incident that accused No.1 had left her daughter at the outskirts of their village. Whereas according to PW-2, the said incident happened two-three months back from the date of the incident, when the deceased had last come to parental house. This inconsistency about the time period as to when their daughter lastly came to their house and made complaints about harassment by accused atleast discounted the trustworthiness of their versions, even if it may not be regarded as totally discrediting the their evidence.

6.1 According to PW-2, her daughter was of sensitive nature even before the marriage, and she used to do household work all along at the matrimonial house. The other witnesses Dipubhai Keshaji (PW-5, Exh.29), who was the younger brother of PW-1, deposed that the deceased had come to parental house one and half months back prior to the date of the incident. She used to complain about the harassment. This witness corroborated the say of PW-2 that deceased was sensitive. Navuba Baldevji (PW-6, Exh.30), sister of complainant, deposed interalia that the deceased had come to her house four to five times during the marriage period. She admitted that at her matrimonial house, the dispute was with regard to doing of household work only, and that there was no other dispute. Uncle Natuji (PW-7, Exh.31) stated that he had gone to the matrimonial house of her niece to reprimand the accused persons for their conduct. However, when he stated that he did not tell anybody about his going to the matrimonial house, it is difficult to accept whether he was telling truth. The evidence of Rakshaben (PW-8, Exh.32), the elder sister of the deceased did not throw much light on the aspect of harassment except her saying that the deceased used to tell about quarrels with her mother-in-law. The testimony of Dr. Jitendra Kumar (PW-4, Exh.27) was relevant to the extent when he interalia stated that the deceased was suffering from malnutrition.

7. Having noted the salient aspects of the evidence as above, pausing to consider the requirements of proving the evidence under section 498A IPC and in particular the nature of cruelty required to make out the offence, this court in **State of Gujarat v. Bharatbhai Balubhai Lad [(2006) 1 GLR 514]** observed it is settled principle of law so far as Section 498-A IPC is concerned that to constitute an offence of cruelty as explained under Section 498-A of IPC, willful conduct which is of such a nature as is likely to drive the woman to commit the suicide should be cogently established to hold the accused persons guilty of the said offence. Some unhappy note / incident during the short married life between the husband and the wife cannot be the circumstance to constitute an offence of cruelty or harassment within the meaning of Section 498-A IPC, it was held.

7.1 This court in **Indrasing (supra)** has elaborately explained the nature of harassive conduct which would amount to cruelty under section 498A.

> "A woman would prefer to end her life, if continuous, or recurring unabated harassment or cruelty grave in nature, is intolerable or unendurable. Highly sensitive impulsive, reckless, or touchy woman may on one incident end her life, but that exception to the rule is not envisaged by the Section. It should also be stated that after marriage sometimes emotional disorder is created, and that results into frustration and pessimism. A woman sometime becomes psychotic and develops tendency to end her life. A woman being highly sensitive and sentimental, or reckless, or if tired of her life either because her dreamt expectations are not satisfied or found to be the mirage, or for any other reason may become dejected & desperate and may develop suicidal tendency, and end her life. The duty of the Court is also to make necessary endeavour to ascertain why the husband or his relatives had as alleged turned up their nose at the victim and resorted to coarse cruelty, divorcing civility, delicacy & refinement. Having regard to the facts & circumstances on record, if Court finds that the misdeed or wrong on the part of the accused is the compelling reaction of the real or unjust or fancied provocative act of the victim, i.e. abetted counter-action

> or wrong, the same even if in civil or barbaric will not fall within the ambits of cruelty envisaged by Sec. 498-A, for required intention would be lacking although the same may attract any other Penal provision. In short, therefore, intention to drive the woman to commit suicide being the essential ingredient, the endeavour of the court must be to find out having regard to the facts & circumstances on record, what the intention of the accused was ? I will, therefore, proceed to ascertain what could be the intention of the appellant when he, on mid-night as alleged, behaved stormily or roughly, though it is clear that the alleged solitary incident will not attract Sec.498-A."
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> (Para 17)

7.2 It was observed that in order to constitute cruelty, the cause and conduct have to be incessant and persistent. They have to be sufficiently grave as are likely to drive a woman to a point of desperation leaving her with no option except to think about committing suicide. It was observed that even in some cases a single act may incite the wife, still however, it would not attract section 498A as the element of persistency and consistency would be lacking. Thus, the position of law with regard to the nature of cruelty to constitute the offence under section 498A is that the harassment must be unabated, continuous and of recurring nature. As observed in **Indrasing (supra)** it must be of such unbearable degree as would drive the woman to opt for suicide.

7.3 Therefore, the concept of cruelty for the purpose of evidence under section 498A IPC has a definite connotation. Whether cruelty of the kind and nature required for establishing the offence has to be culled out from the facts brought out on the basis of evidence on record. Therefore, referring to the evidence on record of the present case, what was indicated was that there were quarrels in the matrimonial house. The quarrels were in respect of doing household work. What were the acts of cruelty by the in-laws and what were the actual cruelty meted out to the deceased could not be demonstrated from the evidence on record. The main incident coming out was that accused No.1

allegedly left the deceased outside the village whereupon the deceased came to her parents (PW-1 and PW-2) and complained about her husband having left her. This is the solitary incident coming forth even if the prosecution witnesses – the relatives of the deceased are to be believed fully. Even in this regard the evidence was not uniform as to whether the deceased had come for the last time to her parental house happened five days prior to the date of incident or three and half months before the date of incident or one and half month before the date of incident remained uncertain in asmuch as the witnesses deposed differently as noted above. The evidence did not disclose the specific acts of cruelty, except vague statements by the witnesses that the deceased was being harassed mentally and physically. Cruelty for the purpose of section 498A IPC has to be of much higher degree and standard. The evidence brought on record of the prosecution was too slender to sustain the charge under section 498A IPC.

7.4 The total insufficiency of evidence on cruelty was coupled with the aspects emerged from the evidence, namely, that the deceased was suffering from hysteria and was under treatment. It also came out from the evidence of PW-2 and evidence of PW-5 that the deceased was a person of sensitive nature. As rightly pointed out by the learned advocate for the applicant, the same was relevant aspect while considering the charge for the offence under section 498A. In **State Of West Bengal vs Orilal Jaiswal [(1994) 1 SCC 73]**, it was observed by the Supreme Court inter alia that before recording the finding of guilt, court must satisfy itself that the deceased was not hypersensitive. Yet another feature available from the record was that the doctor who examined the body of the deceased stated in his evidence that she was suffering from malnutrition. In the aforesaid circumstances, it cannot be said that her death was because of the cruelty committed by the accused. There is no evidence of any willful conduct of such nature as it may and likely to drive the deceased to commit suicide, as contemplated in Explanation (a) of section 498A IPC.

8. It was the submission of learned A.P.P. that since marriage period was

little more than two years only, the presumption under section 113A of the Indian Evidence Act would attract. The said provision raises a presumption as to the abettment of suicide by married woman and provides that when the question is whether the commission of suicide by own had been abetted by her husband or any relative and where it was shown that the suicide was committed within seven years from the date of the marriage, and that her husband had subjected her to cruelty, the court may presume in regard to all the other circumstances of the case that the suicide had been abetted by her husband or by such relatives. The Explanation to the section provides that `cruelty' shall have the same meaning as in section 498A IPC. It is well settled that section 113A is only a procedural provision and it does not create a new offence. The scope of said provision was explained by the Apex Court in ***Rameshkumar v. State of Chattisgadh [(2001) 9 SCC 618]*** it was observed that a bare reading of the section shows that to attract the applicability thereof, 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, and (iii) the husband or his relatives who were charged have subjected her to cruelty. The presumption which according him raised under the provision is not mandatory, but only permissive. The court shall have regard to `all other circumstances of the case'. Thus, a consideration of all other circumstances of the case may strengthen the presumption or may dictate against the presumption. It is amply clear that the presumption contemplated under section 113A relates to abettment of suicide by a married woman. In other words, it operates where the offence under section 306 IPC is alleged. In the present case, the appellants-applicants were though initially charged under section 306 IPC, since they came to be acquitted from the said charge and the offence under section 306 IPC was not proved, the presumption under section 113A will have no application. The question of its attractability does not arise. It is true that section 113A mentions about cruelty by husband. However, it does not provide for raising of presumption in respect of aspect of cruelty in abstract. Where the offence under section 306 IPC is under consideration and when the cruelty is to be viewed in that context, the presumption would arise. Therefore,

the contention about raising of presumption under section 113A of the Evidence Act is devoid of any substance.

9. In the instant case, prosecution could not prove the charge under section 306 IPC. Therefore, cruelty of the kind and degree as would necessarily establish the evidence under section 306 IPC is also not proved. The cruelty contemplated for the purpose of section 498A IPC is in its degree and nature bears close nexus with the offence under section 306 IPC. The aspect that the accused persons were charged for the same, has important bearing. Once it was held by the courts below on the basis of evidence on record that the offence under section 306 IPC was not made out, the rigour of the charge under section 498A IPC with reference to the requisite degree and proof of cruelty can be said to be considerably lessened.

9.1 In respect of degree of proof in criminal trial, following observations in **State Of West Bengal vs Orilal Jaiswal [(1994) 1 SCC 73]** may be usefully noticed.

> "We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in the civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A I.P.C. and Section 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Eater v. Bater

(1950) 2 All ER 458 at p.459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter."

9.2 Therefore, in criminal trial, it is trite that the degree of proof has to be stricter than what is required in the civil proceedings. Howsoever intriguing the facts and circumstances of the case may be, the charges alleged against the accused persons have to be proved beyond all reasonable doubts, and with requisite degree of proof, which may be necessary in the context of the ingredients of particular offence alleged.

10. In light of the above discussion and the parameters of law highlighted in assessing the evidence on the aspect of cruelty for the purpose of offence under section 498A IPC, the courts below have completely misdirected themselves in law. When there was no sufficient evidence to constitute `cruelty' in the eye of law, the charge for the offence under section 498A IPC could not have been held established. The reading of evidence by both the courts below on this core aspect is thus rendered perverse, resulting into a miscarriage of justice. When the evidence is misread and on the basis of such misreading, error is committed in conclusion, such error is an error of law. The judgments of the courts below though concurrent in nature become liable to be interfered with, and cannot sustain.

11. Accordingly, the conviction and sentence recorded by the learned Assistant Sessions Judge and confirmed in appeal by the learned Additional Sessions Judge, Mehsana (3rd Fast Track Court), as per the impugned judgement and order dated 11.11.2005 in Criminal Appeal No. 46 of 2003 is hereby quashed and set aside. The petitioners having already been granted bail pending the Revision Application, their bail bonds shall stand discharged. The Revision Application is allowed. Rule is made absolute.

(N.V.ANJARIA, J.)

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