

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>Criminal Appeal No.514/2011</b>
<b>Parties Name</b>	<i>Anil Patel</i> vs. <i>State of M.P.</i>
<b>Date of Order</b>	<b>18/02/2019</b>
<b>Bench Constituted</b>	<b>Justice B.K. Shrivastava</b>
<b>Judgment delivered by</b>	<b>Justice B.K. Shrivastava</b>
<b>Whether approved for reporting</b>	
<b>Name of counsel for parties</b>	<p><b>For Appellant :</b> Shri Geet Sukhwani, Advocate</p> <p><b>For Respondent/State :</b> Shri Amitabh Gupta, Government Advocate</p>
<b>Law laid down</b>	<p><b>1. Any accused cannot be convicted upon the basis of suggestions given by the defence counsel in cross-examination of the witnesses. The accused may take different types of plea in his defence but that cannot be treated as acceptance of the accused and cannot be made the basis of his conviction.</b></p> <p><b>2. If the Court relied upon any evidence and convicted the accused upon the basis of that evidence, then the aforesaid evidence should be brought before the accused during his examination under section 313 of CrPC to give him the opportunity to explain the circumstances.</b></p> <p><b>3. For convicting an accused for any offence, the ingredients of that offence and the facts alleged should also be included in the charge framed under the aforesaid section.</b></p>
<b>Significant paragraph numbers</b>	<b>19, 27, 28</b>

**J U D G M E N T****(18.02.2020)**

1. This appeal has been preferred by appellant Anil Patel S/o Ramji Patel on 23.2.2011 under section 374(2) of CrPC against the judgment dated 17.2.2011 passed by the Additional Sessions Judge, Maihar, District Satna in Sessions Trial No.22/2009.
2. By the impugned judgment, the learned trial court convicted the appellant for the offence under section 306 of IPC and sentence him to undergo 3 years RI and the fine of Rs.1000/-, with default stipulation.
3. Total four accused including the appellant faced the aforesaid trial. The trial court framed the charges against all four accused under sections 498-A, 304-B and 306 of IPC. After trial, the court acquitted accused Ramji, Archana and Fulli Bai from all charges and convicted appellant Anil Patel for the offence under section 306 of IPC after acquitting him from the other charges under sections 498-A and 304-B of IPC.
4. It is submitted by the counsel for appellant that the trial court committed mistake by convicting the appellant. There was no evidence against the appellant, but the trial court without appreciating the evidence held the appellant guilty. All witnesses are interested witnesses and their statements have many contradictions and omissions. The offence under section 306 of IPC was not made out against the present appellant. Nobody said that the deceased ill-treated by any manner by the present appellant. No any evidence was available to show that the appellant abetted wife/deceased to commit the suicide. Therefore, the judgment of conviction and sentence is liable to be quashed and the appellant is entitled to get the acquittal.
5. On the other side, the counsel for State strongly opposed the

application. It is submitted by the State that sufficient evidence is available against the appellant. It is also submitted that the appellant has been wrongly acquitted by the lower court in other two offences. As per prosecution, the evidence was available against all four accused, but the trial court wrongly acquitted the other three accused. It is submitted that by using inherent powers, this Court may convict all four accused including appellant for the offence under sections 304-B, 498-A and 306 of IPC.

6. The arguments of State cannot be accepted because no appeal has preferred by the State against the order of acquittal of three co-accused. Even the State has not filed any cross-appeal against the acquittal of the present appellant from the offence under sections 498-A and 304-B of IPC. This Court is restricted itself to deal with the conviction of the present appellant under section 306 of IPC. Therefore, now we see whether the trial court committed any mistake by convicting the appellant for the offence under section 306 of IPC.

7. It appears from the impugned judgment that the trial court has not found any evidence to show that the appellant demanded dowry from the deceased. The ingredients of section 304-B of IPC are also not found. The trial court convicted the appellant only for the offence under section 306 of IPC. On the basis of which evidence the trial court convicted the appellant is mentioned in Para 24 of the impugned judgment, which is as under:-

“24. प्रकरण में एक तथ्य यह प्रकट हुआ है कि मृतिका की कुछ सहेलियाँ थी, जो उसके घर अर्थात ससुराल में आती जाती थी और अभि० अनिल सहेलियों को कभी-कभार मोटरसायकल से मैहर छोड़ने भी जाता था, और इसी बात को लेकर मृतिका अभि० पर संदेह करती थी। बचाव पक्ष का यह भी कहना है कि इसी बात को लेकर मृतिका द्वारा आत्महत्या कारित की गई। तर्क के दौरान भी बचाव पक्ष की ओर से यह प्रकट किया गया कि घटना दिनांक को इसी बात को लेकर मृतिका ने काफी बवाल मचाया था। उसका अभि० अनिल से काफी विवाद भी हुआ था, क्योंकि उसे संदेह था कि अभि० अनिल के मृतिका की सहेलियों से भी संबंध थे। कोई भी व्यक्ति बिना किसी

कारण इस तरह की आत्महत्या का निर्णय नहीं ले सकता। इस प्रकरण में भी यह नहीं माना जा सकता कि मृतिका द्वारा आत्महत्या करने का कोई कारण नहीं था। साक्ष्य से यह प्रकट होता है कि मृतिका इस बात को पसंद नहीं करती थी कि अभि० मृतिका की सहेलियों के संपर्क में रहे और यदि इस बात की भनक स्वयं अभि० को थी और वह जानता था कि उसकी पत्नी उस पर किन्हीं बातों को लेकर संदेह करती है तो यह उसका भी कर्तव्य था कि वह इस तरह का आचरण करता, जिससे उसकी पत्नी को संदेह निर्मूल साबित हो। लगातार अभियुक्त द्वारा इस बात की उपेक्षा करते रहना और यह जानते हुए भी कि उसकी पत्नी किसी बात से उससे दुखी रहती है, मृतिका की सहेलियों से दूरी बनाये रखने का प्रयास न करना यह प्रकट करता है कि अभि० अनिल इस बात की परवाह नहीं करता था कि उसकी पत्नी इन सब चीजों से कितनी दुखी होगी और उसके लिए किस हद तक जा सकती है। उपरोक्त तथ्यों के प्रकाश में निश्चित रूप से यही माना जायेगा कि मृतिका द्वारा आत्महत्या का जो निर्णय लिया गया, उसका कारण सिर्फ उसका पति अनिल ही है।”

8. From a bare reading of the provision, it is clear that to constitute an offence under Section 306, IPC, the prosecution has to establish:

- (i) that a person committed suicide, and
- (ii) that such suicide was abetted by the accused.

In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the IPC, which defines abetment of a thing as follows :

**“107. Abetment of a thing.-** A person abets the doing of a thing, who-

**First.-** Instigates any person to do that thing; or'

**Secondly.-** Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

**Thirdly.-** Intentionally aids, by any act or illegal omission, the doing of that thing”.

Explanation 2 which has been inserted along with Sec. 107 reads as under:

**“Explanation 2.-** Whoever, either prior to or at the time of the

commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

9. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

10. Reading of sections 306 and 107 together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under S. 306 of the I.P.C. for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide.

11. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "**instigates**" any person to do that thing. The word "**instigate**" is not defined in the IPC. The meaning of the said word was considered by the Supreme Court in **Ramesh Kumar v. State of Chhattisgarh**[(2001) 9 SCC 618 : (2001 AIR SCW 4282)]. It has been said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or

what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

12. The Supreme Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, = AIR 2010 SC 1446 = 2010 AIR SCW 645 = (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words 'instigation' and 'goad'. The Court said :-

“Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action : provoke to action or reaction" (See : Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See : Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.”

13. The Apex Court in this aforesaid case of **Chitresh Kumar Chopra (Supra)** reiterated the legal position laid down in its earlier three Judges Bench judgment in the case of **Ramesh Kumar v. State of Chhattisgarh, reported in AIR 2001 SC page 3837 : 2001 Cri LJ 4724 (1)** and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. Their Lordships in the aforesaid case of **Chitresh Kumar, (AIR 2010 SC 1446) (supra)**, summed up the legal position as under :-

“In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and,

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.”

The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

14. In the Case of *S.S. Cheena Vs. Vijay Kumar and another, [2010] 12 SCC 190* the Supreme court said that :-

“abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Sec. 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life.”

15. In *State of West Bengal v. Orilal Jaiswal*, AIR 1994 SC 1418 = 1994 AIR SCW 844 = 1994 Cri LJ 2104, the Supreme Court has observed that the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

16. In the case of *Mohd. Hoshan and another v. State of A.P.*, AIR 2002 S.C. 3270 = 2002 AIR SCW 3795, Hon'ble Supreme court observed that whether one spouse has been guilty of cruelty to the other is essentially a question of fact. 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 of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In this case out of 11 months of married life, the deceased was forced to live in her parents' house and could live with her husband for a period of two months in different spells. The Court also took note of the fact that the accused did not try to save the deceased although he was present when burn injuries were caused to her therefore accused is liable to be convicted for offences under section 306 and 498-A I.P.C.

17. In *Randhir Singh and another v. State of Punjab*, AIR 2004 S.C.



**5097 = 2004 AIR SCW 5832**, The Supreme court said that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under Sec. 306 of IPC.

18. In the present case, the prosecution examined 13 witnesses in support of its case; while the defence also examined 3 witnesses. **It appears from the entire evidence produced by the prosecution that no any witness said about the fact that the deceased was having any suspicion upon her husband.** The trial court mentioned in Para 24 that the deceased was having suspicion about the character of the appellant because the friends of deceased were used to come in her house and appellant Anil was used to drop them by motorcycle. The deceased was having suspicion that her husband having illicit relations with the friend of deceased. **No any evidence was produced by the prosecution to prove the aforesaid facts. The Court took the aforesaid facts from the suggestions given by the defence counsel in his defence.** Some parts of evidence may be useful to refer here:-

P.W.1-रामदास पटेल—“21.....मुझे नहीं मालूम कि अर्चना की सहेलियाँ उसके साथ जाती थी और उसके साथ रहती थी। मैं नहीं बता सकता कि मृतिका अनिल के ऊपर शंका करती थी। मैं नहीं जानता कि घटना के समय लड़की की सास के अलावा और कोई घर में नहीं था।”

P.W.2-रामबाई— “13.....मुझे नहीं मालूम कि अर्चना कि दो-तीन सहेलियाँ उसके साथ हमेशा रहती थी और उसके साथ पढ़ती थी । यह कहना गलत है कि उन्हीं लड़कियों के ऊपर मेरी लड़की शंका करती थी । यह कहना गलत है कि मैंने कोई झाड़-फूँक करवाया था । यह कहना गलत है कि मैं आज झूठा बयान दे रही हूँ।”

P.W.5- प्रभुदयाल पटेल— “13. यह कहना गलत है कि अर्चना की एक, दो सहेलियाँ उसके पास उठती बैठती थी। यह भी कहना गलत है कि आरोपी अनिल कभी-कभार उनको मोटरसाईकिल से मैहर पहुँचा देता था। स्वतः

कहा कि मोटरसाईकिल थी ही नहीं ।

14. यह कहना गलत है कि उक्त बात पर मेरे बहन आरोपी अनिल के ऊपर शंका करती थी । यह कहना गलत है कि मेरी बहन से किसी प्रकार का कोई विवाद आरोपी अनिल से नहीं होता था। यह सही है कि हम लोगो ने अपनी बहन की शादी से और मृत्यु के पूर्व तक कभी कोई रिपोर्ट थाना में आरोपीगण के विरुद्ध नहीं करवाया था। मुझे अपने घर से महेदर की दूरी नहीं मालूम है ।”

19. Therefore, it appears that the defence suggested the witnesses that the deceased was having some suspicion about the relationship of the accused with the friends of deceased. It is the settled law that **the accused cannot be convicted upon the basis of suggestions given by the defence counsel. But the trial court ignored the settled law and convicted the appellant upon the basis of suggestions given by the defence counsel; while the suggestions were also denied by all witnesses. Any accused can be convicted only upon the basis of evidence produced by the prosecution, to prove all ingredients of the offence. The accused may take different types of plea in his defence. That cannot be treated as acceptance of the accused and cannot be made the basis of his conviction.** But the aforesaid principle is ignored by the trial court, which is appeared from Para 24 of the impugned judgment.

20. The law is clear about the abetment to suicide. Whether extra-marital relation may be accepted as a proof for proving the abetment of suicide. In this regard, it may be useful to refer some case laws.

21. “Extra-marital affair” is a term, which has not been defined in the Indian Penal Code. It is not possible to give a clear definition of the term as the situation may changes from case to case. The marital relationship means the legally protected marital interest of one spouse to another, which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on.

22. In the case of **Pinakin Mahipatray Rawal Vs. State of Gujarat, AIR 2014 SC 331=(2013) 10 SCC 48**, the Supreme Court said that mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to 'cruelty', but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation of Section 498A of IPC. In the aforesaid case, it was found that the accused had developed intimacy with her colleague but has not ill-treated the deceased, either physically or mentally demanding dowry and the deceased was living with the accused in the matrimonial home till the date, she committed suicide. In the aforesaid situation, the Court held that the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide or that accused had ever intended or acted in such a manner, which under normal circumstances, would drive the wife to commit suicide. In Para 26 the Supreme Court observed as under:-

“26. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets, the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra-marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

23. In the case of **Ghusabhai Raisangbhai Chourasiya and others Vs. State of Gujarat, AIR 2015 SC 2670=(2015) 11 SCC 753**, the accused husband of deceased had illicit relations with the appellant, who

was divorcee. The deceased wife was residing separately on terrace of house and committed suicide by consuming poison. The Court said that the involvement of accused in illicit relationship, even if proven, was not evidence that mental cruelty was of such a degree that it would drive wife to commit suicide. In the aforesaid situation, the explanation of section 498-A of IPC is not attracted. The Court also observed that :-

“It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant divorcee, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A, which includes cruelty to drive a woman to commit suicide, would not be attracted”.

The Supreme Court held in Para 20 of the aforesaid case as under:-

"20. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A, IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (AIR 2014 SC 331) (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant No.4, but

in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A, which includes cruelty to drive a woman to commit suicide, would not be attracted."

24. The aforesaid 2 cases have been considered in ***K.V.Prakash Babu Vs. State of Karnataka, 2017 Cri.L.J. 264***. In that case marriage between the appellant and deceased was solemnized on 12.10.1997. The appellant, as alleged, got involved with another woman. It was the case of prosecution that the deceased felt extremely hurt and eventually being unable to withstand the conduct of the husband, who was allegedly involved in an extra-marital affair, put an end to her life on 20th August, 2004.

25. In the aforesaid case, the Court acquitted the appellant for the offence under section 306 of IPC. The Court observed in Paras 16 and 18 as under:-

“16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

18. In the instant case, as the evidence would limpidly show, the wife developed a sense of suspicion that her husband was going to the house of Ashwathamma in Village Chelur where he got involved with Deepa, the daughter of Ashwathamma.

It has come on record through various witnesses that the people talked in the locality with regard to the involvement of the appellant with Deepa. It needs to be noted that Deepa, being not able to digest the humiliation, committed suicide. The mother and the brother of Deepa paved the same path. In such a situation, it is extremely difficult to hold that the prosecution has established the charge under Section 498A and the fact that the said cruelty induced the wife to commit suicide. It is manifest that the wife was guided by the rumour that aggravated her suspicion which has no boundary. The seed of suspicion planted in mind brought the eventual tragedy. But such an event will not constitute the offence or establish the guilt of the accused-appellant under Section 306 of the IPC.”

In the aforesaid case, the Hon’ble Supreme Court also expressed valuable serious feelings in Paras 2 and 3 as under:-

“2. The instant appeals reveal a factual score that has the potentiality to shock a sensitive mind and a sincere heart, for the materials brought on record show how "suspicion" can corrode the rational perception of value of life and cloud the thought of a wife to such an extent, that would persuade her to commit suicide which entail more deaths, that is, of the alleged paramour, her mother and brother who being not able to emotionally cope up with the social humiliation, extinguish their life-spark; and ultimately the situation ropes in the husband to face the charge for the offences punishable under Sections 302 and 498-A of the Indian Penal Code (IPC) read with Section 3 of the Dowry Prohibition Act, 1961 ('1961 Act' for short). As the facts would unveil, the husband gets acquitted for the offence under Section 302 IPC but convicted in respect of other two charges by the trial court. In appeal, his conviction under Section 3 of the 1961 Act is annulled but success does not come in his way as regards the offence under Section 498-A IPC. And the misery does not end there since in the appeal preferred by the State, he is found guilty of the offence under Section 306 IPC and sentenced to suffer four years rigorous imprisonment and to pay a fine of Rs.50,000/- to be given to the father of the victim with a default clause.

3. In the course of our adumbration and analysis of facts, it will be uncurtained how the seed of suspicion grows enormously and the rumours can bring social dishonor and constrain not-so-thick skinned people who have bound themselves to limitless sorrow by thinking 'it is best gift of

God to man" and choose to walk on the path of deliberate death. A sad incident, and a shocking narrative, but we must say, even at the beginning, the appellant-husband has to be acquitted regard being had to the evidence brought on record and the exposition of law in the field.”

26. Therefore, it appears from the entire case laws that in the aforesaid cases, the extra-marital relationship was duly proved even then the offence of abetment was not found proved. In the present case, the extra-marital relationship has not been proved by the prosecution witnesses. Suggestions related to only suspicion about the extra-marital relationship were put up in the cross-examination of the prosecution witnesses by the defence counsel. Therefore, it cannot be said that the aforesaid suspicion was sufficient to draw a presumption that the appellant abetted her wife to commit suicide.

27. Another aspect was also ignored by the trial court related to the settled principle of law. This is the settled principal of law that **when the Court convicted the accused upon the basis of any evidence, the aforesaid evidence should be put up before the accused under section 313 of CrPC to give him the opportunity to explain the circumstances** and to accept the truthfulness of the aforesaid evidence. But the trial court did not frame any question under section 313 of CrPC upon the basis of that evidence, which was used by the Court in convicting the appellant. Even the evidence was not in the nature of acceptance. No any witness has admitted that the accused was having some illicit relations with another girl and the deceased was having suspicion about the extra-marital relationship of the accused.

28. It is also the requirement of law that the accused can only be punished when the specific averments are mentioned in the charge framed against the accused. In this case, the trial court framed the charge under section 306 of IPC, but no any indications of extra-marital relationship has been mentioned in the aforesaid charge. Therefore, the

accused cannot be convicted for the aforesaid offence in the absence of specific charge.

29. Therefore, in view of the aforesaid, it appears that the conviction of the appellant is not based upon the sound principle of law and also not based upon any sufficient evidence. Only upon the surmises and conjectures, the trial court convicted the appellant upon the basis of suggestions given by the defence counsel.

30. Therefore, the appeal is **allowed**. The conviction and sentence of the appellant are set aside. Appellant Anil Patel is acquitted from the charge of section 306 of IPC. His bail bonds are discharged.

**(B.K.SHRIVASTAVA)**  
**JUDGE**

TG/-