

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A. 19 of 2016

1. Sri Nitai Baidya,
son of Sri Nantyu Baidya,
resident of viallge-Sripur,
PS: Belonia, District: South Tripura
2. Sri Nantu Baidya,
son of late Nibaran Baidya,
resident of village : Sripur
PS: Belonia, District: South Tripura
3. Smti. Dulu Rani Baidya,
wife of Sri Nantu Baidya
resident of village: Sripur
PS : Belonia, District: South Tripura

---- Appellant(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant (s)	: Mr. P. K. Biswas, Sr. Adv. Mr. P. Majumder, Adv.
For Respondent(s)	: Mr. Ratan Datta, PP
Date of hearing	: 22.01.2021
Date of pronouncement	: 31.05.2021
Whether fit for reporting	: NO

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

The appellants have, by means of this appeal, challenged the judgment of conviction dated 31.05.2016 and the consequential order of sentence dated 31.05.2016 delivered in Sessions Trial 66(ST)/B of 2013. The appellants by the said judgment dated 31.05.2016 have been convicted under Sections 306 and 498A of the

IPC for commission of offence of abetting suicide and exercising cruelty on unlawful demand. As consequence of the finding of conviction, the appellants have been sentenced to suffer three years rigorous imprisonment for commission of offence punishable under Section 306 of the IPC and to pay fine of Rs. 5000 with default stipulation. They have been further sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 2000 with default stipulation punishable under Section 498A of the IPC.

[2] The prosecution against the appellant had been initiated on the basis of a complaint filed by one Rita Mitra (PW1) on 30.11.2011 to the Officer-in-Charge, Hrishyamukh outpost revealing that Debabrata Majumder (PW10) informed her on 29.11.2011 at 1600 hrs that Soma Pal (Baidya) had expired. She had rushed to the place of occurrence and found Soma Pal (Baidya) hanging from the ceiling. The members of the victim's matrimonial home were in their respective rooms. She has complained that Soma Pal (Baidya) was given marriage one year ten months ago from the day of death of the victim. She was subjected to severe harassment by her father-in-law, mother-in-law, husband, elder brother-in-law, and uncle-in-law. The relatives of Soma Pal (Baidya) had taken step for their harmonious matrimonial life. But the accused persons whose names have been revealed in the complaint viz, Nantu Baidya, Dulu Rani Baiday, Nita Baidya, Gourhari Baidya and Gopal Baidya were demanding more dowry. On 8th day of last *Sravana*, the

complainant's sister went to see her daughter in her in-laws' house. At that time, she was pressurized to take back her daughter. They had proposed to sell out the paternal homestead of the victim and parting of half of the consideration money with them. As her sister did not, her daughter was put to mental and physical torture. Failing to bear the pressure of such situation, the complainant's sister committed suicide. Thereafter, for restoring the matrimonial life, the complainant and other relatives had tried to persuade the accused persons, but their attempts came to vain and her niece committed suicide.

[3] On the basis of the said complaint filed by PW 1 on 29.11.2011 which was received by Belonia PS by 30.11.2011, Belonia PS case No. 2012/2011 was registered under Sections 498A /306 of the IPC and taken up for investigation. On completion of investigation, the final report, chargsheeting the accused persons, was filed and as the offences were exclusively triable by the Court of the Sessions, the police papers were committed to the jurisdictional court i.e. the court of Additional Sessions Judge, South Tripura, Belonia as it then was. The Additional Sessions Judge, South Tripura, Belonia hereafter referred to as the trial judge, framed the charge against all accused persons separately under sections 498A and 306 of the IPC. The accused persons denied the charges and pleaded not guilty to face the trial. In order to substantiate the charge the prosecution adduced 24 witnesses and introduced 17 documentary

evidence (Exbt-1 to Exbt 17) including the inquest report (Exbt 15) post-mortem examination report (Exbt 17) and the complaint (primarily Exbt 2). On recording the evidence of the prosecution, the accused persons were separately examined under section 313(1)(b) of the IPC when the accused persons reiterated their plea of innocence. Thereafter, having appreciated the evidence, the trial judge has returned the finding of conviction on observing as follows:

17. On overall appreciation of the entire prosecution evidence, I find that some of the witnesses are in the nature of omnibus and some are direct. Almost all the supporting witnesses stated that the mother of the deceased Soma committed suicide due to humiliation caused by the accused persons. The incident of commission of suicide of the mother of deceased suggests that the accused persons i.e. husband of soma namely, Nitai Baidya and her parents-in-law namely, Sri Nantu Baidya and Smt. Dulu Rani Baidya humiliated the mother of the deceased Soma. This incident also has to be taken into consideration for the purpose of appreciation of the prosecution evidence. From the prosecution evidence, I also find that the marriage of Soma was performed on 21.01.2010 and she committed suicide on 29.11.2011, that means, within seven years of her marriage. On the prosecution evidence, the presumption which arises under Section 113A of the Evidence Act is that the husband, father-in-law and mother-in-law of deceased Soma abetted to commit the suicide.

18. On appreciation of the prosecution evidence, I find that Soma committed suicide as a result of cruel treatment meted upon her by her husband Nitai Baidya and her parents –in-law namely, Sri Nantu Baidya and Smt. Dulu Rani Baidya, I do not find the corroborative evidence in respect of involvement of other two accused persons namely, Sri Gopal Baidya and Sri Gourhari Baidya. Accordingly, I find that prosecution has been able to prove the charges under Section 498A as well as 306 of IPC beyond all reasonable doubt against the accused persons namely, Sri Nitai Baidya Sri Nantu Baidya Smt. Dulu Rani Baidya,. But prosecution has failed to prove the charge labeled against other two accused persons namely Sri Gopal Baiyda and Sri Gourhari Baidya under Sections 498A as well as 306 of IPC beyond reasonable doubt. Accordingly, I hold that accused persons namely, Sri Nitai Baidya, Sri Nantu Baidya and Smt. Dulu Rani Baidya have committed offence punishable under

Section 498A as well as 306 of IPC. Hence, I convict them under section 498A and 306 of IPC. But other two accused persons namely, Sri Gopal Baidya and Sri Gourhari Baidya are acquitted of the charges labeled against them under section 498A and 306 of IPC.

[4] It is apparent that two of the accused persons namely Gopal Baidya and Gourhari Baidya have been acquitted by the said judgment dated 31.05.2016. The convicts namely Nitai Baidya, Nantu Baidya and Dulurani Baidya have challenged the finding of conviction and the consequential order of sentence by means of this appeal. It may be noted here that it has been directed by the trial judge, the sentences as above, shall run concurrently meaning the maximum substantive imprisonment that the appellants are to serve is three years' rigorous imprisonment excluding the default imprisonment.

[5] Mr. P. K. Biswas, learned senior counsel having appeared for the appellants has made a general statement that appreciation of the evidence by the trial judge is grossly erroneous and to a greater extent, perverse. Mr. Biswas, learned senior counsel has further submitted that as regards the dowry and torture, there is no specified allegation, but few statements have been made without specific reference to the date and time of dowry demand, harassment or cruelty.

[6] Even PW 1 in her examination-in-chief has stated that Soma's husband i.e. Nitai Baidya was serving in a private company in Nagaland. In the cross-examination, PW 1 (the informant) had

admitted that before the marriage, Nitai was working in Nagaland and she could not say whether on the day of occurrence, Nitai Baidya (the appellant No. 1) was in his residence or not. Even they did not search for him. According to her, the appellant No. 1 started working in Nagaland from the month of July 2011. She was unable to say whether the appellant had returned to his native place.

[7] PW 2 (Debasish Pal) has also stated in the cross examination that on the day of occurrence, the appellant no 1 was in his house but he had not seen him. Thus, the evidence regarding the presence of appellant No. 1 in the place of occurrence at the time when the alleged offence took place is not adequate to meet the standard.

[8] PW 3, Pradip Sutradhar, even though he was declared hostile, but has categorically stated in his cross-examination that the appellant no. 1 was in Nagaland and on the day of the suicidal death of his wife, he was not in his native place.

[9] PW 4, Birendra Majumder was not declared hostile by the prosecution and according to him, the appellant No. 1 was in Nagaland on the day of occurrence. Thus, he has corroborated the statements of PWs 1 , 2 and 3.

[10] PW 11, Lakshmi Pal has stated in her cross examination that she could not say whether Nitai Baidya, [the appellant No.1] was in his house on the day of death of his wife. About a fortnight before the death of Soma Pal (Baidya), PW 11 had visited their

house. When he had asked Soma Pal Baidya about PW 1, she had stated that her husband was in Nagaland. That statement has corroborated the statements of PWs 1, 2, 3 and 4.

[11] Mr. Biwas, learned senior counsel has succinctly submitted that allegations made against two other appellant are omnibus, vague in nature and no reliance could have been placed by the trial judge. The allegations of dowry demand and torture are quite contradictory. In the FIR, there is no mention about the amount of dowry but such statement containing specific amount of dowry has been made by the witnesses particularly by PW 2. But PW1 has admitted that she did not make such allegation at the time of filing of the complaint.

[12] PW 20 (Sankar Nath) the Investigating Officer had admitted that PW 1 did not state of any specific amount of dowry. Mr. Biswas, learned senior counsel has further contended that PW 4, Dhirendra Majumder is an adjacent neighbour and he has testified in the trial that the wife of appellant No.1 had been living in a peaceful conjugal life. PW 4 was not declared hostile by the prosecution. Therefore, his statement, to that extent, remained unchallenged by the prosecution.

[13] PW 5 was cross examined as he had stated that instead of meeting dowry and giving motorbike to the appellant No. 1, a sum of Rs. 2 lacs was given to him, but such statement did not find a mention in the complaint. The complainant (PW 1) is the sister of

Soma's mother and she took the initiative to prosecute the appellants. Had it really so happened, that would have been known to the complainant (PW1) and she would have definitely reflected the same in the complaint. Mr. Biswas, learned senior counsel has placed huge reliance on the testimony of PW 6 (Sadhan Biswas) who has claimed to have visited Soma's matrimonial home with her two aunts namely Laxmi Shil (PW11) and Shipra Pal (PW19). But her parents-in-law did not allow Soma to come with them, saying that Soma will visit them on 30.11.2011. On the day of their visit, PWs 11 and 19 stayed in Soma's matrimonial house and they returned on the following day, but Soma did not accompany them. PWs 11 and 19 are strangely silent about any torture on Soma. PW 19, however, according to Mr. Biswas, learned senior counsel had introduced a new story that a sum of Rs. 70,000/- was paid to the appellants. That statement stands opposite to the statement made by the witnesses. Hence, the trial court could have discarded that statement without attaching any evidentiary value. The statement of PW 7 (Manaranjan Pal) regarding demand of dowry had been made for the first time in the trial and that fact has been admitted by PW 20.

[14] PW 8, Himani Sen Was declared hostile.

[15] PW9, Chandan Biswas has corroborated the statement of PW 1, but in the cross examination he had admitted that he did not state to PW 20 in respect of the cash amount of Rs.70,000/- given to the appellant No. 1, at time of his marriage. Even he did not state

that Soma was tortured by her husband and parents-in-law on demand of dowry. According to Mr. Biswas, the said statement of PW 9 should have been rejected as unreliable.

[16] PW 10, Debabrata Majumder who had informed PW 1 about the death of Soma has stated that after 7/8 months of marriage, Soma used to be tortured on demand of dowry. According to Mr. Biswas, learned senior counsel the said statement should have been rejected as the same was revealed at the time of trial. Both PWs 11 and 12 made the statement regarding the payment of Rs.70,000/- at the time of marriage but those two witnesses (PWs 11 and 12) were silent about the payment of Rs. 2 lacs. They had stated, for the first time in the court, about the payment of Rs.70,000/-. For that reason, the trial court has discarded their evidence. According to Mr. Biswas, the evidence of PWs,13 14, 16 & 17 are not relevant for the decision.

[17] PW 18, according to Mr. Biswas, learned senior counsel was completely silent about the payment of Rs.2 lacs, but he has introduced the story of payment of Rs.70,000/- which was paid at the time of marriage. He has stated that Soma Pal used to be tortured by her husband and other inmates (the accused persons). This particular statement of PW 18 stands contrary to the statement of the other witnesses from the neighbourhood, who had stated that Soma had been living a peaceful conjugal life. PW 19, Shipra Pal is one of the aunts who visited just one day before the death of the

deceased. But she maintained complete silence about the demand of dowry, to the extent of Rs. 2 lacs, and torture. However, she had introduced the story of the payment of Rs.70,000/- "at the time of marriage". From the testimony of PW 20 , the investigating officer, it has clearly transpired that the demand of dowry of Rs. 2 lacs had been made for the first time in the court.

[18] Mr. Biswas, learned senior counsel has therefore submitted with sufficient force that the appellants are legally entitled to be acquitted from the charges as framed as against them. Mr. Biswas learned senior counsel has pointed out to this court the method that has been followed for recording the contradiction with regard to the witnesses' previous statement recorded under Section 161 of the CrPC. He has raised a question that whether the appellants are entitled to benefit of contradiction elicited during cross examination. The trial court should not have been a mere spectator so that the appropriate procedure is followed while recording the contradiction. In this regard, Mr. Biswas learned senior counsel has relied on a decision of this court in **Satish Paul and Ors. vs. The State of Tripura** (the judgment dated 01.03.2016 delivered in CrI.A(J) No. 37 of 2013). In that decision this court having referred to **Tahsildar Singh and Ors. vs. The State of Uttar Pradesh** reported in **AIR 1959 1012** has observed that by the process of cross examination, the witness's oral statement be brought on record for purpose of

recording the contradiction. What has been observed therein, is very material for our purpose:

The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police officer, and not between what he said he had stated before the police officer, and what he actually made before him. In such a case the question could not be put at all; only questions to contradict and be put and question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned Counsel based upon s. 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of s. 162 of the Code of Criminal Procedure."

[19] In **Satish Pal** (supra) this court has occasion to observe as follows:

"27. It must also be noted that the witness should be questioned about each separate fact point by point and passage by passage. When the previous statement is a long one and only one or two small passage in it is used for contradiction, a mere reading out of the whole statement may confuse a witness and not be a fair method. In other words, a witness should be informed of those parts of his statement which are to be used to contradict him. It is not enough to say whether a particular exhibit is his previous statement.— See Sarkar's Law of Evidence, 18th Edition, pp. 2822 and 2830. In the instant case, superficial or crude attempts were made to contradict some of the prosecution witnesses, but not in the manner indicated above. The attempts are proved to be an exercise in futility; it did not help the defense a bit. This should not be repeated in future.

28. Statements made by prosecution witnesses before investigating police officer, being the earliest statement of the occurrence, are valuable material for testing their veracity when they are examined in court. In criminal cases, evidence of witnesses can only be accepted if their statements in the trial court, on the substratum of the prosecution case, is consistent with their statement under Section 161, CrPC. Contradicting a witness under Section 145, Evidence Act is thus one method of finding out if there is an improvement or embellishment in the case of the prosecution and, therefore, a valuable right available to an accused, if he happens to be a victim of trump-up and false charge. Judicial Officers are, therefore, warned that unless the

above procedure is scrupulously followed in future, appropriate action will be taken against them. That apart, if the defense counsel or the prosecuting counsel for purpose of contradicting a witness or a hostile witness, as the case may be, faces a problem from the trial court for contradicting a witness under Section 145, Evidence Act, such lapse/inadequacy may be brought to the notice of this Court immediately for appropriate action."

[20] In **V. K. Mishra and Anr vs. State of Uttarakhand and another** reported in **(2015) 9 SCC 588**, the apex court has dwelled upon the law of bringing out contradiction and how to get it recorded in the course of the trial. The relevant passages from **V.K. Mishra** (supra) with illustrations of the cases have been extracted hereunder:

"18. Section 145 of the Evidence Act reads as under:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that

statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

20. In the case at hand, PW-1 was not confronted with his statement recorded by the police under Section 161 Cr.P.C. to prove the contradiction nor his statement marked for the purpose of contradiction was read out to the investigating officer. When neither PW-1 nor the investigating officer were confronted with the statement and questioned about it, PW-1s statement recorded under Section 161 Cr.P.C. cannot be looked into for any purpose much less to discredit the testimony of PW-1 and the prosecution version."

[21] In this regard, a decision of the Assam High Court in **State Vs Md.Mishir Ali and Others** reported in **AIR 1963 Assam 1961** needs to be referred. The method has been well-illustrated in the said judgment.

[22] Mr. Biswas, learned senior counsel has finally stated that for purpose of convicting an accused for committing offence of abetment to suicide, by evidence it must be established that the accused has played an active role by way of instigation or by doing certain act to agitate the victim to commit suicide. He has submitted that evidence as laid by the prosecution has failed to establish that

there was instigation or other similar act to goad Soma to commit suicide. Hence, the conviction under Section 306 cannot be sustained. Similarly, there is no evidence of harassment on unlawful demand. According to Mr. Biswas, what the prosecution has established is a gift that has been given from the bride's family.

[23] Further, Mr. Biswas, has placed his reliance on **Ramesh Kumar vs. State of Chattisgarh** reported **(2001) 9 SCC 618** where the apex court has clarified the meaning and purpose of the word abetment. It is instigation and 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, actual word which has been used to instigate or what has constituted instigation shall be specifically shown to deduce consequence and reasonable certainty of inferring incitement. It should also be noted that a word uttered in heat of anger or emotion without intending the consequences to follow cannot said to be instigation.

[24] Reliance has been placed on another decision in **Sanju @ Sanjay Singh Sengar** reported in **(2002) 5 SCC 371** where the apex court had occasion to observe as follows:

".....Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die' that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of means rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea....."

[25] Further, reliance has been placed on **Rajesh vs. the State of Haryana** [judgment dated 18.01.2019 delivered in CrI. A. No. 93 of 2019] reported in **(2019) 6 SCC 368** where the apex court clearly observed that the conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being positive action proximate to the time of occurrence on the part of the accused which led or compelled the person who faced the death to commit suicide in order to bring a case within the purview of section 306 of the IPC. The person who is said to have abetted suicide must have played an active role by an act of instigation or by doing certain act instrumental to the commission of suicide. Such act of the person who has been accused of abetment must be proved and established by the prosecution before the accused is convicted under section 306 of the IPC. Mr. Biswas, learned senior counsel has reminded this court that most of the prosecution witnesses are 'related witnesses' who had been under anguish and naturally nurturing intent to ensure punishment of the accused persons. Therefore, a cautious scrutiny is required to be adopted to appreciate the testimony of the related witnesses but has not been followed by the trial judge.

[26] Mr. R. Datta, learned PP appearing for the State has stated in response to the submission of Mr. Biswas, learned senior counsel that there is un rebutted evidence of demand of dowry and harassment. PWs 1, 2, 5, 6, 7, 9, 10, 11, 12 have categorically

stated of the demand by the accused persons. According to Mr. Datta, learned PP, PWs 18 and 19 have roundly proved by vividly stating of the cruelty which had been faced by the victim, Soma Pal (Baidya). Mr. Datta, learned PP has refuted the submission of Mr. Biswas, learned senior counsel that there is no evidence of demand of dowry or treating the victim with cruelty. In this respect, Mr. Datta learned PP has referred to the part of the cross-examination of PW 1 to contend that no contradiction was brought out:

"I lodged the ejahar on the day after evening. The ejahar was written as per version. I have not stated at the time of writing the ejahar that my sister Gita has given 2 lacs in several times as per demand of the accused persons made to her daughter Soma.

After filing the ejahar I was not interrogated by darogababu in connection of this case. I have not stated at the time of writing the ejahar that after giving Rs.2 lacs the accsued persons also assaulted Soma on demand of money from her mother and also not provided her food properly. I have also not stated in my ejahar that one day in the month of May, 2011 I went to the house of accused persons and told them to send Soma to her husband at Nagaland. I have also not stated in my ejahar that the pregnancy of Soma carrying 3 months was terminated at the instance of her mother-in-law. I have also not stated in my ejahar that after 1/1 & 1/2 months back of my visit in their house in the month of May, 2011 Soma was brought to Nagaland by husband of her sister-in-law. I have not stated in my ehajar that accused Nitai Baidya assaulted Soma there during her stay for 15 days then brought her firstly in my house then to Sripur. I have also not stated in my ejahar that on 25.07.2011 when my sister Gita went to the house of accused persons along with her daughter and son-in-law Nitai she (Gita) was assaulted by the accused persons, as a result, she lost her sense.

I lodged no complaint after suicidal death of my sister that due to shame and harassment not the accused persons she has committed suicide. It is not a fact that my sister Gita has not committed suicide [due to shame and harassment] made by the accused persons.

[27] PW 2, according to Mr. Datta learned PP has corroborated the statement of PW 1 on material points. Moreover, he has categorically stated that on the day of occurrence, the appellant No.1 was in the house of the appellant No.1 but he had not seen the appellant No.1 in his house. Two women in their house stated that Nitai Baidya and other family members had fled away. Whether from the evidence, the act of cruelty or harassment has been established? Mr. Datta, learned PP has placed his reliance on **Sahebrao and Another vs State of Maharashtra** reported in (2006) 9 SCC 794 where the apex court has approvingly referred to **Pawan Kumar and Others vs State of Haryana** reported in (1998) 3 SCC 309. The relevant passages from **Sahebro** (supra) is reproduced below:

"14. In Pawan Kumar and Others v. State of Haryana, (1998) 3 SCC 309, this Court observed:

" cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty.... Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such.... A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for bride. "

15. In Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619, this Court specifically mentioned:

"The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behavior may amount to cruelty and harassment in a given case."

[28] To counteract the plea that the related witnesses cannot receive substantive reliance as the human nature might have propensity to be splashed by passion, Mr. Datta, learned PP has referred a decision in the **State rep. by Inspector of Police vs Saravanan & Anr.** reported in **AIR 2009 SC 152**. In **Saravanan (supra)**, the apex court has made following observation having approvingly reiterated the law as enunciated in **Dalip Singh and others vs the State of Punjab** reported in **AIR 1953 SC 364**, as follows:

8. Before the High Court the stand taken by the respondents was that the evidence of P.W. 1, 2, 3, 4 and 5 should not have been relied upon as they were closely related to the deceased and were interested witnesses. The law is long settled that relationship is not a factor to affect the credibility of a witness, for the mere reason that an eyewitness can be said to be an interested witness, his/her testimony need not be rejected. Most of the times, eyewitnesses happen to be family members or close associates because unless a crime is committed in a public place, strangers are not likely to be present at the time of occurrence. It is more often than not that a relation would not conceal actual culprit and make allegation against an innocent person. Whenever any plea is taken by the accused persons about the interestedness of witnesses, materials have to be placed in that regard. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

9. The theory that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, was repelled by this Court in the year 1953 itself in the case of **Dalip Singh v. State of Punjab** [AIR 1953 SC 364], wherein it was held as under:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to

screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

A similar view was taken in a later decision of this Court in *Masalti v. State of U.P.*, [(1964) 8 SCR 133] wherein this Court observed as follows:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautions in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. The principles laid down in the above said cases have been reiterated by this Court time and again. In *State of Rajasthan v. Teja Ram*, [(1999) 3 SCC 507] this Court further stated that over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. The observations as enumerated in Para 20 are as follows:

"The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house, the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such a person as a prosecution witness. Otherwise, merely on surmises the court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those who have witnessed the events and not those who

have not seen it though the neighbourhood may be replete with other residents also."

Moreover, in Amzad Ali v. State of Assam, [(2003) 6 SCC 270], wherein one of was a member (Dr. Arijit Pasayat) this Court stated in clear terms that there is no rule of any presumption that the evidence of a related witness will always be an interested one or that such witness will have only a hostile attitude towards the accused facing trial."

[Emphasis added]

[29] Mr. Datta learned PP having referred **Mohd. Hoshan vs. State of A.P** reported in **(2002) 7 SCC 414** has contended that the impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education, etc. Further, mental cruelty varies from person to person depending on the intensity and the degree of courage or endurance to withstand such mental cruelty.

[30] For purpose of appreciating the rival contention as advanced by the counsel for the parties, it would be appropriate to make a brief survey of the evidence as recorded in the trial.

[31] PW1, Rita Mitra, who had lodged the complaint has identified the complaint in the trial as Exbt-2. She has stated in the trial that Soma Pal (Baidya) was the daughter of her younger sister. Her marriage with the appellant No.1 was solemnized on 21.01.2010 as per Hindu rites and customs. It further appears from the testimony of PW 1 that Soma died on 21.11.2011 and she saw her dead body hanging from the ceiling. She has categorically stated that

mother of Soma, her sister namely Gita was humiliated for failing to meet the demand of a sum of Rs.2 lacs of the accused persons. Soma had reported to her mother "that she was not properly provided food" and always treated her with ill behaviour and torture. Gita requested the other accused persons to send her to Nagaland where her husband was working. But they did not agree. They had categorically stated that Soma would reside in the house of Sripur. At that time, Soma was carrying pregnancy of three months, but her pregnancy was terminated at the instigation of her mother-in-law. Her husband used to torture her giving bad name. Even Soma's mother was assaulted by the accused namely Nantu Baidya and his wife Dulurani Baidya and her son Nitai Baidya [the husband of the deceased]. Her sister Gita told her that she was assaulted by Nantu Baidya, Dulurani Baidya and her son in law, Nitai Baidya. Soma had committed suicide by hanging out of shame and harassment. On 29.11.2011, according to PW1, the accused person killed Soma and hanged her. She got the information from Debabrata Majumder, PW 10 and went to the house of the accused persons. She had been witness to the inquest procedure. She identified her signature on the inquest report and on the ejahar [the complaint]. As the relevant part of the cross-examination has been reproduced extensively, no further narration is required.

[32] PW 2, Debasish Pal has testified in the trial and stated that Soma was his cousin sister. Her marriage with the appellant No.

1 was solemnized on 21.01.2010. Immediately after the marriage, the accused persons had asked her for bringing a sum of 2 lacs from her mother. Her mother paid the sum by several instalments. PW 2 has further submitted that Soma was tortured by her husband and other in-laws on demand of dowry. PW 2 has categorically stated that there was demand of Rs. 2 lacs from the mother of the deceased. As the said demand was not met up, she was subjected to torture and harassment. PW 2 has in the cross examination, in addition to what he had stated in the examination-in-chief, stated that before the death, Soma was physically assaulted. Having been humiliated, Soma committed suicide.

[33] PW 3, Pradip Sutradhar turned hostile to the prosecution case.

[34] PW 4, Birendra Majumder has stated that on the day of occurrence he had left for working in his betel leaf field. On that day, at about 2.30 pm, when he entered in the house, he heard crying from the house of the appellants and other accused persons. When they rushed into the place, they found wife of the appellant No.1, Soma Pal (Baidya) hanging from the ceiling inside the hut. But this witness has categorically made the following statement: "I have seen wife of Nitai Baidya in peaceful life when residing in the house of the accused persons."

[35] PW 5, Gopal Mitra is the husband of the informant. He has stated in the trial that his sister-in-law had given a sum of Rs.2

lacs in several instalments to the appellant No. 1. PW 5 has also corroborated that Gita was abused and assaulted by the accused persons and she lost her senses. After being humiliated, Gita Pal had committed suicide. On 29.11.2011, PW 5 has categorically stated that Laxmi Pal (PW 11) and Shipra Pal (PW 12) went to the house of the accused persons to bring Soma to their house but they refused to send Soma with them. The parents-in-laws told them that they would send Soma on 31.05.2011. On 29.11.2011 at about 5 pm, PW 5 received an information from Debabrata Majumder that Soma had killed herself by hanging in the dwelling hut. Thereafter, PW 5 and other close relatives namely Rita Mitra, Debarata Majumder, Manoranjan Pal went to the house of the accused persons. They saw Soma hanging from the ceiling inside the hut. PW 5 has claimed that he had seen the marks of injury on her neck. He has stated that he has written the ejahar. He has further stated that after 7 to 8 months of marriage, her niece was subjected to torture for more money. He has admitted that no complaint was ever filed against the accused persons for torturing his niece, Soma. The suggestion that after visiting Soma's matrimonial house, all the relatives gathered together and they filed the complaint falsely has been denied by PW 5.

[36] PW 6, Sadhan Biswas has corroborated the material part of the statement of PWs 4 and 5. But, he has stated that he has not seen any mark of injury.

[37] PW 7, Monoranjn Paul has stated that Soma Pal was his niece being the daughter of his younger brother, Bhabaranjan Pal, since deceased . From Soma and her mother he came to know that her parents-in-law were demanding money for construction of dwelling hut. He has also heard that the mother of Soma had also given a sum of Rs. 2 lacs on several instalments. When Soma's two aunts went to bring her to her parent's house, they were refused and after their return from their home, Soma committed suicide.

In the cross-examination, he has categorically stated that he has no knowledge how Soma's life was in her husband's house. He has stated that her in-laws demanded money for construction of their dwelling hut. Soma's mother gave Rs. 2 lacs on several instalments.

[38] PW 8, Smt. Himani Sen did not state anything of material importance, but as she was not supporting the prosecution case' she was declared hostile.

[39] PW 9, Chandan Biswas has categorically stated that Soma spent 7 to 8 months peacefully. Thereafter, Soma was subjected to cruelty by her husband and in-laws for money to be brought from her mother. He has also heard that Soma was subjected to cruelty by her husband and parents-in-law. In the cross examination, his statement could not be dented by the defence rather he had reiterated his statement.

[40] PW 10, Debabrata Majumder is one of the important witnesses. He is the brother of Gita Mitra, mother of Soma. He has stated that Soma's husband, parents-in-law and brother-in-law started physical torture for bringing money from her mother. A sum of Rs.2 lacs was given by Gita Mitra in several instalments. PW 10 has categorically stated as follows :

"I came to know from my sister Gita about giving of cash amount and assault on her daughter by the accused person on demand of money and also of harassment on her by her son in law and parents."

But he has admitted that he has made no complaint to the police. After the death of his sister, Gita, Nantu Baidya and his wife started mental torture on Soma on demand of money. He has supported the statement of PW 4 and PW 5.

[41] PW 11, Smt. Laxmi Pal is the aunt who visited matrimonial house of Soma on 27.11.2011 along with PW 19 for bringing Soma to her paternal home. PW 11 has stated that she came to know about abuse and harassment on Soma from her sister, Rita on Sunday two days before her death. She visited Soma's matrimonial house with Shipra pal (PW 19) and Sadhan Biswas (PW 6) to bring Soma to her parent's house as she had lost her parent but she was not allowed to come. Sadhan left Soma's matrimonial house on the very day but PWs 11 and 19 stayed back. As the parents-in-law of Soma had refused to allow her come along them, they left on the following day. She has also stated that she could not recollect whether the appellant No.1 was at home at the relevant

point of time or not. But she did not state whether she was unwelcome in the house of the accused persons.

[42] PW 12, Sri Nipan Majumder has testified in the trial. Soma is his sister-in-law. He came to know from Soma's mother, that her (Soma's) mother-in-law used to torture for various reasons. He came to know about the humiliation Soma's mother had faced in the house of the accused persons. At that the time, the appellant No.1 pushed his mother-in-law, Soma's mother, by neck and drove her out from their house. On the next day, Soma's mother had committed suicide. In the cross-examination, he has stated that at the time of marriage a cash of Rs.70,000/- was given to the appellant No.1 for purchasing a bike.

[43] PW 13, Sri Dilip Datta has not revealed any material of importance.

[44] PW 14, Sri Gouri Sankar Chakraborty is a professional photographer who took the photographs of Soma's dead body. He has marked his signature on the seizure list of [the photographs] Exbt MO I.

[45] PW 15, Sri Ratan Chakraborty conducted the marriage of the victim.

[46] PW 16, Sri Pradip Ch. Dhar is the seizure witness of the photographs

[47] PW 17, Sri Bimal Malakar is another seizure witness of the photographs. Both PWs 16 and 17 had admitted the seizure of the photographs.

[48] PW 18, Sri Subhas Ch Datta is the cousin of Soma's mother. After marriage of Soma, one day, Gita came to their house and told that her daughter was subjected to cruelty by her husband and parents in law on demand of cash. Thereafter this witness has made the following statement which cannot escape the attention of the court

"One day in the November 2011 my cousin sister Gita informed that her daughter was killed by her family inmates I told my sister Gita to go to house of her daughter's husband Sripur and also to lodge case."
(It has been overwhelmingly established by the relative witnesses that Gita committed suicide three months prior to Soma's committing suicide.)

In the cross-examination, he has also stated that his cousin-sister had also committed suicide. But whether against suicide, there had been any case, he had no knowledge.

PW 19, Smt. Shipra Pal visited the house of Soma just two days before her death along with PW 11. She has made the following statement in the trial:

"On 29.11.2011 Soma died. Her mother Gita died on 26.7.2011 Soma's brother Nandan Pal at that relevant time was prosecuting his study at Bangalore and he used to talk with me from Bangalore over phone. So far my memory is concerned 2/3 says ahead [sic.] of 27.11.11 Nandan told me over phone to visit in the house of his sister Soma at Sripur. Thereafter, on 27.11.2011 myself , my sister in law Laxmi Pal and nephew Sadhan Biswas went to the house of the present accused persons at Sripur. We told Soma's mother in law Smt. Dulurani that we have come to take Soma to visit in our house. Her mother in law told that she would not go at that time but she would go on

30.11.2011. Thereafter, on that night myself and my sister in law Laxmirani Pal stayed in the house of Dulurani but Sadhan Biswas returned his home.

On that night Soma told me that the accused persons will not allow he to stay and also not possible to stay in her husband's house. So requested to take her permanently from their house. I came know from my sister in law Laxmi Pal that Soma on that night told her that her parents in law always told to bring the share of her land properly and on that issue tortured her. Next day myself and Laxmi Pal returned to our house."

[49] On 29.11.2011 in the evening at about 7 p.m. she got the information from Nandan, Soma's brother, who was residing at Bangalore at the relevant point of time, that something untoward had happened with Soma, then they had rushed to the house of the appellant by bike and vehicles, with other relatives and saw Soma's body hanging from the ceiling. PW 19 in the cross-examination has introduced a new story relating to unlawful demand, he has stated in the cross-examination on that night Soma told, Laxmi Pal that her parents in law tortured her by demanding to give her share of the landed property. True it is that Laxmi Pal has stated in the cross-examination that if the share of her land is not given in her favour [Dulu Rani Baidya's] then she would not be allowed to stay in the house of her husband. Such allegation has not been revealed by other witnesses including PW 1.

[50] PW 20, Sri Sankar Nag investigated the case. He had prepared the inquest report (Exbt-10). He had entered the fact of filing the complaint filed by PW 1 in the GD and forwarded the same to the Officer-in-Charge of Belonia PS. After registration of the case,

he was entrusted with the investigation of the case. He had narrated briefly in the trial how he had conducted the investigation. He has handed over the case docket without filing the chargesheet to the Officer-in-Charge of the Belonia Police Station. In the cross-examination, he has clearly stated that PW 2 did not give any statement to him that Soma's mother had given a sum of Rs.2 lacs to the accused persons. Debashis did not state to him that Soma's mother was assaulted by the appellant no. 1 one month preceding the death of Soma. He has not stated that on 27.11.2011 Sadhan Biswas (PW6) Laxmi Pal (PW 11) and Shipra Pal (PW 19) went to the matrimonial house of Soma to bring Soma, but her mother-in-law did not allow her to come. Even PW 20 has stated that Gopal Mitra, PW 5 did not state to him that the accused person assaulted and abused his sister-in-law, Gita Mitra and as consequence of such conduct, she had lost her sense and out of sheer shame, she had committed suicide on the following day in her house. No such statement was given by Gopal Mitra. In this regard, he has also stated that Gopal Mitra had not stated to him about the visit of PWs 6, 11 19 to the house of the accused persons on 27.11.2011. Even Debabrata Majumder did not make any statement to him that after 7 -8 month of her marriage, Soma's husband and her parents-in-law started torture on her and Soma's mother gave Rs.2 lacs by several instalments. Nobody has stated to him that the accused persons raised any doubt about the character of Soma. Even, Debabrata

Majumder did not tell him that the appellant No.1 pushed out Soma's mother from their house. No such statement is available in the case diary. Even, Manaranjan Pal, PW 7 did not make any statement to him that Rs.70,000/- in cash was given to the appellant No.1 in marriage for purchasing a bike. Thereafter, he made the following statement:

"Smt. Laxmi Pal has not stated to me that she came to know from Soma's mother that Soma was subjected to cruelty by her husband and parents in law on demand of money from her mother then her mother has given money to them in three times or she came to know from Rita that Soma's mother was pushed by her neck from the house Soma's husband and parents-in-law then Debabrata Majumder brought her in his house and stayed on that night or Soma told her and Smt. Shipra Pal when they visited in the house of the accused persons two days ahead [sic.] of her death that if share of her land was not given in her favour by registry then she would not be allowed to stay in the house of her husband."

[51] The fact of that grave nature was not stated to the investigating officer while those witnesses were examined under section 161 of the Cr.P.C.

[52] PW 21, Sri Kishore Sarkar prepared the inquest report at the hospital morgue at Belonia (Exbt-16).

[53] PW 22, Sajal Sharma did some part of the investigation and handed over the case docket to his successor, Sri Arun Ray, SDPO, Belonia.

[54] PW 23, Sri Arun Roy had completed the investigation and submitted the charge sheet under Sections 498A and 306 of the IPC. PW 23 has recorded the statement of Shipra Pal [PW-19]. PW 23 has made the following statement in his cross examination:

"Shipra Pal did not give any statement to me that on 27.11.2011 Soma told her that accused persons could not allow her to stay in their house and also not possible for her to stay in their house. Shipra Pal did not give statement that on that night Soma told her (Laxmi Pal) that her parents in law tortured her by demanding her share of landed property. Shipra Pal did not give statement that Nandan told her over phone from Bangalore 2/3 days ahead of 27.11.2011 to visit in the house of his sister. I did not enquire whether brother and sister of Soma are living or dead. I have no knowledge whether any criminal case was lodged against the accused persons by the relatives of Soma."

[55] PW 24, Dr. Pranab Chowdhury had carried out the postmortem report and he has testified on the trial on the basis of the postmortem examination report [Exbt 17] and he opined that the cause of death was asphyxia as a result of hanging. Apart from ligature mark and there had been no other injury mark on the body of the victim.

[56] It has transpired from the records of evidence, as discussed above, that there is no proof of any act of instigation or act to goad Soma to commit suicide by the appellants. Even, on reading circumstantial evidences cumulatively no indication is available to such act of instigation, within the meaning of Section 107 of the IPC. Instigation is a wilful conduct and it has been rightly held in **Rajesh** (supra) that without there being any positive action, proximate to the time of occurrence, on the part of the accused which led or compelled the person [the victim] to commit suicide, no conviction under Section 306 of IPC can be sustained. It appears to this court, to bridge that gap. The PWs 11 and 19 had imported the story of demanding transfer of the share of land in Soma's her mother-in-

law's name. But PW 20, one of the investigating officers had categorically stated in his cross-examination that no such statement was ever made to him during recording their statements under Section 161 of the Cr.P.C. The contradictions have not been recorded following the procedure as laid down in Section 145 of the Cr.P.C. Law in this regard has been discussed above, while recording the submissions of Mr. Biswas, learned senior counsel appearing for the appellants. In **Tahsildar Singh** (supra) it has been illustrated how to record the contradiction emerging from the previous statement.

[57] In **Kalu Barman vs State of Assam** reported in **(1999) 1 GLT 131**, it has been clearly held that the cross-examination of the investigating officer should not be permitted by the court unless the witness's statement which has been sought to be contradicted, is confronted with the specific part of his statement and to which his attention was invited before calling upon the witnesses to explain any contradiction emerging from previous statements. But this court has different reason for disbelieving those statements as those statements were not known to any other witnesses. PWs 11 and 19 have stated they had travelled to the house of the accused persons, after getting the news of Soma's death. That apart, PW 1 who had filed the information and stated in the trial that she did not refer their visit to Soma's house. PW 5, however, has narrated in the cross-examination that PWs 6, 11 and 19 went to the house of the accused person on 27.11.2011, but Soma's mother-in-law did not

permit her to come with her paternal house. Even PW 6 did not state anything about the demand for transferring the victim's land in the name of her mother-in-law. PW 7, even though has stated about the visit of PWs 6, 11 and 19 to the house of the accused persons but he did not even indicate to any demand relating to the transfer of the said land.

[58] It appears to this court that that story is a sheer improvement, else it would have been known to the other relatives.

Hence, the conviction under Section 306 of the IPC is liable to be set aside. PW 1 had in the complaint stated that Soma's mother Gita Mitra was pressurized to give them half of the amount of the money after selling the victim's parental property. That turned to be a demand as it appears as of Rs.2 lacs which has been claimed to have satisfied by Soma's mother. The episode of selling out the parent property did not find any mention in the evidence of PW 1, rather she added a new story that the appellants demanded more money from her mother. This part has not been corroborated by any other relatives. They were confined to the statement of payment of Rs.2 lacs by Soma's mother. There has been no evidence how the said amount of Rs.2 lacs was collected or how the amount was paid on different days. It further appears that there is no specific reference to the days of mental torture on Soma [the victim]. There are sporadic and sweeping statements by some witnesses. It appears that they parroted the episode and all such episodes, no doubt, are

hearsays. As those are not related to the cause death of Soma Pal (Baidya) those cannot be treated as legal evidence. No witness has stated that any payment is made to the accused person in their presence or they have witnessed torture or ill-behaviour. Even when allegedly Soma's mother was humiliated leading to her death, there was no police case against the accused person. No evidence in this regard has been placed in the trial excluding the oral reference. Except PW 19 and PW 21, nobody has even stated that after payment of Rs.2 lacs as claimed by the prosecution witnesses, there had been further demand. If the evidences is meticulously scrutinised, it would be apparent as if a scripted story was given to them and they were stating in the trial. Moreover, there is no evidence that on the day of death or before the death, the appellant No.1 was present in the place of occurrence., even PWs 11 and 19 who stayed a day i.e. 27.11.2011 in the house of the accused persons, they have not claimed that they met the appellant No.1. But he has been roped in by the prosecution as the accused.

[59] On appreciating the evidence in its entirety, this court is of the opinion that the cause of suicide of Soma [the victim] remained unexplored, it is the sadness generated from the death of her mother, may be, the one cause. The evidence relating to the demand and payment of a sum of Rs.2 lacs is grossly inadequate and based on hearsay. Those evidence do not disclose the definite or tentative days of demand and payment. There is no evidence of

transaction. Thus, this court is of the view that in absence of reliable evidence, the court cannot be so passionate to convict the appellant waiving the requirement of legal evidence.

In the result, even the conviction under Section 498A of the IPC is not sustainable. The appellants are entitled to acquittal on benefit of doubt and accordingly it is ordered. The order of sentence is, therefore, set aside. Since the appellant are on bail, their sureties are discharged from their obligation.

The appeal, therefore, stands allowed.

Send down LCRs forthwith.

JUDGE

