IN THE COURT OF MS. GEETANJLI GOEL, ASJ/SPL. JUDGE
(PC ACT) (CBI)-24 (MPs/ MLAs cases)
ROUSE AVENUE DISTRICT COURTS, NEW DELHI

CNR No. DLCT11-000512-2019
SC No. 05/2019
FIR No.04/15
State Vs. Shashi Tharoor
PS : Sarojini Nagar

ORDER ON CHARGE

1. Vide this order I shall decide whether charge is liable to be framed against the accused Shashi Tharoor.

2. A perusal of the record shows that on 17.01.2014, at 9.00 p.m., a phone call from one Abhinav Kumar, IPS (Personal Secretary) to Dr. Shashi Tharoor, the then Minister of State in Human Resource Development Department, Government of India and the accused in the present case was received by Insp. Atul Sood, the then SHO PS Sarojini Nagar informing that Ms. S (the deceased) had done something to herself in room No.345 of Hotel Leela Palace, New Delhi. The same was recorded as DD No.33A at PS Sarojini Nagar and was marked to SI Arun Kumar. SI Arun Kumar, along with staff reached the spot where he found the victim lying apparently dead on the bed in the bedroom of the suite. SHO, PS Sarojini Nagar and other senior officers also reached the spot to enquire into the incident. When it was learnt that the deceased had passed

away within 7 years of her marriage, the Ld. SDM Vasant Vihar Sub Division, Shri Alok Sharma, who was the territorial Executive Magistrate was informed and the scene of occurrence was preserved for his arrival and inspection. The Ld. SDM initiated inquest proceedings under Section 176 Cr.P.C.

3. As per the case of the prosecution, the victim before marrying the accused had been married twice. She also had two brothers and a son. The accused had also been married twice before marrying the deceased. As per the marriage certificate of the deceased and the accused, their marriage was solemnized on 02.10.2010. Investigation revealed that on 04.01.2014, the deceased had left India for Dubai to meet her son who lived there. The accused also joined her in Dubai on 09.01.2014. The couple flew out from Dubai for Thiruvananthapuram, Kerala on 11.01.2014 in order to get the deceased medically examined at Kerala Institute of Medical Sciences (hereinafter referred to as KIMS). Narayan Singh, a domestic help and the personal attendant of the deceased also joined them in Thiruvananthapuram. The deceased was admitted in KIMS, Thiruvananthapuram on 12.01.2014 for check-ups and treatment and at the time of her admission, history of intermittent fever that went upto 104 degree F° most of the times, history of on and off fainting episodes, migraine and once ANA (a test conducted to determine whether someone has auto immune disorder such as lupus) was found positive, was recorded. She also had photosensitivity, joint

arthritis pain, problem of irregular bowel habits etc. The deceased was discharged from KIMS on 14.01.2014 in the afternoon. While in hospital, she was subjected to various tests by KIMS Hospital, which also led to possible diagnosis of Sjogren's Syndrome (a disorder of the immune system). As per the nursing notes, a cannula was placed on 14.01.2014 at 9.45 a.m. on her right hand. At the time of discharge from KIMS, Thiruvananthapuram, her condition was mentioned as hemodynamically stable and she was advised certain medication.

4. On 15.01.2014, the accused, deceased and Narayan Singh returned to Delhi via Air India flight landing in Delhi at about 04:00 p.m. It is the case of the prosecution that, while in the flight the deceased had looked into the Blackberry cellphone of the accused and had found some Blackberry text messages exchanged between the accused and MT, a Pakistani national and journalist, which had led to serious disquiet amongst them as she accused him of continuing infidelity. The said phone could not be recovered as the same was broken during a scuffle between the couple on 15.01.2014. Alighting from the craft, the deceased boarded a wheelchair as she was physically weak. At the arrival side of the airport, the deceased went to the washroom and stayed inside for about 20 minutes. The accused waited for a little while and then left the airport in his official car, leaving Narayan Singh and the deceased at the Airport.

As revealed during investigation, while in the washroom, the deceased had called up her son in a highly depressed state to share her grief regarding the continuing affair of the accused with MT and after coming out of the washroom, she called up her friend Sunil Trakaru, who was then in Gurgaon. He came to the Airport and picked them for onward journey. At about 05:35 p.m., the deceased, Sunil Trakaru and Narayan Singh reached Hotel Leela Palace and booked room No.307 for the deceased to stay. Her body was found two days later in a different suite, though of the same hotel.

5. The scene of occurrence was inspected, videographed and photographed by the Crime Team of South District Police as well as by CFSL, CBI Team and exhibits including some broken glass pieces were collected as also chance prints and several medicines were seized. Thereafter, postmortem of the deceased was got conducted at AIIMS on 18.01.2014 vide PM No.77/14 by an Autopsy Board comprising of Dr. Sudhir Kumar Gupta, Dr. Adarsh Kumar and Dr. Shashank Pooniya of Department of Forensic Medicine and Toxicology, AIIMS, New Delhi, which was constituted at the request of Ld. SDM, Vasant Vihar. The AIIMS Autopsy Board had mentioned 15 ante-mortem injuries on the body of the deceased as detailed therein. The viscera was preserved as also the clothes of the deceased and the swabs. Time since death was found to be about 18 hours. The AIIMS Autopsy Board had opined 'the cause of death to the best of

knowledge and belief in this case is poisoning. The circumstantial evidence are suggestive of Alprazolam poisoning. All the injuries mentioned are caused by blunt force, simple in nature, non-contributory to death and are produced in scuffle, except injury number 10 which is an injection mark. Injury number 12 is a teeth bite mark. The injuries numbers 1 to 15 are of various durations, ranging from 12 hours to 4 days'.

6. The Ld. SDM recorded the statements of various persons and Narayan Singh has stated that the deceased and the accused had frequent quarrels over the issue of relationship of the accused with MT, a Pakistani journalist. They had serious quarrels in the intervening night of 15/16.01.2014 and 16/17.01.2014. It was also stated that the deceased had not eaten anything for the three days preceding her death. On 17.01.2014, the accused had left the hotel at 06:30 a.m. and had returned around 07:45 p.m. After the departure of the accused from the hotel on the said date, the deceased had asked him to bring her white colour suit (from Lodi Estate residence) as she wanted to call a press conference. During their examination by the Ld. SDM, the brothers of the deceased did not raise any specific allegation against anybody. The son of the deceased stated that he had spoken to the deceased for the last time on 17.01.2014 and while she did sound a little distressed, she was otherwise okay. She was not eating and was smoking a lot. She used to tell people that she was sick and felt pains in her body. She used

to have high fever and was also suffering from Lupus. She also used to say sometimes that she was weak and could not get out of her bed. She was taking prescribed and non-prescribed medicines. As stated in the charge-sheet, the said witnesses did not raise any specific allegation and described the relationship between the deceased and the accused to be normal.

7. The Post-Mortem report of the deceased was submitted to the Ld. SDM, who issued a written order to the SHO, PS Sarojini Nagar vide letter dated 21.01.2014 mentioning that no allegations related to dowry demand or harassment of the deceased by her husband or any other family member had come to notice. However, the police was directed to further investigate the matter thoroughly and to take action as per law. The biological examination and DNA profiling report was received from CFSL, CBI vide letter dated 13.03.2014 as per which blood, semen and any foreign material could not be detected from any of the exhibits. The CFSL report regarding chemical examination of the visceral organs and other exhibits was received vide communication dated 07.03.2014 and as per the same, stomach with contents and small intestine with contents gave positive test for presence of ethyl alcohol and caffeine, liver section, spleen (half) and half of each kidney gave positive test for acetaminophen and caffeine and blood of deceased gave positive test for

presence of caffeine. The clothes of the deceased also gave positive test for presence of acetaminophen, caffeine, lidocaine and methylperaben.

8. Shri Shiv Kumar Prasad, Consultant to the accused produced the medical papers pertaining to the treatment of the deceased at various hospitals/ laboratories which were seized. Vide communication dated 29.03.2014 a final opinion about the cause of death was sought from the AIIMS Autopsy Board. Certain further information was sought by the AIIMS Autopsy Board on 04.04.2014. The chance prints could not be matched with anyone. A report dated 01.05.2014 was received from the Biology Division of CFSL, CBI, which stated that the presence of saliva or any other foreign material had not been detected in any of the exhibits. Regarding the other exhibits which were sent to FSL, Rohini for Quantitative Estimation, report was received dated 20.08.2014 and both the reports received from CFSL, CBI and FSL, GNCTD did not find presence of Alprazolam in the chemical examination of the viscera, which were sent to them. The FSL report gave Quantitative Estimation report in respect of ethyl alcohol only which was stated to be 1.8 mg per 100 ml of blood. The AIIMS Autopsy Board thereafter, gave its second/ subsequent medical opinion dated 27.09.2014 and summarized that the deceased was a normal, healthy individual when she had passed away. The PME did not reveal any disease or any pathology except the 15 ante-mortem injuries found on the body. The Board opined that the cause

of death was poisoning. The Board reserved its comments on the specific poison/ chemical stating that there were many limitations in the viscera report and mentioned that there were some specific poisons which were difficult to detect.

9. As per the charge-sheet, the Board advised some additional medico-legal issues to be addressed by the police since circumstantial information was essential for formulating appropriate medical opinion. As such, photographs of the scene of crime, statements of witnesses and relatives, certain e-mails were provided to the Board on 01.10.2014. The AIIMS Autopsy Board Members along with a team of Forensic Experts from CFSL, CBI also visited the scene of occurrence on 05.11.2014 and lifted further exhibits, which were also sent to CFSL, CBI for chemical examination on 07.11.2014. The report dated 23.12.2014 was received as per which the white bed cover and white bedsheet with stains gave positive test for the presence of acetaminophen, aspirin and caffeine. The AIIMS Autopsy Board provided its third opinion dated 29.12.2014, in which it was opined that the deceased was neither ill nor was suffering from any disease prior to her death and she was a normal healthy individual. It was opined that death due to natural causes was ruled out and cause of the death was poisoning. The poisoning was through oral route, however, injectable route too could not be ruled out. The Board had also taken note of the fact that the bedsheet and bed cover had big, dried spots which was indicative of massive

urination, which could have occurred in prolonged unconscious state and that there were several broken pieces of glass on the carpet and curtain suggestive of forceful handling of glass and indicative of scuffle.

10. As per the case of the prosecution, as the possibility of homicidal death had remained open for investigation, a case under Section 302 IPC vide FIR No.04/2015 dated 01.01.2015 was registered at PS Sarojini Nagar and investigation was taken up. A Special Investigation Team (SIT) was constituted to investigate the case under the direct supervision of DCP (South). The medical history of the deceased was examined. The treating doctors and nursing staff, who had attended the deceased, while she was admitted in KIMS, Kerala from 12.01.2014 to 14.01.2014 were examined and their statements were recorded.

11. The CCTV footage of Hotel Leela Palace from 15.01.2014 (17.00 hours) to 17.01.2014 (21.00 hours) was analyzed along with the relevant call detail records. The reported movements of the deceased during the period of stay at hotel were limited to two rooms. The recorded movements of the deceased, her husband, family friends, visitors, domestic help/s and hotel staff were checked and tabulated. As per the CCTV footage, the deceased along with Narayan Singh and Sunil Trakaru had reached Hotel Leela Palace on 15.01.2014 at about 17:34 hours in a private car belonging to Sunil Trakaru and she had checked into room No.307 at 18:08 hours. The accused had entered the said room at 20:37 hours.

Room Service staff was also seen entering and exiting the said room on several occasions. The accused remained in the hotel from 20:37 hours to 01:16 hours. The accused had entered the room No.345 at 13:04 hours on 16.01.2014 and he remained in the hotel from 13:02 hours to 20:29 hours. On 17.01.2014 at 00:11 hours, Bajrangi went outside the room and then the hotel to fetch the accused from his official residence and he returned with the accused at 01:06 hours and again left the hotel at 06:56 hours leaving the deceased and Narayan Singh at the hotel. When the accused left the hotel with Bajrangi, the deceased was alive in her suite and making telephone calls, which was also corroborated by the call detail records of the deceased, who had called up her son and her servant, both residents of Dubai at 07:00 a.m. and again at 07:36 and 07:37 a.m. The deceased had also tried calling the accused but the call could not get connected and automated SMS were sent to the number of the accused. The last call was made from the phone of the deceased at 07:57 a.m. when she had spoken to Amit Lama, a servant of her son, who lived with him in Dubai. Thereafter, the deceased kept receiving several messages on her cellphone from various persons but she did not respond to any of them. The CCTV footage had corroborated the position that the deceased did not come out of the hotel and did not visit any other floor or facility within the hotel during the entire period of her stay there.

12. The CDRs of the deceased and the accused along with others were also obtained for the period from 01.01.2014 to 31.01.2014. The deceased had made 19 outgoing/ incoming calls and had generated 23 incoming/ outgoing SMSs to various media personalities and her close friends during her stay. She remained busy on her phone for almost the whole of the intervening night of 16/17.01.2014 till 07:57 a.m. on 17.01.2014 and the persons, who had contacted/ had been contacted by the deceased were examined. As per the investigation, it was revealed that she was in a highly depressed mental condition over MT issue and wanted to hold a press conference later in the day. Further, the accused after exiting the hotel at 06:56 a.m. had reached the hotel back at around 07:33 p.m. Analysis of the landline phone of the rooms where the deceased stayed was carried out and nothing incriminating and relevant was observed from the same as per the charge-sheet, except that she had called up her son in early morning hours on 17.01.2014 in addition to her regular conversation with him over the mobile phone. The concerned employees of the hotel were also examined to verify the bills and sequence of events.

13. As per the case of prosecution, most of the times when eatables were ordered and served, the deceased did not eat anything at all. She kept sipping coconut water and smoking cigarettes. There were serious quarrels and scuffles between the couple in the intervening night of 15/16.01.2014 and 16/17.01.2014

over the issue of relationship of the accused with MT. Narayan Singh had stated that in the intervening night of 15/16.01.2014, there was quarrel and scuffle between the couple and the deceased had in a fit of rage, banged the mobile phone of the accused on the wall. That night she ate nothing. Sunil Trakaru, a friend of the deceased who was present, stated that the deceased had smoked 30 cigarettes that night and looked totally exhausted as she had not eaten anything since the preceding day. Other witnesses Ms. Advaita Kala and Sunil Alagh, both friends of the deceased also confirmed the same. The hotel staff also confirmed that the deceased had barely eaten anything during her stay apart from smoking heavily. As per the charge-sheet, this showed mental agony, suffering and depressive state of the deceased close to her demise.

14. Further, as per the investigation, the accused had got himself admitted in AIIMS hospital on 18.01.2014, the next day of the death at 05:04 a.m., in the Cardiology Department with complaint of breathing difficulty, palpitation and uneasiness and he was discharged in a stable condition**.** No injury to his person was found mentioned in the discharge summary. As per the medical records related to the accused seized from the Medical Centre, Parliament House Annexe, from where the accused and his family members used to obtain CGHS medicines vide CGHS Token No.219, tablet Alprax 0.5 mg was prescribed in the name of the deceased. Since the prescribed medicine was then not available at

the Medical Centre of Parliament Annexe, 60 tablets of Alprax 0.5 mg were indented on 16.01.2014 in the name of the deceased. Similarly, 30 tablets of 0.5 mg Alprax were earlier found indented on 9.10.2013 in the name of S. Tharoor.

15. As per the statement given by the accused before the Ld. SDM, Vasant Vihar, during inquest proceedings, paint and renovation work was going on at official residence so the deceased had gone to Hotel Leela Palace on 15.01.2014. During investigation, AE (Civil), CPWD and the Contractors had stated that the same was incorrect and that renovation at the residence of the accused had been completed before 31.12.2013 and in the month of January, 2014, no such work as stated by the accused was being carried out. As per the charge-sheet, the accused in an apparent attempt to conceal the fact of continuing severe matrimonial discord and what had happened between the couple when the deceased had checked his mobile phone while they were on board the flight from Thiruvananthapuram to Delhi had tried to mislead the officer conducting the inquest proceedings.

16. During the course of investigation, electronic data was also seized, however, from one Blackberry mobile phone of the deceased, images/ photographs, audio and video files were retrieved but no logs, messages and chats could be retrieved. As per the charge-sheet, the data extracted from the other two Blackberry phones was analyzed but nothing relevant or significant to

the case was observed. The Apple Mac Book and the first Blackberry mobile phone were sent to Directorate of Forensic Sciences, Gandhi Nagar, Gujarat for extracting the data and report was received vide letter dated 17.01.2015, as per which from the Apple Mac Book 76 photographs/ pictures of body parts as saved on the laptop in month of October, 2013 were extracted, which were of the deceased and showed rashes and contusions on skin, indicative of some disease/ allergy. The mobile phones being used by the personal staff of the accused were also seized and sent to Directorate of Forensic Sciences, Gandhi Nagar, Gujarat for analysis and the report was received on 17.01.2015 and as per the charge-sheet, nothing relevant to the case was found.

17. On 05.02.2015, house search of the official residence of the accused was conducted and two mobile phones of the accused were recovered and sent to CFSL, CBI for analysis. From one of the phones, no data pertaining to the period from 15.01.2014 to 20.01.2014 could be retrieved. From the other phone, messages were retrieved and the said phone was used by the accused during the period 15.01.2014 to 29.01.2014. As per the charge-sheet, nothing relevant to the case was found on a perusal of all the forensic reports. House searches of several other persons were also conducted and electronic gadgets and devices including mobiles and laptops were seized and sent to CFSL, CBI for analysis but no relevant information related to the case was found from the same except that in

the hard disk containing information about a desktop model Lenovo belonging to Vikas Ahlawat, OSD to the accused, copy of a letter written by the accused to MT and declaration of the assets of the deceased were found. In the hard disk belonging to Ms. Yashshree, statement of the deceased on the IPL controversy, her will and a poem depicting her pain were found.

18. It is further stated that while tendering its second PME Opinion/ Report dated 27.09.2014, the AIIMS Autopsy Board had reserved its comments on the specific poison/ chemical which had caused the death, stating that there were lots of limitations in the viscera report and that there were some poisons which were difficult to detect. Moreover, the technology/ facility for detection of certain poisons/ radioactive substances and their quantitative estimation were not found available in Indian labs, hence the samples were sent to Federal Bureau of Investigation Lab, USA for further analysis. The report dated 14.09.2015 was received as per which Ricinine was not detected while Nicotine, Cotinine, Alprazolam, Lidocaine and Hydroxychloroquine were detected from the clothing of the deceased and Nicotine, Cotinine, Alprazolam and Lidocaine were detected from the bedsheet and the bed cover found in the bedroom. Cardiac Glycosides were not detected from the tissue and fluid sample while Alprazolam and hydroxychloroquine were detected. It was also stated that due to the limited volume and generally degraded nature of biological specimen/s submitted,

quantification of the identified drugs was not undertaken. The Radiochemistry analysis report of Nuclear Forensic Analysis Centre, USA dated 05.04.2015 was also received regarding the radiation/ radioactive levels which read that the levels of possible contamination were less than the values specified in the International Air Transport Association Dangerous Goods Regulations.

19. After perusal of the FBI report, the AIIMS Autopsy Board tendered its fourth opinion, which unanimously concluded that 'the cause of death in this case is poisoning. The circumstantial recovery of empty Alprax strip (i.e. 27 consumed tablets) and the report of FBI which shows the presence of Alprax in stomach and its contents, spleen, liver section, half of each kidney, blood sample, as well as urine wet clothing, bed cover and bed sheet confirmed the death is due to excessive ingestion of tablet Alprazolam.' The Autopsy Board also discussed the presence of lidocaine, which was reported to be detected and stated that this drug, if, administered intravenously could cause death. The Autopsy Board mentioned that if a person was having hypoglycemia, even a small dose of injectable of hypoglycemic agent like insulin, Albiglutide (Tanzeum) may lead to fatality and as such the report left open the possibility of hypoglycemic agent/ lidocaine to have caused the death and the medico-legal investigation remained inconclusive. A clarification was sought by the SIT vide letter dated 23.01.2016 from the AIIMS Autopsy Board but no further

communication was received leaving open the possibilities of either a suicidal death or a homicidal death as per the charge-sheet.

20. The investigating agency found the fourth opinion of the Autopsy Board, AIIMS dated 12.01.2016, still inconclusive so a letter was sent to the Director General of Health Services, Ministry of Health & Family Welfare, Government of India with a request to constitute a Medical Board comprising of experts from medicine and forensic medicine fields to provide definite opinion on the cause of death. A Medical Board of four doctors was constituted to assist the SIT in the investigation. The DGHS Medical Board Report dated 22.06.2016 stated that no definite opinion could be given regarding the cause of death in this case from the available facts/ information. However, death from lidocaine was unlikely in view of the presence of lidocaine on the clothing not in the viscera of the deceased as detected by FBI lab. The injection mark was due to putting cannula there during the treatment of the deceased. Further it was stated that no opinion regarding Alprazolam as the cause of death could be given in the absence of quantitative levels of drug in the viscera sent for analysis. Moreover, in the absence of definitive evidence of other chemical agents including insulin, it was not possible to comment regarding the said agents being the cause of death and ethyl alcohol levels in the exhibits were unlikely to result in death.

21. Request was again made to DGHS, New Delhi to re-convene a meeting of the Medical Board to be attended by experts from CFSL, CBI and FSL, Rohini apart from the SIT and the second meeting was convened on 09.08.2017. The Board and experts, after detailed discussion declined to tender 'an opinion upon opinion' and reiterated what was mentioned in the first report of DGHS that no definite opinion regarding the cause of death could be given in the case. In response to the queries, the Board provided reference material which stated that the actual oral LD 50 described in 'rats' was 331-371 mg/kg and that no comment was possible on the interaction in a person who was consuming negligible food, alcohol and smoking.

22. The e-mails and the social media accounts of the deceased and the accused were also examined. Some e-mails were found exchanged between the accused and MT and also between the deceased and MT which showed that there was a heated exchange between MT and the deceased over the matter of relationship of MT with the accused. As per the charge-sheet, it was clearly manifested in the said e-mails that the deceased had serious objections to MT being in regular communication and friendship with the accused and was very critical of MT in the e-mails and had warned her to stay away from the accused. There was a bitter spat between the deceased and MT on 15.01.2014 on Twitter which had left the deceased extremely furious and depressed. On the other hand

MT, in her communications with the accused was found showing a close interest in continuing their relationship and even assured the accused that she would not come between the existing relationship of the accused with the deceased. MT did not respond to the questionnaire which was sent to her. As per the case of the prosecution, the e-mails, even if they did not reveal anything incriminating, were certainly suggestive of mental torture of the deceased owing to the affair of the accused with MT. Further, during the course of investigation it had come on record that the deceased and accused were active on various social media platforms and as such processes were initiated to obtain the relevant information. However, only the basic account information/ meta data had been provided as against the sought after contents of chats/ messages of Gmail or BBM accounts in question.

23. During the course of investigation, polygraph tests of Narayan Singh, Bajrangi, Sanjay Dewan, R.K. Sharma, Sunil Trakaru and Vikas Ahlawat were carried out by experts of CFSL, CBI, New Delhi and as per the same, all the said persons were truthful in their answers. During investigation, 97 witnesses, including hotel staff and other relevant persons as identified on the basis of CCTV footage and CDRs of the deceased or others were interrogated.

24. It is further stated that during the course of investigation, it had been revealed that the deceased had been highly perturbed with the conduct of the

accused qua the Indian Premier League controversy and was on the fateful day, intending to call a press conference reportedly to expose the accused over the said controversy. Request was made to the Economic Offence Wing of Delhi Police to carry out a probe into the said angle so that its connection, if any, with the homicide being investigated, could be established. Subsequently, a detailed enquiry into the IPL episode was carried out by EOW Unit of Delhi Police and reference was made to the e-mails of the deceased including the e-mail dated 06.09.2013 sent to the accused wherein she had stated that she had covered for him, took the blame over IPL and asked him to please consider it (the monetary benefits) as a gift (from her). The EOW found that, prima facie, criminal liability under Section 13 (1) (d) of Prevention of Corruption Act read with other provisions of IPC was established against the accused but nothing which could have a direct bearing with the homicide being investigated could be found in the EOW enquiry. The EOW report was forwarded to ED. It is stated in the charge-sheet that subsequent investigation established that the IPL issue was one of the major factors behind the state of severe depression which ultimately led to the demise of the deceased.

25. It is stated that MT had visited India for the first time from 11.04.2013 to 15.04.2013 and stayed at Hotel Leela Palace on a complimentary basis. The visit and stay had been facilitated by the accused, who had recommended

complimentary stay for her and during the visit, MT had visited the office of the accused, then MoS, HRD, Government of India and met him there. She again visited India on 22.12.2013 and also visited the residence of the accused. It is stated that the accused and Ms. MT had been in touch over phone calls, messages and e-mails. It is the case of the prosecution that during the examination of the laptop seized from Vikas Ahlawat, the then OSD to the accused, text of two incriminating communications had been recovered which showed deep intimacy between the accused and MT. On the day of the incident i.e. 17.01.2014, the accused had been in touch with MT over messages and calls.

26. As per the charge-sheet, many persons were examined but none of them were found related to her death. The manner of the death was also examined and the only concrete fact that stood substantiated was that Alprazolam had been detected in all the visceral remnants of the deceased. Nothing indicative of a homicidal death had been found from the chance prints lifted from the scene of occurrence and the electronic gadgets which were sent for analysis. Further, the person who had admitted to have deleted a substantial amount of such non-retrieved data happened to be the son of the deceased who did it out of concern for the private life of the deceased which was of emotional and sentimental value to him. As such, the SIT concluded that homicide as the cause of death was not established by any logical construct. Therefore, the aspect of suicidal

consumption of Alprazolam, which might have acted either alone or in combination with one or more of the other chemicals/ compounds found in the viscera, to cause or hasten the death of the deceased, was explored.

27. A request was made to CFSL, CBI to constitute a Board of Experts to conduct a psychological autopsy upon the deceased. After detailed examination including having personal interviews with six witnesses, the CFSL, CBI Experts gave their Psychological Autopsy Report dated 10.11.2017 which concluded that it was unlikely that the cause of death in the case could be homicide. Reference was made to the fact that the deceased was distressed with her strained marital life and showed extreme emotional disturbance, mood swings, sleep disturbances, low intake of food that indicated the possible depression for a considerable period prior to the incident. It was stated that in view of the psychological autopsy findings, the death of the deceased was neither homicide nor suicide but the most probable mode of death could be the combination of her mental health, self injurious conduct and some unidentified biological causes.

28. During subsequent investigation, some highly incriminating evidence was brought to light which was provided to the Forensic Psychology Experts for a fresh look. Thereafter, the Report was received as per which the deceased was distressed and felt betrayed in her marital life due to intervention by MT. Based on the behavioral analysis of the last few days, it was stated that self-injurious

behavior was obvious; besides suicidal ideations were present in the deceased from some time prior to her death, which may have been the reason for her self-injurious conduct. It was stated that as such, the death of the deceased might be due to the cumulative effect of self-induced starvation, continuous smoking, coupled with biological causes. On the basis of the various reports, it was concluded that it was a case of suicidal death, caused by excessive ingestion of tablet Alprazolam.

29. Further as per the case of the prosecution, on the two nights proceeding the death, the deceased and the accused had bitter fights which, sporadically, turned physical. As per the Post-Mortem report, several injury marks were found on the body of the deceased. No injury whatsoever was found mentioned in the AIIMS medical papers on the body of the accused who had got himself admitted on complaints of uneasiness, palpitation on the very next day of the death. Though, as per the AIIMS Autopsy Board the injuries found on the body of the deceased were not contributory to her death, nonetheless they established physical assault on a person soon before her death. Further, the communication between MT and the accused continued unabated and the nature of the communication was beyond any official communication and was positively intimate. MT gave interviews to Indian media which were critical of the deceased and which had only added to the mental agony of the deceased.

Moreover, the insensitivity and apathy of the accused in leaving the deceased behind at Delhi Airport, while she was on a wheelchair, presumably to attend some function, spoke volumes of his treatment of an ailing wife. While in Hotel Leela Palace, the deceased had requested to call for a resident doctor from the Hotel but it was not paid heed to. With a state of mental health which was precipitous, physical health which was flailing and combined with stated 'self-injurious behaviour' and 'presence of suicidal ideations', the outcome was more or less obvious. It is stated that apart from the IPL misadventure wherein the deceased was kept completely in the dark, it was the issue of the relationship of the accused intimate in all senses of the term with MT that was causing acute mental agony to the deceased.

30. It is further stated that the accused kept willfully misrepresenting/ concealing the true state of affairs, so much so that the accused in an attempt to cover up his extra marital affair, had saved the number of MT by the name of 'Harish' so as to avoid detection by the deceased and kept insisting that he and MT were just friends/ acquaintances. Reference was made to the communication written by the accused addressed to MT retrieved from the hard disk seized from Vikas Ahlawat. It is stated that a reading of the said e-mail left no doubt that the accused was willfully concealing and misrepresenting facts which was crucial to the mental well-being of the deceased and thus, abetment by instigation was

made out. It was also borne out that the deceased loved the accused very much. It is the case of the prosecution that the conduct of the accused was willful as he squarely knew what he was doing and its impact on the mental as well as physical health of the deceased which was well documented and the messages exchanged between the accused and MT, in the critical period when the deceased was inching towards what would become the final decision of her life, added to the 'wilfullness' of the accused in continuing with his extra marital affair. It is stated that the conduct of the accused being cruel could be assessed by the e-mail written by the deceased and addressed to the accused, just 10 days before she died, in which she had stated that she did not care about the tests and she had no more will to live and all she prayed for was death. It is thus stated that there was sufficient evidence against the accused for the offences under Sections 498-A and 306 IPC.

31. After completion of investigation, charge-sheet was filed in the Court of the Ld. MM- 05, Patiala House Court on 14.05.2018. Matter was sent to the special designated court of Ld. ACMM-II (MPs/ MLAs cases), Patiala House Court on 28.05.2018. Cognizance was taken on 05.06.2018 and after supply of documents under Section 207 Cr.P.C., the matter was committed to the Court of Sessions and received by the Court of Ld. Special Judge, CBI-05, Patiala House Court on 20.02.2019. Thereafter, the matter was received by this Court by

transfer on 26.10.2020. An application under Section 91 Cr.P.C. was filed on behalf of the accused which was disposed of vide order dated 30.01.2020 of my Ld. Predecessor.

ARGUMENTS

32. I have heard Ld. Addl. PP for the State Shri Atul Srivastava and Shri Vikas Pahwa, Ld. Senior Advocate with Ld. Counsels, Shri Gaurav Gupta, Shri Syed Arham Masud, Shri Sumer Boparai and Ms. Raavi Sharma for the accused Shashi Tharoor. The Ld. Addl. PP for the State was also assisted by Shri V.K.P.S. Yadav, ACP Crime Branch, SIT Member and Shri Manishi Chandra, Addl. DCP. Arguments were also advanced through video-conferencing (CISCO Webex). Written submissions were filed on behalf of the State and also on behalf of the accused which I have perused as also the record.

33. The Ld. Addl. PP had argued that the law on how to proceed at the stage of framing of charge is well settled and as to what documents and evidence are required for cognizance and charge. Reliance was placed on the judgments of the Hon'ble Supreme Court in **Union of India** v. **Praful Kumar Samal & Anr.** **(**1979) 3 SCC 76 and **Sonu Gupta** v. **Deepak Gupta and Ors.** Criminal Appeal Nos. 285-287 of 2015 decided on 11.02.2015 and it was submitted that it was only when the material was absolutely insufficient or wholly insufficient that the

accused could be discharged. It was also argued that as per the settled law if two views are possible, the view which favours the accused is to be taken only at the stage of final judgment and the said principle is not applicable at the stage of charge. At the stage of charge, the view favouring the prosecution has to be given importance and only after the trial, the view favouring the accused could be taken. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Kanti Bhadra Shah and Anr.** v. **State of West Bengal** Appeal (Crl.) 5 of 2000 decided on 05.01.2000 wherein it was held that detailed reasons for discharge are required but for charge a detailed order is not necessary and on the judgments in **CBI** v. **Lalu Prasad Yadav** and **Bhawna Bai** v. **Ghanshyam and Ors.** (2020) 2 SCC 217. Reference was also made to the judgment of the Hon'ble Supreme Court in **M.E. Shivalingamurthy** v. **CBI, Bengaluru** Criminal Appeal No.957 of 2017 decided on 07.01.2020 and the judgment in **State of Orissa** v. **Debendra Nath Padhi** AIR 2005 SC 359 to contend that at the stage of framing of charge, the material adduced by the accused cannot be looked into. It was submitted that a look at Section 227 of Cr.PC would also show that the Court is not to rely on the material produced by the defence at the stage of charge. It was submitted that the accused could ask for discharge only if the material against him was insufficient for framing of charge absolutely and at that stage sufficiency of material for conviction was not required and the material must be wholly insufficient. It was submitted that even if there was a

strong suspicion, the trial would proceed. At the stage of charge, only the prima facie case is to be looked into and the court is not to marshal the evidence.

34. The Ld. Addl. PP further submitted that inquest proceedings were carried out as the death had taken place within 7 years of marriage. The first statement was recorded by the Ld. SDM, Vasant Vihar, New Delhi. Reference was made to the statement of Narayan Singh, who was the domestic help of the accused and the deceased. It was submitted that the material on record showed that the accused and the deceased were married on 2.10.2010. It was the third marriage of both the parties. They used to fight with each other and in Dubai for the first time, a big fight had taken place and as per the statement of Narayan Singh, the deceased had hit the accused and he had injury on foot. Even just prior to the death of the deceased, when the accused and the deceased were coming from Thiruvanthapuram they had a fight in the flight, the deceased had taken the phone of accused and she was crying till the door of the flight was opened. Her condition was bad and without a wheelchair, she could not move. It was submitted that the accused had stated that the house was under renovation so the deceased had gone to Hotel Leela Palace whereas per the report on record, the work had been completed some months back. The fight in the night had taken place as the deceased wanted to do a press conference and she asked Narayan

Singh to bring her white suit for her. In fact, they fought for 4 hours and the deceased had told Nalini Singh on the phone about the same.

35. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Gananath Pattnaik** v. **State of Orissa** (2002) 2 SCC 619 wherein the Hon'ble Supreme Court had elucidated the concept of 'mental cruelty'. Reference was made to Section 498-A IPC and its ingredients and that the present case was covered within the first part of the section. It was submitted that admittedly the accused was the husband of the deceased. As per the statement of the witnesses, the deceased was very happy at the time of her marriage but subsequently she felt cheated, betrayed by the accused and she had shown her desire for death i.e. she wanted to end her life (e-mail dated 08.01.2014) which was the result of continuous mental cruelty committed upon her by the accused. It was submitted that the concept of cruelty and its effect varied from individual to individual and depended on the social and economic status to which the persons belonged. Cruelty need not be physical and even mental torture or abnormal behavior could amount to cruelty and harassment. It was argued that the status of the parties had to be seen and it was submitted that the deceased had suffered mental torture at the hands of the accused. It was submitted that abnormal behaviour differed from person to person and here the deceased was subjected to abnormal behavior by a person of the stature of the accused. The deceased was a Canadian

national with sufficient worth. The accused is also a high profile person, an eminent orator having a brilliant academic background, a Member of Parliament (Lok Sabha) and had represented the country in the UN. The deceased, no doubt, had high expectation regarding his behavior. As per the report, the house already stood renovated so the question arose as to why the deceased preferred to stay at Hotel Leela Palace and there was no work was going on in the official residence of the accused in January, 2014. It was submitted that the same showed what was going on in the mind of the lady who preferred to stay in a Hotel and it showed that she was disturbed and that clearly amounted to cruelty. Reference was made to the statement of Ms. Nalini Singh to the Ld. SDM, who had stated that the deceased had called her in the intervening night of 16/17.01.2014, which could be taken as the last statement of the deceased before her death. She had stated that she was extremely ill and had cancer and the accused had never even once taken her to a Doctor or to a hospital, which was abnormal behavior covered under Section 498-A IPC. The said statement of Nalini Singh contained the last words of the deceased, which she shared with her close friend.

36. It was further argued that after the deceased and the accused landed at Delhi from Thiruvanthapuram, the deceased went to washroom and she spoke to her son and it showed that there was lack of communication between the accused and the deceased. The deceased was in a bad situation and needed maximum

care of her husband but the accused left her at the airport along with the domestic servant. It was argued that the wife was not well and if the accused was busy, it was his moral duty to arrange a vehicle for his wife to reach the residence and not to leave whereas the accused left the deceased stranded which amounted to cruelty under Section 498-A IPC. It was submitted that a conjoint reading of the statement of Narayan Singh who had accompanied the deceased and the accused from Thiruvananthapuram to New Delhi in the flight and family friend Sunil Trakaru clearly showed how the deceased was subjected to mental cruelty. The cousin of the deceased Renu Das had also stated about relation of the accused with another woman 'MT' which showed the mental state of the deceased. Even the witness Advaita Kala had stated that in her conversation with the deceased of 16.01.2014, the deceased was upset over the relation of the accused with 'MT' and the deceased had told her about the dispute in the plane. Reference was also made to the statements of Sunil Alagh, and Sunil Trakaru who had brought the deceased to the Hotel. Narayan Singh had stated that she had gone without a wheelchair while Sunil Trakaru had said that she was on a wheelchair and that the deceased was continuously smoking, which showed that she was mentally disturbed, sufficient to attract Section 498-A IPC. The Ld. Addl. PP placed reliance on the letter allegedly written by the accused to 'MT', which showed that he was close to 'MT' and the deceased had written on 08.01.2014 that she had no will to live and she prayed for death.

37. It was argued that if the ingredients of Section 498-A IPC were fulfilled, then Section 113A of the Indian Evidence Act would come into play which would lead to Section 306 IPC and the deceased had stated that she wanted only death. It was submitted that if it was shown that the accused had treated the deceased with cruelty, the court may presume that the suicide was abetted. Explanation to Section 113A Indian Evidence Act was important as it gave the same meaning to cruelty as ascribed in Section 498-A IPC. If the lady put her life in danger, then also it would amount to 'cruelty'. It was argued that there was no will left in the deceased to live and she had taken to smoking and had only taken coconut water. As per the Post-Mortem report, there were 15 injuries which were ante-mortem. Though the same were not contributory to death but they showed that physical cruelty was also committed upon the victim by the accused and thus made out the ingredients of Section 498-A IPC. The cause of death was stated to be poisoning. It was submitted that as per Section 221 Cr.P.C., if it was doubtful as to what offence was committed – homicide or suicide, the Court could frame charge alternatively and the death in the instant case could be homicidal or suicidal and charge could be framed for all the offences and every such offence could be tried together and in the instant case, charge for the offence under Section 302 IPC, alternatively under Section 306 IPC ought to be framed. It was contended that any lady could not share her husband with any other woman and she was left with no other choice. Reliance

was placed on the judgment of the Hon'ble Supreme Court in **Rajbir @ Raju and Anr**. v. **State of Haryana** decided on 22.11.2010 wherein it was held that charge for Section 302 IPC ought to have been framed along with the charge under Section 304 B IPC. It was argued that Sections 498-A IPC and 306 IPC are inter-related. While Section 113A Indian Evidence Act used the word '*may*' and Section 113B Indian Evidence Act used the word 's*hall*', the court could draw the presumption that suicide had been abetted. There could be two types of cruelty - mental or physical though the present was not a case of demand of dowry.

38. The Ld. Addl. PP submitted that the deceased was found dead on 17.01.2014, she was shifted to AIIMS. Post-Mortem was conducted by a Board of Doctors. As per the report, there were ante-mortem injuries though they were not the cause of death. There was a tooth bite which showed there was scuffle and she had been beaten and blunt force was used though cause of death was poisoning. Initially no FIR was registered as it was not clear if the deceased had taken the poisonous substance or it was injected or she was forced to take it. The subsequent medical opinions were also referred to. It was submitted that the accused had written a mail to the doctors. As per the medical reports, the deceased had no other problem and she was hale and hearty. She was ill just before her death but otherwise as per the medical record she had no permanent

problem. She was not diabetic and had normal healthy heart and had no disease prior to her death but she was disturbed on account of the e-mails between the accused and MT. As per the opinion dated 27.09.2014 of the Medical Board, it was not a normal death. It was argued that since it was a case of poisoning it could either be a case of murder or suicide. As per the 3rd opinion dated 29.12.2014, the deceased was neither ill nor having any serious disease prior to her death. It was not a natural death and death due to natural causes was ruled out. The cause of death was poisoning and the poisoning could be through oral route, however, injectable route too could not be ruled out. It was submitted that when specific evidence had come, the case was registered under Section 302 IPC. The bedsheet and bed cover, which were recovered from the room of the deceased had spots of bed wetting which indicated caffeine. It was submitted that a lady, who was otherwise hale and hearty had gone through suffering. Broken pieces of glass were found on the carpet, which showed that there was a scuffle.

39. It was argued that the initial burden was on the prosecution but then the onus shifted to the accused to explain the circumstances. The seizure memo with the charge-sheet showed that two used strips of Alprax were seized and 27 tablets had been taken. Reference was made to the statement of Dr. Rajesh Bhatnagar as per which the deceased had been prescribed Alprax on 16.01.2014,

that is the day before her death, which was not available with the Government Medical Centre. The medicines were given around 12:00 p.m and in the night she was found dead. Reference was then made to the statement of Sudershan Kumar Mehra who had stated that he had given the medicine on the saying of Shiv Kumar. The medicines were given at 12:00 p.m. and then Shiv Kumar came to the Hotel and 27 tablets were consumed by evening and in fact 60 tablets had been given. It was submitted that Shiv Kumar was working for the accused and without prescription, he had made a request for 120 tablets and 60 tablets were issued. Shiv Kumar had stated that he had been told by Narayan Singh to get the medicines. As per Yashpal Khurana, the medicines were taken in the name of the deceased on the saying of Narayan Kutty, who was also from Kerala and the accused is also from Kerala whereas the deceased was from Kashmir. It was vehemently submitted that when the deceased was hale and hearty, there was no need for her to start or to be given so much amount of Alprax. It was contended that at the stage of charge, suspicion was enough. It was submitted that how the tablets were procured and the quantity confirmed that it was not a natural death but it was due to poisoning as had been opined in the Post-Mortem report.

40. The Ld. Addl. PP submitted that the exhibits were sent to FBI, USA for further examination and opinion. After examination, FBI opined the presence of Alprazolam in different organs of the body of the deceased as well as on the

clothing of the deceased and bed cover used by the deceased and seized from the place of occurrence. The report of FBI was sent to Medical Board of AIIMS for definite opinion. Reference was made to the 4th opinion of the Autopsy Board dated 13.01.2016 as per which the death had been caused due to Alprazolam. It was argued that if the deceased was a teetotaler, then even taking a small quantity of alcohol would affect her. She was in a bad shape and had stopped taking anything solid and was only smoking and taking coconut water and in those circumstances, even a small quantity of Alprax could be fatal. In the report, it was stated how Alprazolam affects the most vital organs and moves in the body and there was urination on the bedsheet in huge quantity. Alprazolam was excreted through urine. There were also chances that the deceased was given some medicine intravenously. It was argued that efforts were made by the accused to mislead the investigation and he had sent an e-mail to the doctors. Injection mark was found on the deceased so there was possibility of her being injected with some medicine. Moreover, the prescription was written by a Child Specialist. It was argued that the accused was a Minister at the time of investigation and there was no reason why Dr. Mishra was consulted by the accused when he was only a Child Specialist. Reference was also made to the statement of Dr. Sudhir Kumar Gupta who was a part of the AIIMS Autopsy Board, who had stated about the Director of AIIMS being angry with him about the report which he had given.

41. It was further argued that the deceased was found dead at 07:30 p.m and the position of the deceased was not good. The quantity of Alprazolam could affect different persons differently. It was contended that the accused used to take Alprazolam whereas the deceased was not taking it. There was demand of 120 tablets of potency 0.5 mg whereas in the dispensary, tablets only of 0.25 mg were available. The same was indented and supplied on the card of the accused. Signs of alprazolam were found in different parts of the body. It was submitted that the fact that medicine was provided on that day created an adverse inference. The Ld. Addl. PP referred to the opinion given by the Board constituted by Director General of Health Services and the Psychological Autopsy report. It was submitted that the persons who constituted the said Board were not part of the Autopsy Board which had opined that the death was homicidal. It was contended that the Psychological Autopsy Report could not wipe out the findings of the earlier reports. The accused had stated before the Psychological Autopsy Board that the deceased had detached herself since about 3 months and that she was in the habit of keeping used strips and even wrappers of chewing-gum but no such wrappers were found and only the strips of that day were found so the said report was prepared under influence on the basis of hearsay input and it needed to be thrown out. In fact, the deceased was a social, jovial and a party person. It was contended that the accused had tried to divert attention and even earlier Dr. Sudhir Kumar Gupta had stated that the accused

had tried to interfere even with the postmortem report and he was superseded. It was argued that the accused had tried to interfere and influence the reports and there was no explanation as to if the deceased was in the habit of keeping used strips, why only three used strips on that day were found and no wrappers of previous days. It was submitted that the report was given on hypothetical basis. The report stated to refer to medical report for biological causes as per which the death was homicidal due to poisoning. Clarification was sought from the experts of the Psychological Autopsy Board and they finally opined that the death may be due to the cumulative effect of self-induced starvation, continuous smoking coupled with biological causes and also opined that suicidal ideations were present in the deceased some time prior to her death and she felt betrayed by her husband which might have caused her mental disturbance leading to self-injurious behavior and suicidal ideations.

42. The Ld. Addl. PP referred to the letter of the accused to MT recovered from the disk of Vikas Ahlawat, who was the OSD to the accused and his statement was also recorded. It was submitted that the said letter was clear indication of mental cruelty. The witness Vikas Ahlawat had clearly stated that the e-mails in his disk were of the accused and the data related to him only. As per the accused before the Psychological Autopsy Board, the deceased was keeping away from social life but the record showed that she was constantly

making calls. Reference was made to various calls made by her and received by her and that it showed that she was communicating with others whereas the accused had only sent a couple of SMS to the deceased even though he knew that her condition was not good. It was submitted that even the Psychologists had found that due to betrayal by the accused i.e. mental cruelty committed upon her, she developed suicidal ideations and self-injurious conduct and as per the definition in Section 498-A IPC, this would be willful conduct which was of such nature as was likely to drive the woman to commit suicide, to cause grave injury, danger to her life, limb or health (whether physical or mental of the woman). It was argued that it was evidently clear that due to the cruelty committed upon her, she had stopped taking food which had been described by the psychologists as self-induced starvation which would ultimately cause serious effect on her health. She was an educated lady, entrepreneur and must have the knowledge of the repercussions of starvation on her health and as such, by any stretch of imagination, it could not be said that it was not a case of Section 498-A IPC.

43. It was submitted that the last report of the Psychological Autopsy of CFSL dated 09.05.2018 specifically stated that the underlined biological reason for the death may be inferred from the reports submitted by the medical board doctors. Thus, the report had to be read simultaneously with the reports of the

medical doctors, not in isolation. The medical doctors had categorically opined that the death was homicidal, due to poisoning and not due to natural cause. It was submitted that all the medical reports, if read conjointly with oral evidence, circumstantial evidence led to one conclusion that it was either suicidal death or homicidal death. It was contended that the present was a glaring case of mental cruelty wherein a woman of a strong personality ended her life due to mental cruelty committed upon her by her husband and as such offence under Section 498-A IPC was made out and the accused deserved to be charged. Reference was made to the mail of the deceased dated 08.01.2014 that she only wanted to die and the statement of Colleen Lobo with whom the deceased had interacted last and she had replied to the investigating agency in mail stating that the deceased loved the accused and her son immensely and that she would never commit suicide.

44. Alprazolam in sufficient quantity had been found and it was submitted that there was more than sufficient evidence for framing charge against the accused for the offences under Section 498-A IPC and Section 306 IPC and as per the provisions of Section 221 Cr.P.C. alternate charge under Section 302 IPC, as the doctor had specifically opined that poisoning through injectable route could not be ruled out. It was also submitted that the quantity of evidence was not relevant and it was the quality of evidence, which was material. It was

submitted that in view of the material collected during the investigation including electronic evidence in the form of mails of accused written to female friend which was a cause to feel betrayed by the deceased and her own mail wherein she had shown her desire to die, besides other material available on record, the accused was liable to be charged under Sections 498-A, 306 IPC, in the alternative under Section 302 IPC. Reliance was also placed on the article by Tulishree Pradhan, "Mental Cruelty: An Extent of Alchemy of Feelings?" published in Indian Journal of Law and Human Behaviour Volume 3 Number 1, June, 2017 and on the judgment of the Hon'ble Supreme Court in **State of West Bengal** v. **Orilal Jaiswal and Another** (1994) 1 SCC 73.

45. Per contra, the Ld. Sr. Advocate for the accused had argued that the ingredients of offences under Section 498-A IPC and Section 306 IPC were completely missing in the case of the prosecution. There was only one view which was possible in this case as it was neither a case of homicide nor suicide but a figment of imagination of the IO and in fact the IO himself had stated that no case was made out. It was submitted that as per the settled law, the charge-sheet is the opinion of the IO on the basis of material collected during investigation and it was not binding on the Court. The Court had to see if there were sufficient grounds for proceeding against the accused and in the instant case no ingredient of offences under Sections 498-A and 306 IPC had been made

out. Even the IO had said in the charge-sheet that Section 302 IPC was not attracted. It was submitted that the present was also not a case where two views were possible. There was only one view that the accused was innocent and the charge-sheet itself proved the innocence of the accused and there was no need for trial. It was contended that in fact the matter was going towards closure but ultimately an erroneous view was formed and the charge-sheet was filed against the accused. It was submitted that as per the settled law, all the ingredients of the offences should be made out and even if one of the ingredients was missing, it would be a case of discharge. The prosecution itself had accepted that the present was not a case of physical cruelty but at the most of mental cruelty and the prosecution wanted to invoke Section 113A presumption against the accused. Even Section 306 IPC was not vehemently argued as the prosecution could not prove that it was a case of suicide and there was positive evidence on record to show that it was not a case of suicide. It was submitted that as per the well settled law, before the presumption under Section 113A Indian Evidence Act could be invoked, it was for the prosecution to establish the foundational facts whereas in the instant case, the prosecution had not proved the cause of death or that it was homicidal or suicidal and at least it had to be established that death had occurred due to suicide.

46. Reliance was placed on several authorities under Section 306 IPC and it was submitted that in all the cases the cause of death was established, suicide was established and that the accused had instigated the suicide. However, in the instant case there was positive evidence that it was neither a case of homicide nor suicide. There was also no specific evidence that the accused had relations with MT and there were judgments wherein the accused had been acquitted of the offence under Section 306 IPC where the allegations were regarding extra marital affairs and in some of the cases, the accused had even been discharged. It was submitted that the post mortem report was received after three days and the doctors had gone into circumstantial evidence outside the Autopsy Room which was not their job and they had taken cognizance of material, which was outside the Autopsy Room and had stated that the circumstantial evidence showed that it was a case of poisoning based on recovery of two empty strips of Alprax. However, it was not for the doctors conducting the post mortem to have done so. In fact in his statement under Section 161 Cr.P.C., Dr. Pooniya, who was a member of the Autopsy Board had submitted that he had never given a report of poisoning without the FSL report on viscera whereas it was done in the instant case. The Ld. Sr. Counsel for the accused referred to the various medical documents/ reports which were on record and submitted that the prosecution had admitted that the deceased was hospitalized from 12th to 14th January, 2014 in Kerala and had themselves filed all the test reports, statements of doctors and it

was their own case that she was sick, she boarded the plane on a wheelchair, when she came out of the plane she was on wheelchair and even in the corridor of the hotel she was on a wheelchair. The documents showed that she was not a healthy person and the documents showed her medical condition that she had fever, fainting episodes, she was suffering from lupus and many witnesses had stated that she was suffering from lupus. Moreover, she had auto immune disease and the ANA test had also come positive. Reports of some tests were awaited at the time of her discharge from the hospital in Kerala. All this showed that she was not normal.

47. It was pointed out that when the accused and the deceased arrived at the airport, the accused was supposed to go for a book launch function of the daughter of Veerappa Moily so the accused had left the airport and then the deceased had called a friend and gone to the Hotel. It was contended that the deceased had died on 17.01.2014 whereas the post mortem was conducted on 18.01.2014. Reference was made to the statements of doctors who were Members of the Autopsy Board. There was reference to an injection mark in the post mortem report and it was submitted that same was in view of the cannula, which was put when the deceased was hospitalized in Kerala. As per the Autopsy Report, she had died around the afternoon of 17.01.2014 and Autopsy

Report was signed only on 20.01.2014 and the opinion given was beyond the autopsy.

48. The Ld. Sr. Counsel had further argued that as the death had taken place within seven years of marriage, inquest proceedings were conducted by the Ld. SDM. Reference was made to the email of Dr. Rajiv Bhasin dated 26.01.2014, wherein he had stated about examining the deceased about one month prior. It was submitted that mostly the opinion on the Post-Mortem report was kept reserved till the viscera report was received but in the present case, it was opined to be a case of poisoning and mention was made of Alprazolam. Reference was made to one letter of Cooper Health Clinic which was also an opinion of an independent doctor and as such, it was submitted that there were two opinions of two independent doctors available. It was submitted that till August, 2014 the AIIMS doctors were never called on again. The chemical examination reports on the viscera were received and the same did not show the presence of Alprazolam or any other poisonous substance and only caffeine was found. Alprazolam was found only in the tablet which was recovered but nowhere in the body of the deceased or on the bedsheet. It was submitted that before giving the opinion in the Post-Mortem report as to the cause of death, the doctors should have waited for the forensic report but that was not done and nothing was found even in DNA profiling which could be termed as incriminating. Nothing suspicious and

unnatural was found in the body or outside. Even the FIR was not registered till then.

49. The Ld. Sr. Advocate referred to the letter written by AIIMS Autopsy Board to SHO and argued that the AIIMS Autopsy Board had then started a parallel investigation as they had given a speculative opinion and thereafter sought to justify the same. The chemicals which were found in the report were only salts of various medicines and none of them were poisonous. The Autopsy Board had written a letter to the SHO asking for circumstantial evidence which was not their job. Another FSL report was of August, 2014 which also did not mention anything suspicious or unnatural or poisonous and the blood showed the presence of ethyl alcohol. The garments showed presence of nicotine and that was because the deceased was smoking cigarettes and only the tablets contained Alprazolam. The IO had asked for another opinion though the nature of the injuries was already mentioned in the Post-Mortem report which showed that even the IO did not believe that the actual cause of death had been mentioned in the original Post-Mortem report. In September, 2014, the subsequent medical opinion was given and all the documents including of the treatment in Kerala were supplied to the Autopsy Board. It was contended that the doctors had given their own interpretation as they only wanted to prove that it was a case of poisoning which was not the job of the doctors and their job was only to give the

autopsy report. Again it was not mentioned how it was a case of poisoning and which poison was used and no specific poison was pointed out. It was submitted that as per the well settled law, the prosecution had to establish the cause of death but the cause of death was not established even till September, 2014. It was argued that for no medical opinion, circumstantial evidence was necessary. It was submitted that the doctors were only trying to justify the Post-Mortem report which was given and they were in fact guiding the investigation though the material on record did not point out the specific poison. The IO chose not to challenge the authority of the doctors who even sought CDRs with which the doctors had nothing to do. However, the investigating agency itself sought the opinion of another Board.

50. It was further argued that there was no complaint by any friend or any relative of the deceased to make out an offence under Section 498-A IPC which was also a figment of imagination of the IO. There was another chemical examination report of December, 2014, as per which no poison was found in the body or around the body and the said report was placed before the Autopsy Board. Yet the Autopsy Board stated that the death was caused by poisoning, which was contrary to the FSL report, chemical analysis and viscera report. It was stated by the Autopsy Board that the deceased was a normal, healthy individual though the discharge summary of KIMS was there which showed

otherwise and as such, the said report was liable to be rejected outright. It was still maintained by the Autopsy Board that it was a case of poisoning though the scientific evidence was to the contrary. The Medical Board even went to the spot and after the said report, a case under Section 302 IPC was registered. At that time there were already three reports from the AIIMS Autopsy Board and four chemical examination reports. Despite it having been found that the injection mark was due to the cannula, which was inserted while the deceased was admitted in the hospital in Kerala, it was still stated in the report that the poison could have been injected. Thereafter, the samples were sent to FBI Lab and in the FBI report traces of Alprazolam were found after which the investigating agency again approached the AIIMS Autopsy Board. On 12.01.2016, a fourth report was given but therein also, the doctors refused to give a final report and sought more documents. As such, till the year 2016, the cause of death was still not established.

51. The investigating agency, thereafter, decided to approach the Director General of Health Services (DGHS) to constitute an independent Board to ascertain the cause of death as the fourth report of the Autopsy Board had not given the exact cause of death and the Board was asking for original documents in serial number. It was submitted that till then there was no cause of death so no case was made out and closure report should have been filed by the investigating

agency but then it sought the opinion of an independent Board. None from AIIMS was included in the said Board. The IO wrote to the independent Board seeking their opinion as to the cause of death and the Board was apprised about all the facts of the case and even material collected during investigation was supplied. Whether the death could be accidental was also being investigated so no definite cause of death was still there. The Autopsy Board had initially stated that lidocaine could also be the cause of death but lidocaine was found only on the bedsheet and not in the body. Moreover, the FBI Lab only found traces after diluting the samples whereas the Indian Labs had not found Alprazolam. The independent Board did not give any definite opinion but clarified all the aspects. After the said report, again the SIT should have filed closure report but the SIT, still did not conclude the investigation and then the SIT sought another opinion from the Board and at that time, even FSL experts were added to the Board who had applied their mind and had stated that they could not give any conclusive or definite opinion. Reference was made to the literature on the effect of Alprazolam on rats and it was submitted that if 975 tablets of 10 mg were given to a rat, it would die and in the instant case, at least twenty thousand tablets would be needed before they could have resulted in the death of the deceased. As per the case of the prosecution, the deceased had taken 27 tablets and it was absurd as to why the deceased would leave 3 tablets. Moreover the tablets were of potency of 0.5 mg. However, still the case was not closed though there was no

conclusive opinion by the doctors and then the SIT decided to get Psychological Autopsy done though, there was no complaint from anyone regarding torture of the deceased.

52. It was submitted that it was for the IO/ investigating agency to decide whether the offence was made out or not but here the onus was sought to be put on the medical board. The Psychological Autopsy Board was constituted in September 2017 and it gave the report in November 2017. The said Board ruled out death by homicide or suicide and as the cause of death was not established Section 306 IPC was not made out in the present case. It was contended that Dr. Rajiv Bhasin had already explained the cause of death in his e-mail. It was submitted that from 2014 to 2017, no cause of death was established and even the Psychological Autopsy report had exonerated the accused. Senior Scientific Officers and Doctors were part of the said Board but nothing came out against the accused. Thereafter, nothing happened for a considerable time. On 08.05.2018, the SIT again wrote a letter to the Psychological Autopsy Board but even in their final opinion, the Board did not say that it was a case of suicide and as such the death could have been accidental. There was nothing to show that there was any intention to commit suicide and suicide could not be without intent. It was submitted that the medical documents did not show homicide or suicide. It was vehemently argued that the test to be applied was whether, if the

deceased had survived, would there have been a case of attempt to commit suicide against the deceased, whereas in the instant case there was no conclusive cause of death or to show that it was a case of murder.

53. The Ld. Sr. Advocate for the accused had submitted that there was a positive finding in the present case by the Investigating Agency that it was neither a case of homicide nor of suicide and the conclusion drawn by the SIT on the basis of which the charge-sheet was filed, was contrary to the evidence which was collected. Reference was made to the statement of Dr. Shashank Pooniya, who was one of the Members of the Autopsy Board and who had stated that there was no pressure on him from anyone during the post mortem. He had also stated that the notes, which were prepared during the autopsy were destroyed and pertinently he had stated that he had never given any opinion of poisoning without consulting the FSL report. However, in the present case, the cause of death had been stated to be poisoning in the Post-Mortem report on the basis of circumstantial evidence and not on the basis of the post mortem. Reference was again made to the statement of Dr. Rajiv Bhasin, who had last visited the deceased on 04.12.2013 and had also sent an email giving his opinion on the cause of death and which was available on record but even then charge-sheet was filed though it should have been a case of closure. It was submitted that it was settled law that if it was not a case of suicide or homicide or the cause

of death was missing, then no case was made out. Reliance was placed on the judgments of the Hon'ble Supreme Court in **Baijnath & Ors.** v. **State of Madhya Pradesh** (2017) 1 SCC 101; **Akula Ravinder & Ors.** v. **State of Andhra Pradesh** 1991 (2) SCC 99 and **Smt. Swaraj & Anr.** v. **State of Madhya Pradesh** 2017 SCC OnLine MP 112. It was submitted that for the offence under Section 306 IPC to be made out there has to be positive evidence of suicide which was not so in the present case.

54. It was further submitted that in the present case there were even no allegations of the offence under Section 498-A IPC and reference was made to the statements of relatives and persons who were close to the deceased. It was argued that there were 10 witnesses who were relatives and friends and they had not stated anything about cruelty or harassment or even against the accused and even the domestic help had not stated anything against the accused. Further a number of witnesses had stated that the deceased had told them that she was unwell and she was suffering from lupus. In the year 2012-13, the deceased had gone to France to consult a doctor. It was contended that even the reliance which was placed by the prosecution on procurement of Alprax on 16.01.2014 and 17.01.2014 was of no avail and irrelevant as it was stated that the same had been collected and the concerned person reached the Hotel at only 05:30 p.m. on the date of the incident. Further, the son of the deceased Shiv Menon in his

statement had stated that the deceased had been taking Alprax for many years. He had also stated that as per the doctor, who had conducted the post mortem, there was no poisoning but thereafter the doctor had stated in media about it to be a case of poisoning. It was argued that there was no complaint by the family members of the deceased against the accused and the son was the closest to his mother but even he had not stated about any cruelty and there was no question of any demand of dowry. In fact the son had categorically stated that the accused could not have murdered his mother. Reference was then made to the statement of the brother of the deceased Shri Aashish Dass and of the other brother Shri Rajesh Pushkar who had also stated that the accused could not harm the deceased. Reference was then made to the statement of Rohit Kochhar that the deceased had gone to the lawyer and told him that she did not have much time. The statement of Sunil Trakaru, who had joined the deceased at the airport was also relied upon and it was pointed out that he had stated about the joint statement of the deceased and the accused on Twitter on 16.01.2014 that everything was fine between them and the accused had written a tweet which was shared by the deceased about everything being fine between them.

55. Statement of Advaita Kala was then referred to and it was argued that she had stated about the deceased telling her that she had lupus and that she was worried about her reports. Advaita Kala had also stated about the joint statement

of the deceased and the accused that the things between them were settled and there was no allegation in her statement of cruelty by the accused. It was pointed out that Rezina Mazhar was with the deceased in the hospital in Kerala and in fact the deceased had changed her dates of treatment in the hospital to ensure availability of Rezina Mazhar but even she did not utter a single word about cruelty by the accused, though, she was a very close friend of the deceased. Even the domestic help Narayan had not stated anything against the accused or about any alleged mistreatment by the accused of the deceased. Even, there was nothing in the statement of Sunil Alagh or Rajat Rai and in fact the latter had stated that the accused never argued with the deceased when she was in an aggressive mood. Sameer Saran had stated that the deceased had told him that she had lupus and T.B. and was going to die. There was no complaint whatsoever of physical or mental cruelty of any kind. It was submitted that to bring the case under the definition of cruelty under Section 498-A IPC, it was necessary that the cruelty should be of such an extent as was likely to drive the woman to commit suicide and there should be willful intention whereas in the instant case, no cruelty had been alleged by any of the witnesses. There was no incident where the accused could be held liable for cruelty and the evidence on record and definition of cruelty under Section 498-A IPC did not coincide and in fact there was even evidence that it was not a case of suicide. There was no direct evidence of cruelty and evidence to the contrary was available.

56. The Ld. Sr. Counsel had further argued that even for abetment, which was covered under Section 107 IPC, it was necessary that the accused should have instigated or intentionally aided the commission of an act, which was not so in the present case. *Mens rea* had to be established to show abetment, which was not so. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Gurcharan Singh** v. **State of Punjab** (2017) 1 SCC 433 and on the judgments in **S.S. Chhenna** v. **Vijay Kumar Mahajan and another** (2010) 12 SCC 190, **Amalendu Pal @ Jhantu** v. **State of West Bengal** (2010) 1 SCC 707 and **Mangat Ram** v. **State of Haryana (**2014) 12 SCC 595. It was submitted that even if the witnesses whose statements had been recorded were not cross-examined, there was no evidence whatsoever against the accused.

57. The Ld. Sr. Advocate for the accused referred to various judgements and more particularly to the judgment in **Pinakin Mahipatray Rawal** v. **State of Gujarat** (2013) 10 SCC 48 wherein it was held that having an affair with someone or evidence of extra marital affair did not amount to physical or mental torture. It was submitted that in the charge-sheet in the present case, there was reference to a letter which was in fact a draft letter, which was recovered from the computer of someone else and there was no evidence to suggest that the said letter was sent to anyone, received by anyone or replied by anyone. None of the messages, which were seized, even if they pointed to an extra marital affair,

would be enough to constitute cruelty as per the said judgment. It was also submitted that the friends and relatives of the deceased had stated that she was strong and she could not have committed suicide and the prosecution had not even established that the deceased committed suicide so there was no question of abetment of suicide. In the said judgment, extra-marital relationship was established and suicide note was also there, yet it was held that it was not a case that would attract Section 498-A IPC.

58. The Ld. Sr. Counsel had then contended that as per the prosecution the statement of Nalini Singh contained the last words of the deceased and could be regarded as a dying declaration. Under the Indian Evidence Act, all oral evidence was admissible which was direct, which could be seen/ heard/ perceived and even the evidence of experts was admissible and beyond that was hearsay evidence. Section 32 Indian Evidence Act was an exception to the rule of hearsay but it was applicable only if the deceased herself spoke of the cause of death. Section 32(1) of the Indian Evidence Act gave 8 instances where the statement was admissible as dying declaration. Nalini Singh's statement did not talk of the cause of death but of other circumstances and as such it would not be material for the offence under Section 498-A IPC. It was contended that even if the statement of Nalini Singh was accepted as it is, it was hit by Sections 60 and 32 of the Indian Evidence Act so it was not admissible. Moreover, the same also

referred to the illnesses of the deceased. It was argued that none of the statements of the witnesses which were recorded could be regarded as admissible even for the framing of charge as they were only hearsay. It was argued that the prosecution had not been able to show suicide and the same could not be presumed but had to be established. However, in the instant case, all that the prosecution could establish was that it was an accidental death. Reliance was placed on the judgment in **Bhairon Singh** v. **State of MP** (2009) 13 SCC 80**.** It was asserted that if the deceased had given the statement, it becomes relevant but here the source of information was a third party. Moreover, Section 32 of the Indian Evidence Act came into play only where death was involved such as in a case of suicide or murder but it would not apply in case of offence under Section 498-A IPC and in that case, it would become hearsay evidence. It was stated that it was the settled law that for framing charge under Section 498-A IPC, the statement cannot be used but for the offence under Section 302 IPC, if the statement throws light on the cause of death, then it would be admissible and in the present case, the prosecution had relied on the statement of Nalini Singh for the offence under Section 498-A IPC. It was contended that if evidence was totally inadmissible, it was liable to be totally discarded and the argument of the prosecution was fallacious and suicide could not be presumed. It was submitted that inadmissible evidence could not be used for framing charge. Reliance was placed upon various judgments and it was

submitted that the statements relied upon by the prosecution for the offence under Section 498-A IPC were inadmissible.

59. It was further argued that as per the prosecution, the deceased had died due to some substance being injected but the statements of the doctors were there which showed that the only mark was due to putting of cannula. It was reiterated that the Alprax tablets were indented on 16.01.2014 and were delivered in the evening of 17.01.2014 by which time the deceased had already expired. K. Narayan had stated that he had reached at 5.30 p.m. in the evening of 17.01.2014 so there was no link to show that Alprax was procured and given to the deceased. Further the investigating agency had got polygraph tests done to rule out the involvement of any other person and nothing relevant had come out in the said tests. The witnesses Narayan Singh, Bajrangi, Sanjay Dewan, Sunil Trakaru and Vikas Ahlawat had not stated anything which could give rise to suspicion so all were speaking the truth.

60. It was also asserted that the argument advanced regarding Section 302 IPC was preposterous and beyond the charge-sheet and beyond the material on record and beyond the opinion of the IO and the SIT. It was stated in the charge-sheet itself why homicide was to be excluded and why Section 302 IPC was not made out. It was contended that everyone from the hotel had been examined and nothing suspicious was found. The accused had left the hotel at 6.30 a.m. and

came in the night so there was no question of any alternate charge being framed under Section 302 IPC. There was a positive observation by the doctors that it was not a case of homicide and the Psychological Autopsy Report also stated that it was not a case of homicide. It was submitted that the medical opinion was against the arguments advanced on behalf of the prosecution. It was stated that there was ample evidence to show that the death was accidental as shown by the communication of the IO dated 27.02.2016. The Reports of the AIIMS Autopsy Board were inconclusive, the 2 Reports of the Board constituted by DGHS had not opined it to be a case of homicide or suicide and even the Reports of the Psychological Autopsy Board had not stated it to be a case of homicide or suicide which suggested that it was a case of accidental death. It was submitted that the prosecution had to rely on the evidence which was on record and the IO himself had stated that he was not relying on the reports of the AIIMS Autopsy Board so he had requested for a Board to be constituted by the Director General of Health Services. It was asserted that a holistic view needs to be taken and the theory of death due to Alprazolam was irrelevant as the deceased had not died because of it. It was submitted that if it was a case of accidental death, suicide could not be presumed merely because the deceased had suicidal ideations. If there was no suicide, there could be no abetment and under Section 107 IPC, there had to be a positive act of aiding or instigation. However, there was no evidence in the instant case that the accused had instigated or aided or conspired.

61. The Ld. Sr. Counsel then addressed the argument advanced on behalf of the prosecution that only the Post-Mortem report should be relied upon and the other reports should be discarded and submitted that the Post-Mortem report was released three days after the death of the deceased. It was merely a tentative observation of the Autopsy Board and the opinion of the doctors was found wrong by 4 Forensic Lab Reports dated 07.03.2014, 13.03.2014, 20.08.2014 and 23.12.2014 as per which nothing suspicious was found in the body of the deceased. It was contended that as per the prosecution, 95% of the material on record should be ignored which was in favour of the accused and the charge should be framed on the basis of 5% material which could not be done. The FBI Lab Report found only traces of Alprazolam so it was no help to the investigating agency. It was stated that more had been argued in the court than was there in the reports and the statements under Section 161 Cr.P.C. The prosecution had argued that suicide would be established during trial but the theory of the doctors was also that it was an accidental death. The prosecution had argued that the accused was responsible for the mental health of the deceased but the same had been answered in the various reports and the same would not change during the course of trial. It was contended that from the last opinion, the prosecution wanted to cull out the cause of death but the said opinion was also a reiteration of the 3rd category that the death was accidental and it was not open to the prosecution to replace its opinion. It was submitted

that the ultimate state of mind of the deceased could be seen from the Twitter handle which was in the public domain and the electronic record was not in the control of the accused and was unimpeachable. There was not a single word therein to show that the deceased was upset with the accused or critical of him and a joint statement was made by the deceased and the accused on 16.01.2014 that all was well and in every marriage, there are ups and downs.

62. The Ld. Sr. Counsel submitted that as regards the contention of the prosecution that the accused had tried to influence the Post-Mortem report, Dr. Sudhir Gupta had stated that he was never influenced and that he had given the right opinion so it could not be said that the accused was trying to influence the doctors. Further, it was argued by the prosecution that CFSL had not given the correct report due to the influence of the accused but by the time the report came, elections had already taken place and the government had changed and the reports were post-elections. The reports had stated that Alprazolam was not found and FBI Lab report had also stated about only traces being found. It was submitted that innocuous incidents had been referred to by the prosecution to try and make out a case under Section 498-A IPC but even Narayan Singh or Nafisa Ali had not stated about cruelty of such type as would attract Section 498-A IPC. For offence under Section 498-A IPC to be made out, the magnitude of the cruelty had to be very high and even the messages which were exchanged did

not bring the relationship in the category of cruelty to attract Section 498-A IPC. It was submitted that no charge was liable to be framed under Sections 306 or 302 IPC and there was no direct evidence to attract the offence under Section 498-A IPC. No family member stated anything against the accused and the statements of the remaining witnesses were inadmissible as they were hit by Section 32 of the Indian Evidence Act. Moreover Section 113A of the Indian Evidence Act could be seen only if the foundational facts were shown by the prosecution which was not so. It was pointed out that the deceased passed away in 2014 and it was a case of no evidence and a baseless case in which no charge could be framed and the material on record only showed that the accused was innocent.

63. It was also submitted that the judgments relied upon by the prosecution did not take the case forward for the State at all and only reiterated the age-old principle of the duty of the Courts at the stage of framing of charge. It was stated that in the present case, the material placed on record by the State did not even prima facie show that a case against the accused was made out. Further the State had relied upon the decision in **Gananath Pattnaik** (supra) but the said decision supported the case of the accused and not the State. In the said case, the Hon'ble Supreme Court had found that there was no legal evidence to connect the accused with the commission of the offence under Section 498-A IPC and in fact

held that a statement made by the deceased to her sister would be hearsay and inadmissible in evidence for an offence under Section 498-A IPC. It was concluded that not even a prima facie case existed against the accused which would justify framing of charges and it was prayed that the accused be discharged.

64. The Ld. Addl. PP in rebuttal had reiterated the arguments advanced as to when the accused could seek discharge and submitted that the judgments relied upon by the Ld. Sr. Counsel for the accused did not apply to the present case. Reference was made to the statement of Narayan Singh before the Ld. SDM wherein he had stated that the accused and the deceased had a fight and he was not a hearsay witness but an eye-witness. It was asserted that the statements of the witnesses were not hearsay but in the presence of eye-witnesses, the deceased was subjected to physical cruelty which would give rise to grave suspicion. As regards the statements of the brothers, they could not say how the deceased had died and only stated about her nature. Reference was again made to the mail of the deceased wherein she had stated that she did not care about the tests and she was only left with the will to die. Further, the Psychological Autopsy Reports showed that she was distressed, felt betrayed, was fasting, avoiding food, had fainting like sensation due to sedatives used, was smoking continuously and had self-injurious behavior and suicide like ideations were

present due to feeling of betrayal. Days before her death, she was distraught and felt betrayed by her husband. It was submitted that Section 498-A IPC covered even those situations which could drive a woman to cause grave injury to herself or endanger her life. It was stated that the deceased had started smoking though she did not smoke and had stopped eating so it was dangerous to health. Cruelty could be 'mental' or 'physical' and she had developed suicidal ideations. It was argued that even if the statement of one person was trustworthy, then charge could be framed and conviction could be awarded. It was reiterated that if offence under Section 498-A IPC stood proved, then Section 113A of the Indian Evidence Act would come into play and suicide would stand established.

65. The Ld. Addl. PP referred to the statement of Nafisa Ali. It was contended that if the wife was not well, the accused would be conscious of the same. Reference was made to the compilation of mails which was retrieved and there was a mail by her from Dubai which reflected betrayal by the accused. It was asserted that the deceased had so much devotion for the accused that she left her son behind and what the accused did to her amounted to mental cruelty and he mentally abused her. The IO had produced details of the financial status of the deceased which showed that she was very well-off. The record also showed that she was threatened. It was contended that the circumstances do not lie and in her mail dated 08.01.2014 she had stated that she prayed for death. The accused

started using the word ‘Harish’ for MT. It was also submitted that the accused had intervened to help the son of the deceased so the son had given statement in favour of the accused. It was argued that the accused had tried to come in between the preparation of the Post-Mortem report and tried to give a different dimension to the case and on his behalf, Abhinav Kumar asked for copies of the PM report. The letter of Dr. Bhasin was also meant to influence the doctors as the accused wanted a favourable report. It was asserted that the present was not a case of Section 107 IPC but was covered under Section 306 IPC. Due to the mental cruelty caused to the deceased, her health became bad and she had no ailments or issues but whatever problems developed were on account of betrayal by the accused.

66. The Ld. Addl. PP further submitted that it was argued on behalf of the accused that the death was accidental but nowhere in the reports, it was stated that the death was accidental. The medical reports were conclusive that the cause of death was poisoning and at this stage of framing of charge, only grave suspicion was needed. Even after such a long period, FBI Lab had detected the presence of Alprazolam though the samples would have deteriorated over time. The CFSL did not carry out proper tests as the accused was a Minister in the Central Government at that time. It was asserted that this was not a case of wholly insufficient material as FBI Lab had found traces of Alprazolam in the

body and around the body of the deceased and death due to natural causes had been ruled out. It was argued that it could not be ruled out that Alprazolam could be injected. The Autopsy Board members had visited the site of the incident several months after the incident and they had found several broken pieces of glass which showed that scuffle had taken place. As per the Post-Mortem Report, injuries were present on the body of the deceased caused by blunt force and the same were not the result of the medical condition of the deceased. It was submitted that the defence had relied on the statement of Dr. Pooniya but Dr. Pooniya had not disagreed with the Report and he did not say that he was forced to sign the same. He was not the head of the Board and the report did not say that 'only' on the basis of circumstantial evidence, the cause of death had been opined to be Alprazolam.

67. It was contended that the argument of the defence that for the offence under Section 306 IPC to be made out, the ingredients of offence under Section 309 IPC had to be shown was preposterous and there was no document to show that the death of the deceased was a natural one. As per the Psychological Autopsy Report, the death of the deceased was the cumulative effect of self-induced starvation and other factors and as per the report of the medical doctors, it was an unnatural death due to poisoning which may have been taken through the oral route or may have been injected. It was submitted that all the answers

could not be given by the IO and the court had to see all the reports. The PM Report did not say that it was a natural or an accidental death. It was submitted that as per the well-settled law, the court was not bound to accept the conclusions of the SIT as the court was the master of the facts and had to see the same as per the settled law.

DISCUSSION

Considerations for framing of charge/ discharge

68. Regarding the considerations to be kept in mind while framing charge, the Ld. Addl. PP for State had submitted that if there was a strong suspicion, the trial would proceed. At the stage of charge, only the prima facie case is to be looked into and the court is not to marshal the evidence and meticulous examination of the material on record is not required and the court is required to examine the question only prima facie. Reliance was placed on the judgment of Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra)** wherein the considerations to be kept in mind while framing charge have been laid down as under:

> *"(1). That the Judge while considering the question of framing the charges under Section 228 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;*

> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial;*
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused;*
> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

The Ld. Sr. Counsel for the accused had also placed reliance on the said judgment as also on the judgments in **Sajjan Kumar** v. **Central Bureau of Investigation** (2010) 9 SCC 368; **P Vijayan** v. **State of Maharastra** (2010) 2 SCC 398; **Dilawar Balu Kurane** v. **State of Maharastra** (2002) 2 SCC 135 and **State of Bihar** v. **Ramesh Singh** (1977) 4 SCC 39. The Ld. Sr. Advocate for the accused had then referred to the judgment of the Hon'ble Supreme Court in **Niranjan Singh Karam Singh Punjabi** v. **Jitendra Bhimraj Bijjaya & Ors.** (1990) 4 SCC 76 and submitted that if a prima face case was not disclosed the

accused could be discharged. In the said judgment it has been observed by the Hon'ble Supreme Court as under:

> *"4…Under this section (Section 227 Cr.P.C.) a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. Once the charge is framed the trial must ordinarily end in the conviction or acquittal of the accused. This is in brief the scheme of Sections 225 to 235 of the Code.*
>
> *5. Section 227, introduced for the first time in the new Code, confers a special power on the Judge to discharge an accused at the threshold if 'upon consideration' of the record and documents he considers 'that there is not sufficient ground' for proceeding against the accused. In other words his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge under section 228, if not he will discharge the accused. It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.*
>
> *6. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may*

sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh, [1978] 1 SCR 257 this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

Xxx

7. Again in Supdt. & Remembrancer of Legal Affairs, ***West Bengal*** *v.* ***Anil Kumar Bhunja & Ors.****, [1979] 4 SCC 274 this Court observed in paragraph 18 of the judgment as under:*

> "*The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or other- wise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion rounded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence*".

From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence

as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

Reference may also be made to the observations made by the Hon'ble Supreme Court in **State of Tamil Nadu** v. **N. Suresh Rajan & Ors** 2014 1 AD (SC) 505: (2014) 11 SCC 709 wherein it was observed as under:

"...True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has not to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Alhawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

> *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."*

Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused."

69. The Ld. Addl. PP for the State had relied upon the judgment in **State of Rajasthan** v. **Ashok Kumar Kashyap** 2021 SCC OnlineSC 314 wherein also

reference was made to the aforesaid judgment and to the judgment in **P. Vijayan (supra)**. The law in this regard is well settled that at the stage of framing of charge, the court is only to see if a prima facie case is made out. The Ld. Addl. PP had further placed reliance on the judgment in **Sonu Gupta** v. **Deepak Gupta and Ors. (supra)** and it was submitted that it was only when the material was absolutely insufficient or wholly insufficient that the accused could be discharged. It was also argued that as per the settled law if two views are possible, at the stage of charge, the view favouring the prosecution has to be given importance. The Ld. Sr. Counsel for the accused had submitted that the said judgment was on taking of cognizance and was not applicable to the present case as cognizance had already been taken by the Ld. Magistrate. No doubt, the said case was on taking of cognizance by the Ld. Magistrate but, in the said case, it was also observed as under:

> *"It is also settled law that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials*

> *raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."*

Again the said proposition cannot be disputed and it reiterates the settled law. In **Bhawna Bai** v. **Ghanshyam (supra)** on which reliance was placed by the Ld. Addl. PP, the Hon'ble Supreme Court referred to the judgment in **State of Bihar** v. **Ramesh Singh (supra)** on which reliance was placed by the Ld. Sr. Counsel for the accused and also to the judgment in **Amit Kapoor** v. **Ramesh Chander and another** (2012) 9 SCC 460 wherein it was observed that once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. It was also observed that at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. "*All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."* Thus, at the stage of framing of charge, the court is only to see if there is strong suspicion that the accused had committed an offence and not whether the material on record would lead to conviction or not. At the stage of framing of charge, the Court is required to evaluate the material and

documents only to the extent and with a view to finding out if the facts taken on their face value disclosed the existence of a prima facie case.

70. The Ld. Addl. PP had further submitted that a detailed order was not required to be passed in case charge was directed to be framed and reasons were required to be given only when the accused was discharged and in this respect reference was made to Sections 227 and 228 Cr.P.C. and the judgments of the Hon'ble Supreme Court in **Bhawna Bai** v. **Ghanshyam (supra), Kanti Bhadra Shah** v. **State of West Bengal (supra)** and **Lalu Prasad Yadav (supra)**. In **Kanti Bhadra Shah** v. **State of West Bengal (supra)** it was held that while exercising power under Section 228 Cr.P.C., the judge is not required to record his reasons for framing the charge against the accused which was reiterated in **Dinesh Tiwari** v. **State of Uttar Pradesh and another** (2014) 13 SCC 137. Again the law in this regard is well established.

71. It was also the contention of the Ld. Addl. PP that at the stage of framing of charge only the material submitted by the investigating agency along with the charge-sheet could be considered and the material placed on record by the accused could not be considered. It was submitted that a look at Section 227 of Cr.PC would show that the Court is not to rely on the material produced by the defence at the stage of charge. Reliance in this regard was placed on the judgments of the Hon'ble Supreme Court in **State of Orissa** v. **Debendra Nath**

Padhi (supra) and in **M.E. Shivalingamurthy** v. **CBI, Bengaluru (supra)**. The law in this regard is well settled and in the instant case even the accused has not sought to produce any material on record at this stage.

Section 302 IPC

72. At the outset, it may be mentioned that the FIR was registered in the instant case under Section 302 IPC though the charge-sheet was subsequently, filed for the offences under Sections 498-A and 306 IPC. The Ld. Addl. PP had vehemently argued that charge, in the alternate for the offence under Section 302 IPC was liable to be framed in the present case. It was submitted that as per Section 221 Cr.P.C., if it was doubtful as to what offence was committed – homicide or suicide, the Court could frame charge alternatively and the death in the instant case could be homicidal or suicidal and charge could be framed for all the offences and every such offence could be tried together and in the instant case, charge for the offence under Section 302 IPC, alternatively under Section 306 IPC ought to be framed, moreso as the doctors had specifically opined that the poison could have been administered through the injectable route. The Ld. Sr. Counsel for the accused on the other hand, had refuted the said contention and submitted that the said argument was beyond the charge-sheet and beyond the material on record and beyond the opinion of the IO and the SIT. It was stated in the charge-sheet itself why homicide was to be excluded and why

Section 302 IPC was not made out. It was contended that everyone from the hotel had been examined and nothing suspicious was found. The accused had left the hotel at 6.30 a.m. and came in the night so there was no question of any alternate charge being framed under Section 302 IPC. There was a positive observation by the doctors that it was not a case of homicide and the Psychological Autopsy Report also stated that it was not a case of homicide.

73. A perusal of the charge-sheet and the record shows that the FIR in the instant case was registered on 01.01.2015 after the AIIMS Autopsy Board had given its third opinion/ report dated 29.12.2014 wherein it was opined as under:

> "*The cause of death in this case is poisoning (as detailed in SMBO dated 27th Sep. 2014). The poisoning is through oral route, however injectable route too can't be ruled out."*

As per the charge-sheet, as the Autopsy Board added the new dimension of probable poisoning through an injectable route, the possibility of homicidal death remained open for investigation and accordingly the FIR was registered at PS Sarojini Nagar and investigation taken up. It is pertinent that in the Post-Mortem Report dated 18.01.2014 (the first Report), the cause of death was stated to be poisoning but no opinion was expressed whether it was homicidal or suicidal. It was also stated that the injuries mentioned in the Report were caused by blunt force, simple in nature, not contributing to death and were produced in scuffle, except injury number 10 which was an injection mark and injury number

12 which was a teeth bitemark. As such the injuries which were listed in the Report were stated to have not been contributory to the death. Mention was made of the injection mark. Thereafter, the IO wrote to the Autopsy Board vide letter dated 28.08.2014 annexing with it the Reports as were asked for, asking for its opinion as to the actual cause of death; the nature and duration of each injury mentioned in the Post-Mortem Report i.e. injury No.1 to 15, and the specific duration of injection mark mentioned as Injury No.10 in the P.M. Report. A detailed opinion was given by the Autopsy Board dated 27.09.2014 (referred to as the 2nd Opinion) stating that the deceased was neither ill nor had any disease prior to her death and she was a normal healthy individual. It was reiterated that the cause of death was poisoning though the Board reserved its comment on the specific poison/ chemical since there was a lot of limitation in the viscera report. Thereafter, the IO had enclosed the documents as sought by the AIIMS Autopsy Board, the Board had also visited the scene of occurrence and further documents were submitted by the IO. Then the 3rd Opinion dated 29.12.2014 was given which has been referred to above, on the basis of which the FIR was registered. As such, it is seen that even till the registration of the FIR, there was no definite opinion that the death was homicidal but in the 3rd Opinion, injectable route for poisoning was not ruled out and as such the angle of death being homicidal was investigated.

74. The samples were sent to FBI Lab, USA and reports were obtained which were then placed before the AIIMS Autopsy Board. The IO had raised various queries from the Board. The Board in its 4th Opinion dated 12.01.2016 reiterated that the cause of death was poisoning and that death was due to excessive ingestion of tablet Alprazolam. It is pertinent that the Board in answer to a specific query had stated that as per pharmacopeia, Alprazolam was available for oral use: tablets and suspension and it was not mentioned that it was available in injectable form. However, the Board also stated that Lidocaine which was found present by the FBI Lab, if administered intravenously could cause death. Further it was mentioned that if a person was having hypoglycaemia, even a small dose of injectable hypoglycemic agent like insulin, Albiglutide (Tanzeum) may lead to fatality. A further letter dated 23.01.2016 was sent by the SIT to the AIIMS Autopsy Board seeking certain clarifications but no further communication to clarify the questions related to injectable poisoning was received from AIIMS Autopsy Board. As such, while the possibility of Alprazolam having been injected can be said to be ruled out as the Autopsy Board itself had stated that Alprazolam was available only for oral use (though the Ld. Addl. PP had still argued that Alprazolam could have been injected) but the possibility of injectable poisoning by insulin/ lidocaine remained as per the opinion of the Board.

75. It is significant that in the charge-sheet, it is stated that the fourth opinion of the Autopsy Board, AIIMS dated 12.01.2016, though asserting Alprazolam as the fatal poison, was still inconclusive as it simultaneously suggested insulin/ hypoglycaemic agent or lidocaine as also being the possible causes of fatality, as such the SIT itself did not regard the opinion of the Autopsy Board as conclusive. The SIT thereafter, requested the Director General of Health Services, Ministry of Health and Family Welfare to constitute a Medical Board and the Board so constituted gave its Report dated 22.06.2016 after referring to the opinions of AIIMS Autopsy Board and the FSL reports. The IO had specifically put the query as to whether the death in this case was homicidal, suicidal or accidental and sought definite/ conclusive opinion regarding cause of death in this case. To this, the Board responded as under:

> *"No definite opinion can be given regarding definite cause of death in this case from the available facts/ information. However,*
>
> *i. Death from Lidocaine is unlikely in view of the presence of Lidocaine on the clothing and not in the Viscera of the deceased detected by FBI lab. The injection mark from the colour changes around the injection site, substantiate the fact from the KIMS Hospital that the prick was due to putting a cannula at KIMS, Trivandrum during the treatment of the deceased.*
>
> *ii. No opinion regarding Alprazolam as the cause of death can be given in the absence of quantitative levels of the drug in the viscera sent for analysis.*
>
> *iii. Similarly in the absence of definitive evidence of any other chemical agent including Insulin, it is not*

possible to comment regarding these agents being the cause of death.
iv. Ethyl alcohol levels in the exhibits are unlikely to result in death."

Thus, the reason why the investigation was proceeding on the premise that it could be a homicidal death was the presence of injection mark. However, the Board concluded that the prick was due to putting a cannula at KIMS, Trivandrum during the treatment of the deceased. The Board also ruled out possibility of death from lidocaine and remarked that in the absence of definitive evidence of any other chemical agent including Insulin, it was not possible to comment regarding the said agents being the cause of death. It is noteworthy that the Board also stated that no definite opinion could be given regarding definite cause of death in the case from the available facts/ information and as regards whether the death was homicidal, suicidal or accidental, it was stated that from the evidence/ documents provided no definite opinion could be given. Further queries were raised to the Board but again it was stated that no definite opinion could be given regarding the cause of death from the available facts/ information. It may also be mentioned that it was stated in the charge-sheet itself that in its generic sense, Alprazolam was not considered to be a homicidal drug.

76. It is thus seen that the FIR was registered under Section 302 IPC considering the possibility that a poisonous substance may have been injected on account of the presence of injection mark as per the Post-Mortem Report based

on the 3rd Opinion of the AIIMS Autopsy Board and thereafter opinion was sought on what was stated in the 4th Opinion of the AIIMS Autopsy Board. However, the Boards constituted by Director General of Health Services had categorically ruled out the possibility of death due to lidocaine and opined that it was not possible to comment regarding agents such as Insulin being the cause of death and had also stated that the prick was due to putting a cannula at KIMS, Trivandrum during the treatment of the deceased. This is substantiated by the documents of treatment of the deceased at KIMS, Trivandrum and the declaration dated 01.02.2016 addressed by Lt. Col. Chandrika T.G., Group Coordinator Nursing SBU, KIMS Hospital, Trivandrum that as per their records, cannula size 20 g was inserted on the deceased's RT hand dorsal metacarpal vein on 14.01.2014 at 9.45 a.m. It was also mentioned that the cannula was only inserted once and that the same was removed at the time of discharge, the same day afternoon. It was stated that under normal circumstances, the I/V cannula site, the mark on the skin goes away after 72 hours. Thus, the said communication confirmed that cannula had been inserted on the hand of the deceased and it is pertinent that the so called injection prick as per the Post-Mortem Report was also on the same hand. In normal circumstances, the mark disappeared after 72 hours though it remained in the case of the deceased but on that basis, it cannot be inferred that an injection had been given to the deceased at the same point in order to inject some poisonous substance. There is also merit

in what is stated in the charge-sheet that the theory of insulin administration through the same place where an injection prick was made by the treating doctors of KIMS, Thiruvananthapuram is not sustainable as it is next to impossible to prick the skin for this purpose precisely over an existing prick so as to remain undetected.

77. It is further seen that even the Psychological Autopsy Report dated 10.11.2017 referred to the Forensic Reports and mentioned that the injection mark injury on the right hand dorsum was due to the cannula left by the KIMS as admitted by Hospital Authorities, KIMS, Kerala. The said Report also stated that it was unlikely that the cause of death in this case could be homicide owing to the following reasons:

> *"a. Had it been the case of homicide, the perpetrator's intention to kill would have reflected in the choice of weapon, time of the incident etc. that is to say, a decisive device would have been used to kill at the earliest point of time with 100% fatality.*
> *b. Absence of any attempt to hide or close the premises so that the incident may be exposed much later time.*
> *c. No killer prefers a slow poisoning where the victim could get any assistance at any point of time to recover.*
> *d. No incriminating and suspicious poison or substance was recovered at the scene of crime."*

Thus, the Psychological Autopsy Report dated 10.11.2017 had also ruled out that the cause of death could be homicide and even the SIT had found the same to be in consonance with the medico-legal, histopathological and other oral,

circumstantial, electronic evidence brought forth during the course of investigation.

78. It is pertinent that the investigating agency itself had decidedly, after carrying out detailed investigation as to who could have committed murder and in what manner it could have been committed ruled out the possibility of death being homicidal and as such the accused was not charge-sheeted for the offence under Section 302 IPC. The Ld. Addl. PP had argued that the court is not bound to accept the opinion of the IO and the charge-sheet is only the opinion of the IO and the court has to take a holistic view. There is merit in the said contention of the Ld. Addl. PP but when the entire material placed on record is perused, there is nothing whatsoever to even prima facie, show that offence under Section 302 IPC is attracted in the instant case. Even the Ld. Addl. PP himself had premised his argument of the death being homicidal and his prayer for alternate charge being framed under Section 302 IPC on the doctors opining that the poison could have been administered through the injectable route but the said opinion had been decisively rejected in the subsequent Reports of the Board constituted by Director General of Health Services and the Psychological Autopsy Board and was also not substantiated by the material on record, moreso the clear admission that cannula had been inserted on the hand on the deceased in KIMS,

Trivandrum at the same place where the injection mark was found in the Post-Mortem Report.

79. It was sought to be argued that as per the AIIMS Autopsy Board, there were certain poisons which could not be detected and certain literature was placed on record in that regard but in the absence of any material pointing to any such substance having been administered to the deceased or by whom it was administered, it would not be possible to proceed on the basis of a mere presumption that some poisonous substance which could not be detected was administered to the deceased and that too by the accused. No other circumstance has been pointed out by the Ld. Addl. PP which could lead to the inference that *prima facie,* a case was made out to charge the accused for the offence under Section 302 IPC and in the absence of any reason to doubt the subsequent reports, it would not be open to the Court to only accept the view expressed by the AIIMS Autopsy Board in its third and fourth opinions and reject the subsequent opinions and the findings during investigation.

80. The Ld. Addl. PP had placed reliance on the judgment of the Hon'ble Supreme Court in **Rajbir @ Raju and Anr**. v. **State of Haryana (supra)** wherein it was held that charge for Section 302 IPC ought to have been framed along with the charge under Section 304 B IPC but the same is not applicable to the facts of the present case. In view of the above, it cannot be said that

suspicion, much less grave suspicion exists in the present case to charge the accused for the offence under Section 302 IPC.

Section 498-A IPC

81. It is the case of the prosecution that the accused had subjected the deceased to cruelty, more particularly mental cruelty prior to her death and as such Section 498-A IPC was attracted in the present case. The Ld. Addl. PP had further argued that if the ingredients of Section 498-A IPC were made out, then Section 113 A Indian Evidence Act would come into play and lead to the presumption that the accused had abetted the suicide by the deceased. It would be apposite to first refer to Section 498-A IPC which reads as under:

> *"**498-A. Husband or relative of husband of a woman subjecting her to cruelty. –** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
>
> *Explanation.- For the purpose of this section, "cruelty" means –*
>
> *(a) any willful 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."*

As submitted by the Ld. Addl. PP, for the offence under Section 498-A IPC to be made out, the following ingredients must be shown:

a) the woman (aggrieved) must be married;
b) she must be subjected to cruelty or harassment; and
c) the cruelty or harassment must be shown to be by the husband or his relatives.

82. In the present case, there is no doubt about the accused being the husband of the deceased and they had got married on 02.10.2010. It is further no one's case that there was any harassment coupled with any unlawful demand for dowry. As such part (b) of the Explanation would not be attracted in the present case. However, it is the case of the prosecution that the deceased was subjected to 'mental cruelty' by the accused though reference was also made to the aspect of physical cruelty in view of the injuries found on the body of the deceased in the Post-Mortem Report. For the case to be covered under part (a) of the Explanation, the following ingredients must be shown:

a) the conduct must be willful
b) the willful conduct must be of such 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.

83. As regards the aspect of physical cruelty, the Ld. Addl. PP had submitted that the AIIMS Autopsy Board which had conducted the post-mortem on the dead body had found 15 ante-mortem injuries on the body of the deceased and the same coupled with the circumstances and the statements of the witnesses under Section 161 Cr.P.C. clearly went on to suggest that physical cruelty was

committed upon the deceased by the accused. A perusal of the Post-Mortem Report shows that it mentions 15 injuries out of which injury No.10 was an injection mark. Injury No.12 was a teeth bite mark on the dorsal aspect of the left hand. Remaining injuries were abrasions or contusions. It was opined that all the injuries mentioned were caused by blunt force, simple in nature, not contributing to death and were produced in scuffle, except injury No.10 and injury No.12 was a teeth bite mark. It was also stated that the injuries number 1 to 15 were of various duration ranging from 12 hours to four days. Thus, the Post-Mortem Report itself mentioned that the injuries were produced in a scuffle.

84. The Ld. Addl. PP in this regard had relied on the statement of the domestic help Narayan Singh on which reliance was also placed by the Ld. Defence Counsel. There are two statements of Narayan Singh placed on record - one dated 8th January and the other dated 27.01.2016, apart from the one made before the Ld. SDM. In the former statement, he had stated that on 15.01.2014, the accused had come to the Hotel at about 10.00 p.m. and the accused and deceased were talking and then started fighting and that the deceased slapped the accused and started throwing the articles in the room. She also threw the phone of the accused on the wall. At that time Sunil Trakaru and Advaita were present and when they tried to pacify the deceased and the accused, they calmed down.

The accused left the room at about 12 in the night. He further stated that in the intervening night of 16/17.01.2014, the deceased had sent the driver Bajrangi to fetch the accused from his house after he did not pick the call of Narayan and Bajrangi came back with the accused at about 12-1 in the night. The deceased and the accused had an argument and they went inside the bedroom and started fighting. The deceased started beating the accused and caught hold of his hair and hit his head against the wall and she was also abusing stating what relation he had with MT on which he stated that he had no relation with her and she stated that MT had come to Delhi and stayed with him. Narayan Singh had intervened. The deceased started talking to Nalini Singh and the accused went and lied down on the carpet in the drawing room. At about 6 a.m. the deceased gave a leg blow to the accused and woke him up and also abused him and thereafter the accused left. As such there is nothing in the said statement about the accused picking up a fight with the deceased or subjecting the deceased to physical cruelty.

85. In the second statement, Narayan Singh had stated that in the night of 16/17.01.2014, when the deceased was hitting the accused, he had intervened. He had also stated that the deceased had thrown a glass which hit the wall and when he intervened he was also hit on his face. He had stated that he had not seen any bruise mark on her face or hand. He had stated that whenever there was

a fight between the deceased and the accused, the deceased used to raise her hand on the accused. He had never seen any injury mark on the body of the deceased or the accused. He did not know from where the tooth bite mark had come on the hand of the deceased. Thus, even in this statement, Narayan Singh had not stated about any physical cruelty by the accused on the deceased.

86. Further, as per the version of Narayan Singh, at the time of the fight on 15.01.2014, Sunil Trakaru and Advaita Kala were also present and reliance has been placed on their statements as well. Statements of Sunil Trakaru were recorded on 15.01.2015, 16.01.2015 and 21.01.2015. In the statement dated 15.01.2015 he had stated that on 15.01.2014, a lot of arguments were happening between the deceased and the accused over the alleged affair of the accused and he along with Advaita and the accused were trying to pacify the situation but the deceased did not seem to be relenting. He however, did not state about any physical fight. In the statement dated 21.01.2015, he stated that he along with Sunil Alagh, Advaita Kala and the accused were trying to pacify the deceased but the deceased was aggressive and screaming while everyone was trying to calm her down. He stated about the accused leaving at about 12 in the night.

87. Sunil Alagh in his statement dated 15.01.2015 had stated about receiving a call from Sunil Trakaru asking him if he could come and see the deceased and when he answered in the affirmative, Sunil Trakaru asked him to come to Hotel

Leela Palace and briefed him about the hot heated arguments between the couple. He stated that when he went to the room along with Sunil Trakaru, the accused, Narayan Singh and an unknown lady were sitting there. The deceased was agitated and aggressive and was threatening the accused that she would finish his political career by exposing his affair and his IPL misconducts to the media. He tried to calm them and thereafter left. As such he did not state about any physical fight.

88. Advaita Kala in her statement dated 23.01.2015 had stated that on 15.01.2014, when she called the deceased on checking some twitter posts, the deceased told her that she was very upset and crying and asked her to meet her. She reached the Hotel around 9.00 p.m. and the accused and the deceased both were there. The deceased was very upset and one plate was also lying broken. She stated that the deceased grabbed the hair of the accused as she was in a rage, she intervened and helped the accused remove her hands. The accused did not regret. It is pertinent that Advaita Kala also stated that at that time, there were no marks on the skin of the deceased but the deceased told her that she would get marks after 2 days. She stated that the accused grappled her hands when the deceased caught his hair. She had stated about Sunil Alagh and Sunil Trakaru also trying to calm her down and pacify her. She stated that the deceased was very angry and aggressive and also broke the mobile phone of the deceased. As

such even she has not stated anything specific about the accused subjecting the deceased to any physical cruelty, and if anything, the fight was started by the deceased, though that was because she was upset and angry with the accused.

89. Apart from that, Bajrangi who was the driver had stated that there used to be fights between the deceased and the accused and at times the deceased used to throw the phone of the accused and the accused used to remain busy on phone mostly. In his supplementary statement, he had stated about the quarrel between the deceased and the accused in the night of 16.01.2014 but he did not state about any physical fight.

90. Both sides had also referred to the statement of Shiv Menon, the only son of the deceased and who had stated that his mother used to discuss freely her inner feeling with him. He stated that every time he came to India, the deceased was found in aggressive mood and she used to become angry over little things and was short tempered. He had not stated about any physical cruelty to the deceased by the accused and rather stated that in his strong belief, the accused could not harm even a fly and he could not even think of harming her. The two brothers of the deceased also did not state about any physical cruelty nor did any of the other witnesses. In his statement dated 17.01.2015, Vikas Ahlawat who was OSD to the accused had stated that one day in a quarrel, the deceased had broken the specs of the accused. Statement of one more witness may be referred

to whose statement has been referred to in the charge-sheet and relied upon by the Ld. Sr. Counsel for the accused. Her phone was also seized but her name does not find mention in the list of witnesses i.e. Rezina Mazhar who was very close to the deceased. It was argued on behalf of the accused that Rezina Mazhar was with the deceased in the hospital in Kerala and in fact the deceased had changed her dates of treatment in the hospital to ensure availability of Rezina Mazhar but even she did not utter a single word about cruelty by the accused, though, she was a very close friend of the deceased. A perusal of the statement (without at this stage going into the aspect of admissibility or inadmissibility of any part thereof) of the said witness shows that she had stated about the deceased showing her some bruises on her body and telling her that the accused had hit her, but she did not rely as the accused 'was not asked to hit her rather she could have hit herself and slapped her. He was a dignified man'. The deceased also told her that once when he was talking on phone, she snatched his phone and slapped him. Thus, Rezina Mazhar had stated about the deceased showing her some bruises on her body and telling her that the accused had hit her but even the said witness did not believe her. Other than the said one incident about which no details are forthcoming, even if the entire material that has come out during investigation is accepted as the truth, there is nothing to demonstrate that prima facie, the accused had subjected the deceased to physical cruelty.

91. The Ld. Addl. PP for State had argued that the accused had got himself admitted in hospital the day after the death of the deceased and his medical papers did not show any injury or bruise marks whereas per the Post-Mortem report, there were injuries on the body of the deceased which showed that the accused had subjected the deceased to physical cruelty. However, the statements of the above witnesses which have been referred to by the two sides show otherwise, and while there was a scuffle, it was when the deceased had caught hold of the hair of the accused and even the witness Advaita Kala had intervened to help the accused to release himself. The Ld. Addl. PP had also adverted to the recovery of glass pieces from the Hotel room but Narayan Singh had stated about the deceased throwing a glass which hit the wall and it would not lead to any presumption of physical cruelty by the accused against the deceased. The prosecution itself has not shown how the deceased received the tooth bite. In view of the above, there is nothing to even prima facie make out a charge for physical cruelty against the accused.

92. The main contention of the prosecution is that the deceased was subjected to mental cruelty by the accused which drove her to commit suicide and caused grave injury or danger to life, limb or health of the deceased. The Ld. Addl. PP had in this regard relied on the judgment of the Hon'ble Supreme Court in

Gananath Patnaik v. **State of Orissa (supra)** wherein it was observed as under:

> *"7. 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."*

Thus, it was held that cruelty need not be only physical but even mental torture or abnormal behavior may amount to cruelty and harassment in a given case and the effect of cruelty varies from individual to individual, also depending upon the social and economic status to which a person belongs. The Ld. Addl. PP had relied upon the statements of various witnesses and certain e-mails and instances to buttress his assertion regarding the deceased being subjected to mental cruelty by the accused. The said contention has been strongly refuted by the Ld. Sr. Counsel for the accused and he had also relied upon the statements of various witnesses in this regard.

93. The Ld. Addl. PP had referred to certain incidents which, he argued showed abnormal behavior and cruelty on the part of the accused. In particular he referred to the fact that the accused had left the deceased who was unwell at the airport without making any arrangement for her though it was his moral duty to arrange a vehicle for her to reach the residence and not to leave, and she then

called a friend Sunil Trakaru who took her to Hotel Leela Palace. Reliance in this regard was placed on statements of Narayan Singh who had accompanied the accused and deceased in the flight from Thiruvananthapuram to Delhi. At the airport they were met by Shiv Kumar, Consultant to the accused. He stated that the deceased had gone to the bathroom and the accused had left for some meeting alone. He and the deceased came out from the airport where Sunil Trakaru met them and they went by his car to Hotel Leela Palace. Even Sunil Trakaru had stated that on 15.01.2014 he received a call from the deceased requesting to pick her up from IGI International Airport at about 4 p.m. Since he was in Gurgaon, he agreed and thereafter he had taken her to Hotel Leela Palace at her saying. The Ld. Defence Counsel had on the other hand, asserted that the accused had to attend a book launch function and he waited for some time for the deceased and then left. As such, there is no dispute that the accused had left alone from the Airport and the deceased had gone to Hotel Leela Palace with Sunil Trakaru. However, a perusal of the statement of Shiv Kumar Parsad dated 17.01.2015 would show that on 15.01.2014, when he came to know that the accused and the deceased were coming from Thiruvananthapuram, he had gone by the Taxi of the Ministry to the Airport. He also stated that the flight was little late and that the accused came alone in the Arrival Hall and told him that he was going for Book Launch and he should receive the deceased and Narayan and thereafter he left by the government vehicle. He also stated that the deceased

was brought in a wheelchair after half an hour and she told him to take the luggage to the residence and she left with Sunil Trakaru and Narayan for Hotel Leela Palace. It is noteworthy that he stated that two vehicles had gone to get the deceased and the accused- one government vehicle and one Ministry taxi. In his statement dated 27.01.2016 as well, he had stated that he had gone to the Airport by private car provided by the Ministry and in the government vehicle, the driver and PSO of the accused were there. No doubt, the accused had left the deceased at the Airport but it is not the case that no alternative arrangement was made for the deceased or that she was left to fend for herself, though she decided to go with Sunil Trakaru.

94. Another incident referred to by the Ld. Addl. PP is the failure to call a doctor when the deceased was not feeling well in Hotel Leela Palace and it was argued that despite the deceased being unwell, the accused did not call a doctor or get her treated. Narayan Singh in his statement dated 27.01.2016 had stated that on 16.01.2014 at about 11.30 p.m. the deceased told him that she was not feeling well and asked him to call a doctor. He called at the Reception but he was told that doctor was not available and outside doctor would take Rs.5,500/- for visit. When he told the deceased about the same, she asked him to call the accused and how he had left like that. He had stated that he had told the accused about Rs.5,500/- being payable to a doctor from outside for his visit on phone

but he also stated that when the accused reached at 12.30 in the night, the accused and the deceased started fighting and they forgot about the doctor. As such, there is nothing to suggest that the accused had refused to call the doctor, rather he had reached the Hotel in the night but then the accused and the deceased had a fight.

95. The Ld. Addl. PP had also submitted that the deceased, instead of going from the Airport to the residence had gone to Hotel Leela Palace which showed the mental state she was in. It was also submitted that the accused, in order to cover up, had falsely stated that the deceased had gone to Hotel Leela Palace as renovation work was going on at the official residence whereas no renovation work was going on there in January, 2014. Reliance was placed on documents being the Report of the Executive Engineer, CPWD regarding renovation work at the official residence of the accused. Statements of Kamal Taurani (Government Contractor with CPWD) and Mukesh Bambani (Government Contractor in CPWD) were also recorded who had stated that the work was completed in the month of December, 2013 and there was no work being done there in January, 2014. A perusal of the statement dated 19.01.2015 of Rakesh Kumar Sharma who was PA to the accused shows that the renovation/ construction work going on at the house was almost complete. He had stated that the deceased was allergic to construction work and painting work and also that

the deceased had scolded him 2-3 times about the delay in construction work. In his further statement dated 27.01.2015 he had stated that he came to know through the staff that the deceased had decided to stay in Leela Hotel due to some renovation work in the Bungalow. Even Sunil Trakaru in his statement dated 15.01.2015 had stated that the deceased had asked him to take her to Hotel Leela Palace as some painting work was on at her Lodhi Estate House. As such, the same version was given by the deceased to Sunil Trakaru as had been stated by the accused.

96. The thrust of the case of the prosecution is the alleged affair of the accused with MT and that the same caused mental cruelty to the deceased so much so that she committed suicide. In this regard, the Ld. Addl. PP had referred to statements of various witnesses and certain e-mails. The Ld. Addl. PP had referred to the statement of Narayan Singh recorded by the Ld. SDM on the day after the incident wherein he had stated the deceased used to fight with the accused over one girl named Katy. He had also stated about the fight on the plane while coming back from Trivandrum and that the deceased had taken all the phones of the accused saying that he did not take care of her when she was unwell and all his attention was on the phone. She was crying and after landing at the airport had gone to the washroom. The accused left and when Narayan Singh told her that the accused had left, she said in anger that she would not

leave the accused and that he had told MT everything about her previous husband. He had stated about the fight on 15.01.2014 in the hotel room as also on the night of 16.01.2014. In the morning of 17.01.2014 she asked Narayan Singh to bring her white suit as she was going to hold a conference. In his statements recorded by the IO, he had stated about the deceased crying at the Airport and being sad on the way to the Hotel; about the fight with the accused in the night of 15.01.2014 and on 16.01.2014; about the deceased stating to the accused what relation he had with MT on which he replied that he had no relation, about the deceased speaking to Nalini Singh, about asking him to get her cream suit from home. He also stated about her not eating at the Hotel. Reference was also made to the statement of the son of the deceased who had stated that after one and a half year of marriage, the deceased had started becoming angry over small things. He had advised his mother not to get angry with the accused as he was not able to give much time to her. He had stated that his mother used to say that she was ill and she would die in a short time. He stated that his mother had caught some messages of the accused and was feeling cheated by her husband; that there was lack of communication between them; the deceased suspected that the accused had slept with some other lady namely MT and she was totally convinced; she once told him that she took the blame for IPL. He had also stated about the deceased calling him from the Airport and she

was crying hysterically and broke down and told him that she had been cheated by the accused.

97. The brother of the deceased Aashish Dass had stated about the deceased telling him that she had Lupus; that the accused and the deceased used to sleep in different rooms; that she told him that she and the accused were not living as a couple for many months due to the alleged affair of the accused with MT; that she told him that the accused was selfish and insensual; that she was planning to make a will and she had already talked to her lawyer. Reference was also made to the statement of Brigadier Rajesh Pushkar, brother of the deceased and of Renu Dass, cousin of the deceased who stated that on 16.01.2014 at about 11.30 p.m. she called the deceased who told her that she was sick and was weeping regularly while talking to her. She stated that the deceased was very much tense due to relation of the accused with MT and had told her about checking the phone of the accused on the plane and finding that the accused was still in contact with MT despite giving her assurance that he had stopped his relationship with MT; that she told that the accused had apologized for his relationship with MT and promised not to be in relationship with MT.

98. Reference was also made to the statement of Sunil Trakaru who had stated that the deceased had told him about seeing BBM messages from a lady to the accused and she was extremely upset about the messages which she had seen

on the mobile of the accused. He stated that the deceased smoked around 30 cigarettes and it was particularly shocking as he had never seen her smoking before. He further stated that a lot of arguments were happening over the alleged affair of the accused. The deceased was carrying the phone of the accused and she sent him an email containing some of the BBMs. He also stated that the deceased hardly ate anything. He had stated about the fight in the night of 15.01.2014. Sunil Alagh had stated about being called by Sunil Trakaru who also briefed him about the hot heated arguments between the accused and the deceased and that they were arguing since morning as she came to know about the affair of the accused with MT. He had stated about the deceased being agitated and aggressive and threatening the accused that she would finish his political career by exposing his affair with MT and his IPL misconducts to the media. He had stated that next morning he was called by the accused to the Hotel who showed him copy of the joint statement which he had written to release in media stating that both of them had cordial relations.

99. The Ld. Addl. PP had then referred to the statement of Advaita Kala who had stated about checking the twitter posts on 15.01.2014 and then calling the deceased who was very upset and crying. She went to Hotel Leela. The deceased was very upset and the main reason was MT and some trivial issues related to marriage. She stated about the fight that took place. She stated that the deceased

was not happy over the issue of MT and was worried. On 16.01.2014, Advaita Kala spoke to the deceased over phone and the deceased told her that she was fine and the matter was settled upto some extent though she also told that there was a dispute in the plane. She remained in hospital in Dubai for approximately one month for treatment as she was suspecting Lupus. Samir Saran whose statement was also read by the Ld. Addl. PP during the course of arguments had stated that the deceased had informed him that she was angry and upset with the accused as he did not help her son in Dubai when he needed help. The deceased told him that she was suffering from Lupus and TB and used to regularly tell him that she was going to die. He also received an email from the account of the accused which had some conversation in the format of BBMs and when he called the accused, he informed him that the deceased was using his phone and she was in rage as she had seen his conversation with MT. He stated about sending messages to the deceased and about the deceased telling him that her friend had told her that the accused had met MT in Dubai and that the accused was going to leave her after the election. It may be mentioned that the said statements were also read out on behalf of the accused to contend that Shiv Menon, Aashish Dass, Brig. Rajesh Pushkar, Renu Dass, Sunil Trakaru, Sunil Alagh, Advaita Kala and Narayan Singh despite being close relatives/ friends had not stated or made any complaint of cruelty against the accused, rather Shiv Menon, Aashish Dass, Brig. Rajesh Pushkar Renu Dass, Sunil Trakaru, Advaita

Kala, Narayan Singh and Sameer Saran had stated about the deceased being worried about having Lupus or being unwell.

100. The Ld. Addl. PP had relied on the statement of Nafisa Ali who had stated that on 16.01.2014, she had sent a message to the deceased that she was very sad with the news coming, to which the deceased replied that it was sad what she read in the morning. She had also stated that the accused remained busy in AICC meeting throughout the day and did not come to see his wife, who was already very upset and not feeling well and was busy in mobile phones. Reference was also made to the statement of Barkha Dutt. The Ld. Addl. PP had further read the statement of Nalini Singh who had stated that in 2012 or 2013 the deceased had told her that some problems were going on in her married life. She also stated that when she had gone to the house of the deceased, the latter had told her about MT and that the accused had spent three nights with her in Dubai. The deceased had also told her that she and the accused used to sleep in separate rooms. At another function after a few months, the deceased had told her that the matter had been compromised. On another occasion the deceased told her that her mother had died due to controversy of IPL as she could not bear the strain and she was angry. She stated that on 15.01.2014, she read something in newspapers about Twitter expose and she came to know that the relations of the accused and the deceased were tense and bad but on 16.01.2014 she read a joint

reconciliatory statement in Indian Express. She stated about receiving a call from the deceased about 12 in the intervening night of 16-17.01.2014 who was crying and sobbing. It may be mentioned that even Narayan Singh had stated about the deceased speaking to Nalini Singh in the night. Nalini Singh stated that she tried to console the deceased but she realized that the deceased was very agitated due to the bad publicity in media on MT and wanted to take revenge from the accused and MT. She was abusing the accused and stated that she had done a lot for him in IPL but then she became quiet in the matter of IPL. She further stated that the deceased wanted her to retrieve some deleted BBMs from the phone of the accused. She had also stated about the deceased telling her that she was ill and got herself checked at KIMS; she had stomach TB and the accused did not accompany her to the hospital KIMS; in June 2013 she had told that she had Lupus and she would survive for two years and before June, 2013, she had told her that the accused was playing around women and also about the accused leaving her at Thiruvananthapuram Airport and about the family of the accused not liking her.

101. At the outset, reference may be made to a legal objection raised by the Ld. Defence Counsel to the admissibility of what was allegedly stated by the deceased to the witness Nalini Singh and what the Ld. Addl. PP had called the last statement of the deceased made to a close friend and argued that the same

would show that the accused had subjected the deceased to mental cruelty. The Ld. Sr. Counsel for the accused had contended that the said statements allegedly made by the deceased amounted to hearsay evidence. It was submitted that the only provision which permits hearsay statement made by a deceased person to be read in evidence is Section 32 (1) of the Evidence Act and under the said provision, while the statement could be read if the deceased had stated about the cause of death, it could not be admissible in evidence by way of oral dying declaration qua what was allegedly disclosed by the deceased to the witnesses during her life time regarding the acts and conduct of the accused. Reliance in this regard was placed on the judgment of the Hon'ble Supreme Court in **Inderpal** v. **State of MP** (2001) 10 SCC 736 wherein the Hon'ble Supreme Court had held as follows:

> *"7. Unless the Statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act, there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the Statements of Damyanti contained in Exhibit P-7 or Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned."*

102. Likewise in the case of **Bhairon Singh** v. **State of MP (supra)**, it has been held that:

> *"15. Except Section 32(1) of the Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW4 and PW5 has no connection with any circumstance of transaction which resulted in her death.*
>
> *16. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498-A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted."*

The aforesaid judgments have also been followed in **Kantilal Martaji Pandor** v. **State of Gujarat** AIR 2013 SC 3055; **Smt. Swaraj & Anr.** v. **State of Madhya Pradesh** 2017 SCC OnLine MP 112. The judgment of the Hon'ble Supreme Court in **Gananath Pattnaik** v. **State of Orissa (supra)** is also to similar effect. In **Sakatar Singh and Ors.** v. **State of Haryana** (2004) 11 SCC 291 it was opined that evidence which was not based on personal knowledge of the witness could not be the foundation for basing a conviction; in **Santosh Rohidas** v. **State of Maharashtra** (2017) SCC OnLine Bom 7990 as well, it was held that there was no evidence against the appellant, which was admissible

according to law, to connect the appellant with the offence punishable under Section 498-A of the IPC; in **Purushottam Sitaram Bakal** v. **The State of Maharashtra** 2017 SCC OnLine Bom 8225, the evidence of PW2 was held to be inadmissible as it was entirely hearsay and PW2 was not a witness to the alleged ill treatment but was stated to be narrated to her by the deceased. It was observed that "*the evidence of the family members of the deceased is mostly if not entirely inadmissible and section 32(1) of the Indian Evidence Act does not come into play since cause of death or the circumstances leading to death was not an issue in so far as offence under section 498-A of IPC was concerned."* In **Kailash & Ors.** v. **State of MP** Crl.R.No.293 of 2016 decided by the Hon'ble High Court of Madhya Pradesh, it was held that the portion on which the charges were framed was hearsay evidence which was not admissible in evidence and even if the prosecution witnesses stated the same facts before the trial Court, no conviction could be based on that part of the statement, which were not admissible in evidence and the charge was set aside. In **Sentu Ghosh & Ors.** v. **The State of West Bengal & Anr.** 2013 SCC OnLine Cal 6485, reliance was placed on the judgment in **Bhairon Singh** v. **State of MP (supra)** to hold that the evidence of the mother of the victim girl was hit by Section 32 of the Evidence Act because she heard about the factum of torture from the deceased; **Biplab Chakraborty and Ors.** v. **State of Tripura** (2011) 6 Gauhati Law Reports 775 was also to similar effect as also **Mony @ Suresh Kumar & Ors.**

v. **State of Kerala** Crl. A. No.79 of 2002 decided on 17.12.2009 and **Sangannagari Narasimulu** v. **State of AP** 2005 SCC OnLine AP 1098 and **G.M. Ravi** v. **State of AP** 2003 SCC OnLine AP 1258.

103. The Ld. Sr. Counsel had further submitted that it had even been held that evidence which was inadmissible could not be looked at even at the stage of charge and in this regard he cited **Suresh Budharmal Kalani** v. **State of Maharashtra** (1998) 7 SCC 337 wherein it was held that a statement which was inadmissible in evidence could not be made the basis to frame charge. Similar view was taken in **Vijay Kumar @ Tina** v. **State of Punjab** 2013 SCC OnLine P&H 2024 and **Amit Pratap & Anr.** v. **State** 2011 SCC OnLine Del 5062 and in **Parasa Koteswararo** v. **EedeSree Hari & Ors.** (2017) 11 SCC 52 to set aside the conviction. The legal position in this regard is well settled. However, apart from what the deceased had stated to Nalini Singh or to some of the other witnesses, the witnesses have also stated about the deceased being upset over the alleged affair of the accused with MT and there is merit in the contention of the Ld. Addl. PP that Narayan Singh, Advaita Kala, Sunil Trakaru and Sunil Alagh were witnesses to the fight between the accused and the deceased and had seen how upset she was over the issue of the alleged affair of the accused with MT.

104. Apart from the statements referred to above, the Ld. Defence Counsel had relied on the statement of Rajat Rai who had stated about advising the deceased

to get herself checked for her ailment at Rattle Hospital, Singapore but she had not shown any interest in her treatment there. He had stated about the deceased threatening to expose the accused. It was submitted that the said witness had also not stated about any cruelty by the accused against the deceased. Reference was also made to the statement of Rohit Kochar, a lawyer who had stated that on two occasions, the deceased had stated to him that she was suffering from Lupus and on one occasion, she mentioned to him that due to her illness, she may not live more than one year and she also mentioned that she would seek his help in drafting of Will.

105. Statement of Rezina Mazhar may also be referred to who had accompanied the deceased for her treatment at KIMS. She had stated that the deceased had told her about MT and again in KIMS, she had discussed with her the issue of MT. She had also stated about the incident with the son of the deceased and about the deceased complaining that she had Lupus. She had stated that the deceased used to suffer from high fever and she was little depressed and wanted to go for check-up and thereafter they had gone to KIMS. She had stated about the deceased taking food at KIMS and about her fight with the accused as he was not taking care of her properly. She had also stated that on 16th, the deceased had called her, she was crying and told that the doctor was suspecting that she was suffering from TB.

106. It is thus seen that the witnesses had stated about there being fights between the deceased and the accused; there being lack of communication between the two; that the two were sleeping in different bedrooms (it may be mentioned that Narayan Singh had stated that earlier the accused used to snore a lot so he used to sleep in a different room) and the deceased was upset with the accused as he did not take care of her, did not have much time for her and remained busy on the mobile all the time. However, the sine qua non for a case to be covered under Explanation (a) to Section 498-A IPC is that there should be willful conduct on the part of the accused. It has been held in a catena of judgments that the mental cruelty should be of such a high degree as to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical and that it is not every harassment or every type of cruelty that would attract Section 498-A IPC. In **Gurcharan Singh** v. **State of Punjab** (2017) 1 SCC 433 it was elucidated that for the purpose of Explanation (a) to Section 498-A IPC, proof of the willful conduct actuating the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, was the sine qua non for entering a finding of cruelty against the person charged. In this case, it was held that the materials on record did not suggest even remotely any act of cruelty, oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-extinction being left with no other alternative. Similar is the

situation in the present case where there may have been some marital problems (the question of whether the alleged affair of the accused would constitute mental cruelty would be adverted to later) between the accused and the deceased but there is nothing on record to suggest even remotely any act of cruelty or harassment on the part of the accused, much less mental cruelty to the extent as envisaged under Section 498-A IPC which would prima facie attract the provisions of Section 498-A IPC. The Ld. Addl. PP for the State had argued that the son of the deceased Shiv Menon had not stated anything against the accused as the accused had helped him in Dubai but the said argument is neither here nor there as even by the version of some of the witnesses, the deceased herself believed that the accused had not helped her son when his help was needed. Further, it cannot be believed that the son of the deceased who was the closest to the deceased and with whom the deceased was constantly talking, would favour the accused and try to bail him out, if the accused had indeed subjected his mother to cruelty. Moreover, the prosecution itself has placed reliance on the statement of the said witness.

107. Coming to the contention regarding the alleged affair of the accused with MT, without doubt, the witnesses have stated about the deceased being upset over the alleged affair of the accused with MT. The deceased had been told that the accused had been with MT in Dubai. Vikas Ahlawat, the then OSD to the

accused in his statement had stated about MT meeting the accused in his office in the month of May-June, 2013 though at that time Ms. Yashshri was also present. He had stated that the deceased used to quarrel with the accused for not being paid attention to and on one or two occasions, the quarrel was due to his closeness with some female friends. He had also stated about coming to know from the print media that MT had also attended the function at Dubai in June, 2013 which was attended by the accused. There are statements of witnesses, namely, Maharani Kant Sharma and Surya Singh about the visit by MT to Delhi in December, 2013 and that she had visited the residence of the accused. It is also on record that on the flight from Thiruvananthapuram to Delhi on 15.01.2014, the deceased had checked the mobile of the accused and found messages exchanged with MT which had made her agitated and upset. She had hardly eaten anything while being in the Hotel and mainly had coconut water. Further she was smoking (it may be mentioned that Sunil Trakaru had stated that the deceased was smoking regularly very heavily whereas he had not seen her smoking before that day though she was known to him since 2 years, however Dr. Madhu Shashidharan, Gastroenterologist working with KIMS Hospital had stated that the deceased had reported about irregular bowel movements and that she used to smoke to pass stool easily and Narayan Singh had stated that the deceased used to take cigarettes of Marlboro brand) was calling up people, was angry and agitated.

108. The Ld. Addl. PP had relied on the email retrieved from the hard disk seized from Vikas Ahlawat which was allegedly written by the accused to MT and forcefully argued that the same showed the closeness between the accused and MT and that the accused was misrepresenting facts, facts which were crucial to the well-being of the deceased. The Ld. Sr. Counsel for the accused, on the other hand, had argued that there was nothing to establish that the said email was, in fact, sent to MT. Even if the contention of the Ld. Addl. PP is accepted that the said email showed the relation between the accused and MT, the question that arises is whether it could be regarded as an instance of 'willful conduct' as contemplated by Section 498-A IPC. The answer to that has to be in the negative. The Ld. Addl. PP had also adverted to the fact that the accused, in an apparent attempt to cover up his extra marital affair with MT had saved her number by the name of 'Harish' so as to avoid detection by the deceased. The very fact that the accused tried to hide the identity of MT from the deceased would take such an act out of the purview of "willful conduct". The Ld. Sr. Counsel for the accused had sought to rely on the joint statement issued by the accused and deceased on 16.01.2014 that all was well between the two. It was submitted that the said statement was available in the public domain. It is seen that several of the witnesses such as Sunil Alagh, Sunil Trakaru have referred to the joint statement issued by the accused and the deceased that all was well between them. However, nothing much turns on the same as according to

Narayan Singh, the deceased and the accused also had a fight in the night of 16.01.2014. The Ld. Sr. Counsel for the accused had further submitted that the state of mind of the deceased could be seen from the Twitter posts which were in the public domain and which showed that the deceased had not stated anything against the accused. Though reference to social media accounts of the accused and deceased has been made in the charge-sheet, the prosecution has not placed on record any such Twitter posts so the same cannot be looked into.

109. The Ld. Addl. PP had then vehemently put forth that the deceased felt distressed, betrayed and cheated and that the Psychological Autopsy report also showed that she was on fast, was avoiding food, was smoking, had fainting like sensation, had suicidal ideations and had clearly indulged in self-injurious behavior which would be clearly covered under Explanation (a) to Section 498-A IPC. He had referred to the document retrieved from the hard disk seized from Yashshri, PA to the accused to argue that the same disclosed how much the deceased loved the accused and that she was so devoted to the accused, had left her son, taken the blame of IPL to save the career of the accused and the accused had cheated her. He had placed strong reliance on the mail dated 08.01.2014 of the deceased wherein she had stated "I don't care about the tests. I have no will to live, all I pray for is death' and argued that the deceased felt betrayed to such an extent that she had lost all will to live. However, it need be mentioned here

that subsequent to the said mail dated 08.01.2014, the deceased had undergone tests at KIMS, Kerala and Rezina Mazhar, who was with the deceased at KIMS, Kerala had stated about the diet of the deceased being normal. She had not mentioned anything about the desire of the deceased to die.

110. The Ld. Addl. PP had also quoted the email which had been sent by Colleen Lobo in response to the letter of the IO seeking her statement wherein she had stated that the deceased had spoken to her in the evening of 16th December (Toronto time) and asked her to read her Twitter correspondence regarding MT. She stated that the deceased was hurt at some of the comments from people and was distraught that MT was pursuing her husband, after reading the messages between MT and the accused. She felt betrayed as her husband had lied to her as he had previously confirmed that he was not in touch with MT and confirmed from the correspondence that the accused did not lead MT on but the latter was persistently messaging him. The deceased had also told her that she had eaten little over the last couple of days and prayed to Lord Shiva. She would fast until Lord Shiva told her what to do next and she trusted that he would guide her. She stated that she was feeling faint. She also stated that the deceased was a very strong woman who loved her husband and son immensely and would never have committed suicide. It was thus argued that the deceased was not eating anything and fasting and felt betrayed.

111. The Ld. Addl. PP had again referred to the judgment in **Gananath Pattnaik (supra)** and submitted that cruelty would depend upon the strata from which the person comes and a person's sensitivity and it was also submitted that looking to the strata to which the deceased and the accused belonged, it would be natural for the wife to feel agitated if her husband was having an affair with another woman. It was submitted that the deceased was financially well off and had a good status and she could not even think of sharing her husband with another woman and all that the accused did amounted to mental cruelty and his conduct was "willful" in that he knew what he was doing and its impact on the mental and physical health of the deceased. It was asserted that the accused continued with his extra-marital love affair which caused immense mental cruelty to the deceased and made her take the extreme step of committing suicide. The string of messages exchanged between the accused and MT added to the 'willfulness' of the accused in continuing with his extra-marital love affair. Even if it is assumed that the accused continued his affair with MT as is the case of the prosecution and he exchanged messages with MT which were seen by the deceased, there is nothing on record to bring out that the accused made any effort so that the messages would be seen by the deceased, though according to the case of the prosecution, he had earlier promised the deceased that he would discontinue his relationship with MT, or that she would know about his continued alleged affair with MT with the view to cause her mental torture or

cruelty so as to make his conduct 'willful' as was contended by the Ld. Addl. PP for State.

112. At the cost of repetition, while the statements of the witnesses do point to the fact that the deceased was agitated, upset and angry with the accused at what she perceived as his continuing relationship with MT, she hardly ate anything and was smoking continuously, and was without doubt, mentally disturbed, the question that arises is whether the same could be construed as 'cruelty' which would be covered within the ambit of Section 498-A IPC as had been asserted by the Ld. Addl. PP. The Ld. Sr. Advocate for accused had cited certain judgments in which there were allegations of extra marital relations and the accused was either acquitted or discharged holding that extra-marital relationship, per se, would not come within the ambit of Section 498-A IPC. In **Pinakin Mahipatray Rawal** v. **State of Gujarat (supra)** it was observed as under:

> *"22. We are of the view that the 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 to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra*

> *marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide."*

Thus, the mere fact that the husband had developed intimacy with another and failed to discharge his marital obligations was held not to amount to 'cruelty'. In the present case as well, it cannot be said that the accused had ever intended or acted in such a manner which under normal circumstances would drive the deceased to commit suicide.

113. In **Ghusabhai Raisangbhai Chorasiya** v. **State of Gujarat** (2015) 11 SCC 753, it was found that there was some evidence about the illicit relationship but it was held that even if the same was proven, cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted and "*it would be difficult to hold that the mental cruelty was of such 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, 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."* It was thus, held that the accused may have been involved in an illicit relationship, but in the absence of some other acceptable evidence on record that could establish such high degree of mental cruelty, the Explanation to Section 498-A IPC which includes cruelty to drive a woman to commit suicide, would

not be attracted. Likewise in **K. V. Prakash Babu** v. **State of Karnataka** (2017) 11 SCC 176, it was observed as under:

> *"... 10. The said provision (Section 498-A IPC) came up for consideration in Girdhar Shankar Tawade vs. State of Maharashtra (2202) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus: (SCC p.180, para 3)*
>
> > *"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures : Whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide, or (ii) to cause grave injury or, (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."*
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> *11. In Gurnaib Singh v. State of Punjab (2013) 7 SCC 108, while dwelling upon the concept of "cruelty" enshrined under Section 498-A the Court has opined thus: (SCC pp.118-19, para 18)*
>
> > *"18.... Clause (a) of the Explanation to the aforesaid provision defines "cruelty" to mean "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty."*
>
> *12. The aforesaid analysis of the provision clearly spells how coercive harassment can have the attributes of cruelty that*

would meet the criterion as conceived of under Section 498-A IPC. Thus, the emphasis is on any willful conduct which is of such a nature that is likely to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of Section 498-A of the IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned.

13. In this regard, Mr. Singh has drawn our attention to the authority in Pinakin Mahipatray Rawal v. State of Gujarat (2013) 10 SCC 48. In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of Section 498-A IPC and whether that would amount to abetment leading to the act of suicide within the meaning of Section 306 IPC. Dealing with the extra-marital relationship, the Court has opined that 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, but extra-marital relationship as such is not defined in the Penal Code. The Court analyzing further in the context of Section 498-A observed that the mere fact that the husband has developed some intimacy with another woman, 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 to Section 498-A IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that: (Pinakin Mahipatray case, SCC p.58, para 27)

"27. Section 306 refers to abetment of suicide which 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. The 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."

14. Slightly recently in Ghusabhai Raisangbhai Chorasiya v. State of Gujarat (2015) 11 SCC 753, the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the Explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below: (SCC pp. 759-60, para 21)

"21. ... 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 498-A 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, 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 498-A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted."

15. 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."

It was thus held that extra-marital relationship, per se, would not fall within the ambit of Section 498-A IPC and other ingredients would have to be brought home so that it would constitute a criminal offence. In the said case, wherein the evidence showed that the wife had developed a sense of suspicion that her husband was involved with another woman and the people in the society also talked with regard to the involvement of the appellant with the said woman and the wife, being not able to digest the humiliation, committed suicide, it was held that it was extremely difficult to hold that the prosecution has established the charge under Section 498-A IPC and the fact that the said cruelty induced the

wife to commit suicide. It was observed that "*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 appellant-accused under Section 306 IPC.*" It was also clarified that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments.

114. The Ld. Addl. PP for State had referred to the article by Tulishree Pradhan (supra) on mental cruelty wherein she had referred to an illustrative list drawn up to show what does and what does not constitute mental cruelty. It is pertinent that the said list is taken from the judgments of the Hon'ble Supreme Court in **Samar Ghosh** v. **Jaya Ghosh** (2007) 4 SCC 511 and **Vidhya Viswanathan** v. **Kartik Balakrishnan** (2004) (II) OLR (SC) 907. However, both the said judgments were passed in context of matrimonial disputes and the standard of cruelty required under matrimonial statutes and under criminal law cannot be put on par. This also becomes clear from the judgment of the Hon'ble Supreme Court in **K. V. Prakash Babu** v. **State of Karnataka (supra)** and the passages from the judgment quoted above.

115. Looking to the enunciation of law in the judgments referred to above and what has come on record, the present case would be squarely covered by the said judgments. As discussed above, there is no allegation of any demand of dowry and harassment by the accused pursuant to the same and there is nothing, even prima facie to show that he had subjected the deceased to physical cruelty. Even if the case of the prosecution is taken on its face value that the accused had an affair with MT and the deceased was distressed, agitated, upset and mentally disturbed, in the absence of anything further, it cannot be said that the same would amount to mental cruelty. As such, even prima facie, there is anything to show that the accused subjected the deceased to mental cruelty of such a high degree as would be covered within the ambit of Section 498-A IPC.

116. It is also necessary at this stage to deal with another issue which has been the subject matter of arguments at length i.e. whether the deceased had committed suicide or not or the cause of death of the deceased. The Ld. Addl. PP for State had furthered the case of prosecution by asserting that the material on record had established the cause of death as other than natural circumstances and that death had taken place due to poisoning and suicide while the same was refuted by the Ld. Sr. Counsel with same vehemence and it was urged that the investigating agency had failed to establish the cause of death from the Reports of any of the Boards that were constituted and that the prosecution had also

failed to show that the death was suicidal. Both the sides had referred to the Post-Mortem Report and the 3 subsequent opinions given by the AIIMS Autopsy Board, the two Reports of the Board constituted by the Director General of Health Services and the 2 Reports of the Psychological Autopsy Board. In fact, the Ld. Sr. Counsel for the accused had contended that even the investigating agency had not accepted the Reports of the AIIMS Autopsy Board as conclusive and as such had sought the opinion of another Board which also had not given any definite opinion and in those circumstances, a closure report ought to have been filed rather than charge-sheeting the accused.

117. Further, the Ld. Additional PP for the State had argued that the deceased was a strong woman and could not have died in the ordinary course of nature and had placed reliance on various medical reports to show that her health condition was normal. On the other hand, the Ld. Sr. Advocate for the accused had contended that the various medical papers on record and statements of friends and relatives of the deceased showed that she was suffering from various ailments including lupus - an Auto immune disorder and she was not in a healthy condition. The Reports and Opinions of the various Boards have already been referred to above. As per the Post-Mortem Report, the dead body was received on 18.01.2014 at 04:25 a.m. Autopsy was concluded on 18.01.2014 at 01:30 p.m. after it started at 11:55 a.m. Various ante-mortem injuries were noted. The

opinion given was that "the cause of death to the best of my knowledge and belief in this case is poisoning. The circumstantial evidences are suggestive of alprazolam poisoning. All the injuries mentioned are caused by blunt force simple in nature, not contributing to death and are produced in scuffle, except injury number 10 which is an injection mark. Injury number 12 is a teeth bitemark. The injuries number 1 to 15 are of various duration ranging from 12 hours to four days." Thus, as per the very first Post-Mortem report, the cause of death was stated to be poisoning and that the circumstantial evidence was suggestive of Alprazolam poisoning.

118. The Ld. Sr. Advocate for the accused had argued that it was not the job of the Autopsy Board to take into account circumstantial evidence and in the instant case the Board had given an opinion without even waiting for the report of viscera which was borne out by the opinion contained in the Post-Mortem report. It was argued that it had not been stated in the report as to on what basis the conclusion was reached that the death was due to poisoning though it was stated that the circumstantial evidence was suggestive of Alprazolam poisoning. It was also argued that though the post mortem was conducted by a Board of three doctors, the cause of death was stated to the best of 'my' knowledge and belief i.e. it was the opinion of one person and not of the Board. Ld. Sr. Advocate for the accused had then referred to the statement of Dr. Shashank Pooniya, who had

stated that he had never given an opinion as to poisoning without the Chemical Analysis Report. It cannot be disputed that in the instant case, the cause of death was given without waiting for the chemical examination reports based on the circumstantial evidence of recovery of strips of Alprax. The Ld. Additional PP for the State on the other hand had contended that there was a lot of pressure on the Post-Mortem Board, moreso, as the Congress was the ruling party at that time to which the accused belonged and reference was made to the statement of Dr. Sudhir Gupta. Dr. Sudhir Gupta in his statement had stated about the Director, AIIMS telling him that he was under very high pressure and he was even called to the Director's office. He had also stated about the accused trying to reach him through some known person who asked him to give ethical report. However, it is pertinent that he stated that he did not succumb to suggestive pressure. Dr. Pooniya in his statement had stated that there was no pressure on him. As such nothing much turns on the said contention and in fact the Ld. Addl. PP had submitted at one point that only the Post-Mortem report should be looked at.

119. The chemical examination report dated 07.03.2014 showed the presence of ethyl alcohol and caffeine in viscera stated as stomach with contents and the piece of small intestine with contents; acetaminophen and caffeine in viscera stated as liver section spleen (half) and half of each kidney; caffeine in blood and

acetaminophen, caffeine, lidocaine and methylparaben on the clothes. As per the chemical examination report, Alprazolam was found only in the strips of 15 tablets and not in the viscera of the deceased or even in the blood or on clothes. As per the report of biological examination and DNA profiling Report dated 13.03.2014 no foreign material could be detected on the exhibits. Thereafter, the IO sought further opinion of the AIIMS Autopsy Board. An FSL report dated 20.08.2014 was received, as per which ethyl alcohol and caffeine were found in unidentified tissue material; ethyl alcohol, Acetaminophen, Cotinine and caffeine were found in some tissue material Exhibit 1B. Ethyl alcohol was found in the blood sample. Nicotine was found on the purple colour top. As such, again it is seen that no poisonous substances were found. It may be mentioned that even in context of the forensic reports, it was sought to be contended on behalf of the State that the same were prepared under influence but the said contention is groundless as reports were obtained from two different labs and it is stated in the charge-sheet that requisite technology was not available to detect all types of chemicals or poisons.

120. On 28.07.2014, the IO again wrote to the Autopsy Board to opine the actual cause of death. The Board inferred that the deceased was neither ill nor had any disease prior to her death and she was a normal healthy individual. It was stated that the stomach showed hemorrhagic patches all over the stomach

mucosa and the stomach was containing 50 ml of chocolate colour fluid. It was stated that the cause of death was poisoning, however, the Board reserved the comment on specific poison/ chemical since there was a lot of limitation in the viscera report. The Autopsy Board had then asked for further documents which were submitted by the IO. On 01.10.2014, another chemical examination report dated 23.12.2014 was received as per which the exhibits gave negative test of presence of common poisons. The bed cover and white bedsheet gave positive test for presence of Acetaminophen, Aspirin and Caffeine. Thereafter, the Autopsy Board gave its third opinion on 29.12.2014 after a visit to the scene of incident at Hotel Leela Palace was conducted on 05.11.2014 by the Medical Board and Forensic Analysists. It was concluded that the deceased was neither ill nor had any disease prior to her death. She was a normal healthy individual. In view of the analysis, death due to natural cause was ruled out in the case. The cause of death was reiterated to be poisoning, which was through oral route however, injectable route too could not be ruled out. It was noted that the unconsciousness period may have lasted for several hours. It was stated that the bruises were caused by blunt force and not spontaneous due to any medical reason/ purpura.

121. Thereafter, the samples were sent to the FBI laboratory, which gave its report as per which on the clothing of the deceased Nicotine, Cotinine,

Alprazolam, Lidocaine and Hydroxchloroquine were detected. On the bed cover and sheet from the bedroom Nicotine, Cotinine, Alprazolam and Lidocaine were detected. In the tissue and fluid samples i.e. stomach, small intestine, organs and blood sample Alprazolam and Hydroxychloroquine were detected. As such for the first time, the FBI report had detected Alprazolam in the samples of the deceased. It was mentioned that due to the limited volume and generally degraded nature of the biological specimens submitted, quantification of the identified drugs was not performed. A supplementary report dated 06.11.2015 was received by which certain clarifications were given. Thereafter the IO on 09.12.2015 again wrote a letter to Autopsy Board for an opinion and the forth subsequent opinion dated 12.01.2016 was given. In response to the query as to what was the genesis of arriving at the opinion that it was alprazolam poisoning and what are the symptoms on body and organ of the deceased which was suggestive of Alprazolam poisoning, reference was made to the Post-Mortem Report dated 20.01.2014. As regards the question as to how many tablets of 0.5 mg Alprax were sufficient to cause death of the deceased, it was stated that the fatal dose of Alprax was completely variable from person to person, physical conditions and medical history/ duration/ dose of intake of Alprax. It was stated that exceeding the prescribed dose led to poisoning and that Alprax was a prescription sedative-hypnotic drug, acted on CNS, caused coma and death due to its poisoning. It was also stated in answer to the question whether

combination of alcohol with Alprax was poisonous and if yes in what quantity for each of alcohol and Alprax Tablets 0.5 mg was fatal for her, that the amount of alcohol in the blood was 1.8 mg, which was pharmacological, non-significant in post mortem cases and due to post mortem production of alcohol. It was stated that Alprax was available for oral use: tablets and suspension. It was further opined that as per standard international Pharmacology, drugs Etoshine, HCQs and Pantocid-HP, which the deceased was prescribed to take on her discharge from KIMS and acetaminophen had no combination/ summation/ additive / synergistic effect with Alprazolam to cause death. It was also stated that caffeine, acetaminophen, Cotinine and Hydroxchloroquine were not CNS depressant drugs and death due to combination of drugs was ruled out. The physiological and pharmacokinetics flow of Alprazolam in the deceased was also stated and that it confirmed excessive ingestion of Alprazolam.

122. The investigating agency had regarded the fourth opinion of the Autopsy Board, AIIMS dated 12.01.2016 as still inconclusive and it was argued by the Ld. Sr. Counsel for the accused that closure report should have been filed at that stage. However, investigation is the prerogative of the investigating agency and it cannot be said when investigation should stop. The SIT had then requested the Director General of Health Services, Ministry of Health and Family Welfare to constitute a Medical Board. The IO had specifically put the query as to whether

the death in this case was homicidal, suicidal or accidental and sought definite/ conclusive opinion regarding the cause of death in this case to which the Board in its Report dated 22.06.2016 stated that no definite opinion could be given regarding definite cause of death. However, as discussed above, it ruled out lidocaine as the cause of death and regarding Alprazolam, no opinion was given and no comment was made regarding other chemical agents. The Board also remarked that no definite opinion could be given as regards whether the death was homicidal, suicidal or accidental, from the evidence/ documents provided. Further queries were raised to the Board but it was stated that no comment was possible on the interaction in a person who was consuming negligible food, alcohol and smoking as to whether Alprazolam, in the quantities as recovered from the scene of occurrence would have led to the death of the deceased. A further Report dated 09.08.2017 reiterated that no definite opinion could be given regarding cause of death and whether it was homicidal, suicidal or accidental.

123. Request was thereafter made for constitution of a Psychological Autopsy Board which after considering all the previous reports and profile of the victim, in its Report dated 10.11.2017 had concluded that:

> a) the deceased was distressed with her strained marital life, showed extreme emotional disturbance, mood swings, sleep disturbances, low intake of food that indicated possible depression for a considerable period prior to the incident;

b) While medical reports suggested that she was not having any illness that could cause death, it was inferred that she was suffering from various illnesses and was under medication;

c) Three Alprazolam tablets found at the scene of crime did not necessarily imply that the remaining 12 or 27 tablets were taken at a stretch and viscera analysis revealed very less quantity of Alprazolam which indicated that she might not have taken all the 12 or 27 tablets together;

d) Deceased had withdrawn and isolated herself but no triggering event that could have prompted possible suicidal thoughts or ideations was noticed after 8.30 a.m. on the date of the incident;

e) Deceased had shown interest in specific choice of dress for the press meet scheduled on the day of the incident to ventilate her anger against her spouse, which showed that she was not intending to commit suicide;

f) The discussion by the deceased about her death was in context of her poor health conditions and not related to her depressive mood and her private life;

g) Her behavior was detrimental to her health which could have hastened her death.

It was stated that suicide could not be the cause of death and it was opined that the death of the deceased was neither homicide nor suicide but the most probable mode of death could be the combination of her mental health, self-injurious conduct and some unidentified biological cause. Thus, for the first time, it was categorically stated that the death of the deceased was neither homicide nor suicide.

124. The SIT, based on some fresh evidence being the emails of the deceased sought further opinion from the Psychological Autopsy Board. The Board in its

Report dated 09.05.2018 inferred that the deceased was distressed, felt betrayed in her marital life due to the intervention of MT. She revealed that she was going to fast till Lord Shiva's guidance and was avoiding food for a couple of days before the incident. She felt fainting like sensation, may be due to the effect of sedative used and she was found smoking continuously a day prior to the incident. It was opined that self-injurious behavior like skipping meals and continuous smoking was obvious. Besides suicidal ideations were present in the deceased from some time prior to her death which may have been the reason for her self-injurious conduct as witnessed over the preceding days prior to her death. She was distraught over comments from people and felt betrayed by her husband which might have caused her mental disturbance leading to self-injurious behavior and suicidal ideations. It was opined that the death may be due to the cumulative effect of the self-induced starvation, continuous smoking, coupled with biological causes which may be inferred from the reports submitted by the medical doctor. Thus, even in the last Report, while the Board stated that suicidal ideations were present in the deceased as also self-injurious behavior, it still did not state that the death was suicide unlike the previous Report in which it was categorically stated that the death was not suicide or homicide and death was opined to be due to cumulative effect of various factors.

125. It is thus seen that the AIIMS Autopsy Board had maintained that the cause of death was poisoning and due to excessive ingestion of Alprazolam. It had not stated about the death being homicidal or suicidal or accidental. The Board constituted by the Director General of Health Services had also stated that no definite opinion could be given in this regard. The Psychological Autopsy Board in the first Report had stated that the death was not homicide or suicide while in its second report had stated that the deceased had suicidal ideations but did not state that it was a suicide nor there is any other material to confirm the same. As such, none of the Boards had confirmed that the death was a suicide. The Ld. Addl. PP for State had submitted that the Psychological Autopsy Board had found that the deceased was distressed and felt betrayed and self-injurious behavior of the deceased was evident and the death had occurred due to excessive ingestion of Alprazolam. It was also argued that the witnesses such as her son, brothers and close friends had stated that the deceased was a strong woman and she could not have committed suicide. Moreover, the accused had stated before the Board that the deceased had detached herself since about 3 months whereas she was regularly making calls and was a social, jovial and a party person. She had stopped taking food which had been described by the experts as self-induced starvation and was smoking. It was submitted that it was a case where a normal, healthy individual who had a good social life had committed suicide owing to the cruelty to which she was subjected by the

accused. It was also submitted that as per the Report of the Psychological Autopsy Board, the underlying biological reason for the death was to be inferred from the reports submitted by the Medical Board as per which the cause of death was poisoning.

126. The Ld. Sr. Counsel for the accused had, per contra argued that the deceased was not keeping well and was suffering from lupus which had caused her distress. It was submitted that no definite opinion regarding death had come and there was nothing to show that she had committed suicide and the death in the instant case was clearly accidental. It is pertinent that as per the Reports of the AIIMS Autopsy Board, the deceased was not suffering from any disease, not even from lupus and was a healthy individual. However, it has come in the statements of several witnesses, more particularly, her son, her brothers, her cousin Renu Dass, Sunil Trakaru, Advaita Kala, Sameer Saran, Rohit Kochar and Narayan Singh that she had either told them about not being well or having lupus or TB and that she would not live for long.

127. Further, it is seen that a just few days prior to the incident, she was admitted in KIMS for check-up and as per the discharge summary, she had history of intermittent fever (which the doctors had also stated in their statements); she gave history of on and off fainting episodes; she had treatment for migraine and at one time, she was told that the headache is due to lupus; at

one point, her ANA was positive; she had irregular bowel habits and problem with the stomach and bowel; muscle pain and bone pain. She also had photosensitivity and small joint arthritis pain and motor weakness on the left lower extremity. While most tests were normal, she was diagnosed with Sjogren's Syndrome/Overlap Syndrome. She was stated to be hemodynamically stable and discharged in stable condition. Thus, the deceased did not suffer from any major ailment but she was suffering from various problems and used to take medication as stated by some of the witnesses. The statements of the witnesses also point to the fact that she was disturbed over her health though she was more distressed over the alleged affair of the accused with MT.

128. The Ld. Addl. PP for State had argued that there was no doubt that the death of deceased had occurred due to excessive ingestion of Alprax and he had pointed out to the recovery of 2 strips of Alprax from which 27 tablets were missing and 3 had been consumed. He had also contended that it was the accused who used to take Alprax and the deceased had not taken Alprax earlier. However, the said argument is contrary to the record as Narayan Singh and Shiv Menon both have stated that the deceased used to take Alprax. The Ld. Addl. PP had tried to raise suspicion on the fact that Alprax was indented in the name of the deceased on 16.01.2014 and the same was supplied on 17.01.2014 and on that date itself, the deceased was found dead. The Ld. Sr. Counsel for the

accused had controverted the same by arguing that the indented tablets had not even reached the deceased at the time of her death. As per the record, Dr. Rajesh Bhatnagar had stated that 60 tablets 0.5 mg Alprax had been indented in the name of the deceased on 16.01.2014 and were given after being obtained. Dr. Sudershan Kumar Mehra had stated that at the saying of Shiv Kumar, staff of the accused, he had written Alprax and given the indent slip and that the medicine was obtained and given to the patient on 17.01.2014 at about 11/ 12. Shiv Kumar Parsad had stated that Narayan Singh had asked him to get Alprax and some other medicines on 16.01.2014. While he got the other medicines from CGHS Dispensary, Parliament Annexe, Alprax was not available so Dr. Mehra had indented the same and next day, he had sent K. Narayan Kutty to get the tablets. He had also stated that Narayan had told him to get 120 tablets but the doctor had given only 60 tablets. K. Narayan Kutty had stated that he had gone at the instance of Shiv Kumar to get the medicine and after getting the medicine had handed over the same to Shiv Kumar. He had also stated that he had come back to the residence at about 5.30 p.m. after getting the medicine and he had never been to Leela Hotel.

129. The Indent Slip which was seized shows that the medicines were received on 17.01.2014. There is nothing to show that Shiv Kumar or K. Narayan Kutty had gone to the Hotel on 17.01.2014 and Narayan had gone back to the Hotel at

about 3.00 p.m. with the white dress of the deceased. As such there is merit in the contention of the Ld. Sr. Counsel for the accused that the Alprax tablets which were indented on 16.01.2014 were not even delivered at the Hotel prior to the alleged incident. No doubt, 2 strips of Alprax were seized from the scene of occurrence in which 3 tablets were missing but it has also come on record that the deceased used to take Alprax earlier as well. The Ld. Addl. PP had then argued that even after two years, the FBI Lab in US had detected traces of Alprazolam in the viscera and on the clothes of the deceased, bed cover and bedsheet when even the sample was not sufficient which showed that death was due to Alprazolam. The Ld. Sr. Counsel for the accused had submitted that as per the studies on rats referred to by the Medical Boards, more than 2000 tablets of Alprax would have been needed to cause the death of the deceased whereas there was nothing in the instant case to show that she had even consumed 27 tablets at one go. However, there is no quantitative analysis available on record and as per the record itself and as stated by Shri Manishi Chandra, Member of the SIT on a query put to him during the course of arguments, there are no studies which could show what quantity of Alprazolam would be sufficient to cause death and the same varied from individual to individual. It is also seen that the DGHS Board had stated that no opinion regarding Alprazolam as the cause of death could be given in the absence of quantitative levels of the drug in the viscera

sent for analysis despite the categorical opinion of the AIIMS Autopsy Board that the death had been caused due to excessive ingestion of Alprazolam.

130. The Ld. Sr. Counsel for the accused had relied on the email of Dr. Rajeev Bhasin to the accused dated 26.01.2014 wherein he had stated that he had been reading newspaper reports that the deceased had been drinking only coconut water for 3 days before her demise. He had stated about examining her on 04.12.2013 and further stated that if she had no food over 3 days and had only coconut water which has a very high content of potassium, it could have elevated her serum potassium levels and possibly slowed her heart rate. In addition, if she took Alprax, it could have contributed to the slowing down of her heart rate and made it possibly difficult for her to call for help. It may be mentioned that the said email finds mention in the opinions of the AIIMS Autopsy Board. There is also mention of the email dated 12.2.2014 written by Dr. Anil Gupta, Cooper Health Clinic, Dubai on which also reliance was placed on behalf of the accused. He had stated that the deceased had told him that she had Lupus and was consulting a Lupus expert. He had further stated that the deceased had several episodes of plummeting blood pressure and that she used to bruise easily.

131. The Ld. Addl. PP for State had objected to the said emails on the ground that the first one had been procured by the accused to support his case and as

regards, Dr. Anil Gupta, he was a Child Specialist and there was no reason why the deceased would consult a Child Specialist. However, as regards Dr. Anil Gupta, it is mentioned that he was also a close family friend of the deceased. It may be mentioned that as per the AIIMS Autopsy Board, no such abnormality was detected during the admission of the deceased in KIMS and in the 4th Opinion it was stated that the emails were a desperate effort to mislead the investigation by a doctor who was not a specialist of Lupus and merely a child specialist. The Ld. Sr. Counsel for the accused had submitted that the said two emails constituted opinions of two independent doctors and formed part of the record. However, merely on the basis of the said emails, no conclusion can be arrived at.

132. While the Ld. Sr. Counsel for the accused had argued that the prosecution had not shown that the death was suicidal, it may be mentioned that the prosecution itself has taken the stance at one point that it was a homicidal death and at another that the death was a suicide. Suffice it to say that none of the Reports either of Medical Doctors or of Psychological Autopsy Board had confirmed that the death was a suicide. Even if it is presumed that the deceased had suicidal ideations and she had committed suicide or caused grave injury or danger to life, limb or health as per the case of the prosecution, as discussed above, there is nothing, even prima facie, to suggest that there was any willful

conduct on the part of the accused of such a nature as was likely to drive the deceased to commit suicide or to cause injury or danger to life, limb or health.

133. The Ld. Sr. Counsel for the accused had argued that in several cases, the proceedings had been quashed where the ingredients of offence under Section 498-A IPC were not made out and cited **Varala Bharath Kumar and Anr.** v. **State of Telangana and Anr.** (2017) 9 SCC 413 wherein it was found that the story narrated by the complainant did not attract Sections 498-A and 406 IPC as there had been no dowry demand or harassment and the proceedings were quashed observing:

> *"This is a case where there is a total absence of allegations for the offences punishable under Section 498-A and Section 406 IPC. In the matter on hand, the allegations made in the first information report as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offences punishable under Sections 498-A and 406 IPC against the appellant-accused. So also the uncontroverted allegations found against the appellants do not disclose the commission of the offence and make out a case against the accused. The proceedings initiated against the appellants are liable to be quashed."*

In **Shakson Belthissor** v. **State of Kerala and Anr.** (2009) 14 SCC 466 the Hon'ble Supreme Court observed that no prima facie case as narrated under Explanation (a) to Section 498-A IPC or under Explanation (b) thereto was made out and quashed the proceedings under Section 498-A IPC. Likewise in **Onkar**

Nath Mishra & Ors. v. **State (NCT of Delhi) and Anr.** (2008) 2 SCC 561 it was held that the charge under Section 498-A IPC was not brought out against the appellants No.1 and 2 and the charge against them was quashed. Reliance was also placed on **Harish Chandra Prasad Mani** v. **State of Jharkhand & Anr.** (2007) 15 SCC 494 wherein it was held that even cognizance cannot be taken unless there is at least some material indicating the guilt of the accused and that cognizance cannot be taken merely on the basis of suspicion. However, in the present case, we are at present at the stage of framing of charge. Undoubtedly, the court has the power to discharge an accused for offence under Section 498-A IPC where there is no prima facie case against the accused and the present is one such case where the prosecution has, even on the basis of uncontroverted allegations at this stage, failed to raise any suspicion, much less grave suspicion which would warrant framing of charge for the offence under Section 498-A IPC against the accused. It is trite that at the stage of charge, the court is not to meticulously examine the material on record but the court is not to act as a post office and can sift the evidence for the purpose of seeing if the ingredients of the offence so as to frame charge are made out and for presuming that the accused had committed the offence but in the present case, there is nothing which could even lead to the presumption that the accused had committed the offence under Section 498-A IPC.

Section 113 A of the Indian Evidence Act

134. The next limb of argument of the Ld. Addl. PP was that Section 113 A of the Evidence Act would apply on all fours in the present case and would give rise to the presumption that the accused had abetted commission of suicide by the deceased. Section 113 A of the Evidence Act reads as under:

> *"**113-A. Presumption as to abetment of suicide by a married woman.** – When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*
>
> *Explanation.- For the purposes of this section, 'cruelty' shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860)."*

135. The Ld. Sr. Advocate for the accused had submitted that the prosecution was seeking to take aid of Section 113A Indian Evidence Act, which raises a presumption against the accused for framing of charge against the accused whereas, it was necessary for prosecution to establish certain foundational facts and without showing any material on record, merely on the basis of presumption the accused could not be charged. Reliance in this regard was placed on the judgment of Hon'ble High Court of Calcutta in **Shahid Hossain Biswas** v. **State of West Bengal** 2017 OnLine Cal 5023 wherein the Hon'ble High Court had in

context of the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 observed that:

> *"... in a prosecution under the POCSO Act an accused is to prove 'the contrary', that is, he has to prove that he has not committed the offence and he is innocent. It is trite law that negative cannot be proved [see Sait Tarajee Khimchand v. Yelamarti Satyam (1972) 4 SCC 562, Para-15]. In order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. It is, therefore, an essential prerequisite that the foundational facts of the prosecution case must be established by leading evidence before the aforesaid statutory presumption is triggered to shift the onus on the accused to prove the contrary.*
>
> *Once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour".*

Reference was also made to the judgment of the Hon'ble Supreme Court in **Babu** v. **State of Kerala** (2010) 9 SCC 189, wherein the Hon'ble Supreme had observed as under:

> *"Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to*

> *any injustice or mistaken conviction…., such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact".*

It was also observed that "*the statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution*." To similar effect is the judgment of the Hon'ble Supreme Court in **State of Maharastra** v. **Dnyaneshwar Laxman Rao Wankhede** (2009) 15 SCC 200, wherein again it was held that "*even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts*."

136. While the reverse evidentiary burden has been upheld in a catena of decisions in reference to various statutes such as in **K. Veeraswami v. Union of India** (1991)**-** Section 5 of PC Act, 1947; **Noor Aga v. State of Punjab and Ors.** (MANU/SC/2913/2008)- Sections 35, 54 of NDPS Act; **Kumar Exports v. Sharma Carpets** (2009) 2 SCC 513- presumption under Negotiable Instruments Act, it is also the settled law that wherever such presumptions are provided under the statute against the accused, it does not absolve the prosecution of its duty to establish the foundational facts (**Naresh Kumar v. State of Himachal Pradesh** AIR 2017 SC 3859; **Gangadhar @ Gangaram v. State of MP** 2020 (5) KLT 294 SC – NDPS Act and the judgments referred to above). In the

context of POCSO Act as well, it has been consistently held that though the presumption under Section 29 was a rebuttable presumption, it does not absolve the prosecution of its duty to establish the foundational facts. The Hon'ble High Court of Delhi in a recent judgment in the context of the presumptions under the POCSO Act has held that the presumptions come into play only after charge is framed (**Dharmander Singh @ Saheb v. State** Bail Appln 1559/2020 decided on 22.9.2020- under the POCSO Act, the presumption arises in case of a person prosecuted for an offence). As such, looking at the settled law, at the stage of framing of charge, it is incumbent upon the prosecution to show that there is sufficient material on record which gives rise to grave suspicion and merely on the basis of the presumption, the prosecution cannot be absolved of its duty to bring forth material to show the foundational facts.

137. It is pertinent that even on a plain reading of Section 113 A of the Evidence Act, it is abundantly clear that the presumption which may be raised by the court is with regard to suicide having been abetted by the husband. Section 113 A of the Evidence Act would not come to aid for raising a presumption that suicide had been committed by the woman, even if read in conjunction with Section 498-A IPC and the wordings of the Section are clear that it has to be shown "that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had

subjected her to cruelty." In the present case, no doubt the deceased had died within seven years of marriage but to raise the presumption, at this stage, the prosecution would still have to show, prima facie, that the deceased had committed suicide and that she had been subjected to cruelty by her husband i.e. the accused. Reference herein may be made to the judgment of the Hon'ble Supreme Court in **Pinakin Mahipatray Rawal** v. **State of Gujarat (supra),** on which reliance was placed by the Ld. Sr. Counsel for the accused, wherein it was observed as under:

> *"26. Section 113-A only deals with a presumption which the court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution."*

Further, in a recent judgment in **Satbir** v. **State of Haryana** decided on 28.05.2021, the Hon'ble Supreme Court has held as under:

> *"Section 113A, Evidence Act creates a presumption against the husband and/ or his relative with respect to the abetment of suicide of a married woman, under certain conditions. Not going into the other conditions, a perusal of the provision indicates that such presumption shall be attracted only if the factum of suicide has been established by the prosecution first."*

Thus, the prosecution would still have to show that the accused had committed cruelty as defined under Section 498-A IPC and that suicide had been committed by the deceased.

138. The Ld. Sr. Counsel for the accused had cited the judgment of the Hon'ble Supreme Court in **Anand Kumar** v. **State of M.P** (2009) 3 SCC 799, wherein the Hon'ble Supreme Court had referred to the difference in terminology used in Sections 113-A and 113-B of the Indian Evidence Act and observed that "*under Section 113-A, the court "may presume", having regard to all the other circumstances of the case, an abetment of suicide as visualized by Section 306 of the IPC but in Section 113-B which is relatable to Section 304-B the word "may" has been substituted by "shall" and there is no reference to the circumstances of the case*." It was held that in a case under Section 306 IPC which is relatable to Section 113-A, though the presumption against the accused has to be raised, "*the onus is not as heavy on the accused as in the case of a dowry death*." However, this would be relevant at the stage of trial and here, we are at the stage of framing of charge. Apart from the fact that none of the Reports

on record confirm that the death in the present case was suicidal, as discussed above, there is even nothing to show that the accused had subjected the deceased to cruelty within the meaning of Section 498-A IPC which is one of the ingredients to be fulfilled for the presumption under Section 113-A of the Evidence Act to come into play. As such, the prosecution cannot take recourse to Section 113-A of the Evidence Act to contend that the accused had abetted the commission of suicide by the deceased.

Section 306 IPC

139. The accused in the present case has also been charge-sheeted for the offence under Section 306 IPC which prescribes the punishment for abetment of suicide. Section 306 IPC may be reproduced here for ready reference:

> *"**306. Abetment of suicide.** – If any person commits suicide, whoever, abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

In order to make out an offence under Section 306 IPC, it has to be shown that:

i) the deceased committed suicide; and

ii) the accused abetted the commission of the suicide.

The word "suicide" has nowhere been defined in the Indian Penal Code. In **Gangula Mohan Reddy** v. **State of Andhra Pradesh** (2010) 1 SCC 750, the meaning was enunciated as under:

> *"The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself."*

The Hon'ble Supreme Court in **Pinakin Mahipatray Rawal** v. **State of Gujarat (supra)** held that "*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. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide."*

140. In the case of **Wazir Chand** v. **State of Haryana** (1989) 1 SCC 244 it was held that there must be clear proof of the fact that the death in question was a suicidal death and it was observed:

> *"5…Reading Sections 306 and 307 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 Section 306 of the Penal Code, 1860 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."

In this case, the evidence adduced was not able to justify a finding of suicide. The only other possibility was accidental burning of the newly married woman though she was being victimized for insufficient dowry and there was no chance of an accident being abetted. The husband and in-laws, were, however, found guilty under Section 498-A for causing harassment for dowry. In the case of **Satbir Singh** v. **State of Haryana (supra)** it was held that the conclusion reached by the Courts below that the deceased had committed suicide was based on assumptions, as there was no evidence on record to support the same and as such the presumption under Section 113A Evidence Act would not be of much help to the prosecution. It was held that the essential ingredient of deceased committing suicide had not been proved by the prosecution by adducing sufficient evidence.

141. The Ld. Sr. Counsel for the accused had also argued that in a catena of judgments, it has been held that where the cause of death was not definite, then Sections 306 or 304-B IPC could not be attracted and reliance was placed on the judgment in **Baijnath & Ors.** v. **State of Madhya Pradesh** (2017) 1 SCC 101 in which the Hon'ble Supreme Court had observed as under:

> *"35. A cumulative consideration of the overall evidence on the facet of dowry, leaves us unconvinced about the truthfulness of the charge qua the accused persons. The prosecution in our estimate, has failed to prove this indispensable component of the two offences beyond reasonable doubt. The factum of unnatural death in the matrimonial home and that too within seven years of marriage therefore is thus ipso facto not sufficient to bring home the charge under Sections 304B and 498-A of the Code against them.*
>
> *36. The predicament of the prosecution is compounded further by its failure to prove, the precise cause of the death of the deceased. It is not clear as to whether the death has been suicidal or homicidal. It is also not proved beyond doubt, the origin and cause of the external injuries. Though the obscurity of the causative factors is due to the putrefaction of the body, the benefit of the deficiency in proof, logically would be available to the persons charged."*

Reliance was also placed on **Akula Ravinder & Ors.** v. **State of Andhra Pradesh** 1991 Supp (2) SCC 99 which was to similar effect and on the judgment in **Smt. Swaraj & Anr.** v. **State of Madhya Pradesh** 2017 SCC OnLine MP 112 wherein it was held that "*Since prima facie, the death was neither homicidal nor suicidal; therefore, the offence punishable under section 302 of the Indian Penal Code or 306 of the Penal Code, 1860 would also not be constituted."* In the said case, the order framing charge against the accused for the offence under Section 302 read with Section 34, 304-B, 306 and 498-A of the IPC and Section 3/4 of the Dowry Prohibition Act was set aside. In **Sanju** v. **State of Maharashtra** 2017 SCC OnLine Bom 8402, in the facts of the case it was held

that on a holistic appreciation of the evidence on record it would be vary hazardous to totally exclude the possibility of the death being accidental and not suicidal. As such, where the death was not shown to be suicidal, Section 306 IPC was held not to be made out.

142. The Ld. Sr. Advocate for the accused had further cited **Gurcharan Singh** v. **State of Punjab (**2017) 1 SCC 433 in which discussing what constituted the offence under Section 306 IPC, it was observed as under:

> *"... 21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.*
>
> *27. The pith and purport of Section 306 IPC has since been enunciated by this Court in Randhir Singh vs. State of Punjab (2004) 13 SCC 129, and the relevant excerpts therefrom are set out hereunder.*
>
> > *"12. 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 is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73, this 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."

28. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707.

xxx

> *30. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chhena vs. Vijay Kumar Mahajan."*

It has thus, been held that there must be clear mens rea to commit an offence under Section 306 IPC and there must be an active or direct act by the accused leading the deceased to commit suicide. It may be mentioned that the judgment in **State of W.B.** v. **Orilal Jaiswal** (1994) 1 SCC 73 which has been referred in the above judgment has been relied upon by the Ld. Addl. PP for State. Likewise, it has been held in **S.S. Chhenna** v. **Vijay Kumar Mahajan and another (supra)** on which reliance was placed on behalf of the accused, that:

> *"Abetment 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 section 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 this act must have been intended to push the deceased into such a position that he committed suicide."*

143. In **Gangula Mohan Reddy** v. **State of Andhra Pradesh** (2010) 1 SCC 750 and **M. Mohan** v. **State** (2011) 3 SCC 626 which were relied upon by the Ld. Sr. Counsel for the accused, the concept of abetment was discussed at length

and similar observations were made. In **Gurcharan Singh** v. **State of Punjab** (2020) 10 SCC 200 (on which reliance was placed by the Ld. Sr. Counsel for the accused) the Hon'ble Supreme Court elaborated the concept of abetment and it was observed as under:

> *"10…. In order to give the finding of abetment under Section 107 IPC, the accused should instigate a person either by act of omission or commission and only then, a case of abetment is made out…*
>
> *xxx*
>
> *15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime he is held to have committed. The conviction of appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.*
>
> *xxx*
>
> *17. While dealing with a case of abetment of suicide in Amalendu Pal v. State of West Bengal (2010) 1 SCC 707, Dr. M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms: (SCC p.712, paras 12-13)*

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

18. In ***Mangat Ram*** *v.* ***State of Haryana (****2014) 12 SCC 595, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnan, J. rightly observed as under: (SCC p.606, para 24)*

"24. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning."

19. Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is

apparent is that no overt act or illegal omission is seen from the appellant's side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The trial court and the High Court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife."

This has been reiterated by the Hon'ble Supreme Court in the latest judgment in the case of **Shabbir Hussain** v. **The State of Madhya Pradesh & Ors.** SLP (Crl.) No.7284/2017 decided on 26.07.2021 observing:

"In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal (2010) 1 SCC 707]

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605]"

Thus, it stands settled that for an offence under Section 306 IPC to be made out, the prosecution has to show that suicide was committed and that the accused who is said to have abetted the commission of the suicide had played an active role in the same and there was some positive act proximate to the time of the occurrence on the part of the accused (reiterated by the Hon'ble Supreme Court in **Satbir Singh** v. **State of Haryana** decided on 28.05.2021).

144. Without doubt, though it was sought to be contended otherwise by the Ld. Addl. PP, 'abetment' under Section 306 IPC is relatable to 'abetment' under Section 107 IPC. Section 306 IPC nowhere defines what is meant by 'abets' so we have to look for the definition of 'abetment' elsewhere which is contained in Section 107 IPC which, in so far as is material, is reproduced hereunder:

> *"**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.*
>
> *Xxxx"*

Thus, abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. Again all three involve a mental process as observed in **Randhir Singh** v. **State of Punjab** (2004) 13 SCC 129.

145. The Hon'ble Supreme Court in **Ramesh Kumar** v. **State of Chattishgarh**, (2001) 9 SCC 618 in para 20 examined the different shades of 'instigation' and observed as under:

> *"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."*

Further, the Hon'ble High Court of Rajasthan in **Vijay Kumar Rastogi** v. **State of Rajasthan** (2012) Crl.L.J.2342 observed as under:

> *"10. The word 'urge' means to advice or try hard to persuade somebody to do something, to make a person to move more quickly or in a particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying*

> *the deceased by words, taunts or willful omission or conduct which may even be willful silence, until the deceased reacted, or pushing the deceased by his words or willful omission or conduct to make the deceased move forward more quickly in a forward direction. Secondly, the accused had the intention to provoke or urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly the presence of mens rea is the necessary concomitant of instigation.*

In **Cyriac & Anr.** v. **The SI of Police and Anr.** 2005 SCC OnLine Ker 346, what is instigation under Section 107 IPC was discussed at length and after referring to the judgment in **Ramesh Kumar** v. **State of Chhatisgarh (supra)**, it was observed as under:

> *"8. It is clear from the above discussion that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward. Going by the dictionary meaning (vide Oxford Advanced Learners Dictionary, Sixth Edition) the word `goad ' means, `keep irritating or annoying somebody until he reacts.' So also, `urge' means 'to advise or try hard to persuade somebody to do something or to make a person to move more quickly in a particular direction especially by pushing or forcing' such person. `Urge forward' means in this context, `urge' a person `forward'. Thus, a person who instigates another has `to goad or urge forward' the latter, with intention to provoke, incite, urge or encourage doing of an act by the latter.*
>
> *9. A close, combined reading of the meaning of the word `instigation' with the meaning of the terms `goad' and `urge' will reveal that `instigation' involves two things. One is a physical act or omission, while the other is a mental act. The physical act or omission involved in `instigation' is, `goading or urging forward' another. Such physical act of goading can be committed either by words or deed, as the meaning of the word*

suggests. `Goading' can be committed also by any other willful conduct--may be, by even an adamant silence. Thus, by words, deeds willful omission or willful silence also, one can goad a person i.e, keep irritating or annoying a person until he reacts.

10. So also, the physical act of `urging forward' or 'instigation' involves doing of an act by strongly advising, persuading to make a person do something or by pushing or forcing a person in order to make him move more quickly in a forward direction. Thus, both the physical acts in `goading or urging forward' can be committed by doing some act, either verbal or physical or even by a willful omission or conduct.

11. But, apart from such physical act or omission, one more factor has to be established to constitute `instigation'. That is a mental act. While a person instigates another by the act of `goading or urging forward', such person must also have, the intention to provoke, incite, urge or encourage doing of an act by the other. Such intention to provoke, incite, urge or encourage doing of an act by the other is an essential factor in `instigation'. A person can be said to have instigated another, if such person, with intention to provoke, incite, urge or encourage the latter to do an act, has goaded or urged forward the other person.

12. I shall make the position clearer. If a person commits suicide as instigated by another the following facts will be involved. The person who instigates the deceased to commit suicide must do some act by words, deed or willful omission or conduct which may even be a willful silence, in order to irritate or annoy the deceased until he reacted. Or, the person who instigates the deceased must push or force the deceased by deed, words, or willful omission or conduct which may even be a willful silence to make the deceased to move forward more quickly in a particular direction. Or, he must strongly persuade or advise the other to do some act. While acting so, the person who instigates the other must also have the intention to provoke, incite, urge or encourage the latter to commit suicide.

13. In short, in order to prove that the accused abetted commission of suicide of a person, prosecution has to establish the following factors: 1) that the accused kept on irritating or annoying the deceased by words, deed or willful omission or

> *conduct which may even be a willful silence until the deceased reacted; Or, that the accused strongly advised or persuaded the deceased to do something; or pushed or forced the deceased by deed, words, or willful omission or conduct which may even be a willful silence to make the deceased to move forward more quickly in a forward direction 2) that the accused had the intention to provoke, incite, urge or encourage the deceased to commit suicide, while acting in the manner stated above."*

It was thereafter, held as under:

> *"17. From the discussion already made by me, I hold as follows: The act or conduct of the accused, however insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capabale of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of commission of suicide. Unless it is established that the accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide."*

In **Chitresh Kumar Chopra** v. **State (Govt. of NCT of Delhi)** (2009) 16 SCC 605, the same position of law was reiterated. Thus, the contours of what would constitute abetment and its different shades have been well laid down in a catena of judgments and there must be either instigation as elaborated in the above cited judgments or conspiracy or intentional aiding. On the facts of the present case, there are no allegations to the effect that there was any conspiracy so clause 'secondly' of Section 107 IPC would not be attracted.

146. The Ld. Sr. Counsel for the accused had submitted that Section 306 and Section 498-A IPC had to be seen independently and they were not mutually inclusive. Reliance in this regard was placed on the judgment in **State of Gujarat** v. **Sunilkumar K. Jani** 1996 SCC OnLine Guj 52 : 1997 Cri LJ 2014 wherein reference was made to the judgment of the Hon'ble Supreme Court in **Chanchal Kumari** v. **Union Territory, Chandigarh** AIR 1986 SC 752 (on which also reliance was placed and in which it was observed that for offence under Section 306 IPC, there should be dependable evidence with regard to actual abetment by the accused) and of the Division Bench of the Hon'ble High Court of Gujarat in **Rameshbhai Ranchhodbhai** v. **State of Gujarat** (1989) 30 (2) GLR 834 : 1990 (1) Crimes 417 wherein keeping Section 107 IPC in mind, it was laid down as under:

> *"For establishing abetment covered by Clause Thirdly read with Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of Clause Thirdly. What is required to be established is that the person against whom the charge of abetment is levelled has done something in order to facilitate the commission of the offence, what is, therefore, required is that the person against whom charge of abetment is levelled has to do something purposefully which facilitates the commission of the offence. It cannot be said with any stretch of imagination that a person subjecting a woman to cruelty is guilty of abetment. Sections 306 and 498-A are two independent Sections in the Indian Penal*

> *Code, 1860. While considering the guilt or otherwise of an accused for the offence punishable under Section 306 I.P.C., we have to read only Sections 306 and 107 I.P.C. Section 498-A I.P.C. is out of question so far as the question of abetment is concerned. In view of this, it is difficult to support the finding of the learned trial Judge that the appellants are guilty of the offence punishable under Section 306 I.P.C."*

It was thus, held that Section 306 and 498-A IPC are two independent sections. Likewise, in **Sushil Kumar Sharma** v. **UOI & Ors.** (2005) 6 SCC 281, it was elucidated that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive; the said provisions deal with two distinct offences though cruelty was a common essential to both the sections and had to be proved. It was also held that the basic difference between Section 306 and Section 498-A IPC was that of intention; under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended. The position regarding Sections 304-B and 498-A IPC was reiterated in **Noorjahan** v. **State** (2008) 11 SCC 55. The law in this regard is well settled and both the offences have to be looked at separately.

147. Coming to the facts of the present case, apart from the observations already made regarding commission of suicide, it is to be seen whether the material on record, prima facie shows that the accused had abetted the commission of suicide by the deceased, assuming that she had indeed committed suicide. The Ld. Addl. PP for State had referred to the accused leaving the

deceased at the airport, not calling a doctor, not paying attention to her but the same cannot be termed as having been done with the intention to goad her or instigate her to commit suicide. Much emphasis was laid on the accused allegedly having an affair with MT. While it may be reiterated that the statements of the witnesses show that the deceased was agitated, distressed, felt betrayed and cheated due to the alleged affair of the accused with MT, the prosecution has not brought anything on record to show that the accused had provoked, incited or induced the deceased to commit suicide. There is nothing to demonstrate any overt act on the part of the accused and only on the ground that he continued the alleged affair with MT (even if it is assumed) and exchanged messages with her, it cannot be presumed that he had abetted the commission of suicide by the deceased. The prosecution has not been able to point out even one instance where the accused had done something purposefully which facilitated the commission of the offence. As held in the aforesaid judgments, even it cannot be said that a person subjecting a woman to cruelty is guilty of abetment unless something further is shown. Even for instigation, the intention to provoke, incite, urge or encourage doing of an act is an essential factor but the record does not bear out any such intention on the part of the accused. The Ld. Addl. PP for State had argued that the accused had continued the affair with MT despite his assurance not to continue the same and this showed willful misrepresentation and instigation by misrepresentation. However, there is no merit in this

contention as even as per the case of the prosecution, the accused took steps to hide his alleged affair with MT. There is nothing on record to show that the accused did some act in order to irritate or annoy the deceased until she reacted or strongly persuaded or advised the deceased to do some act with the intention to provoke, incite, urge or encourage the latter to commit suicide.

148. It is again the settled law that marital disputes cannot be taken as abetment if suicide results therefrom. In **Assoo** v. **State of Madhya Pradesh** (2011) 14 SCC 448 it was noted that every quarrel between a husband and wife which results in a suicide cannot be taken as an abetment by the husband and the standard of a reasonable and practical woman as compared to a headstrong and oversensitive one, has to be applied and it was held that no case of abetment of suicide was made out. In **Sohan Raj Sharma** v. **State of Haryana** (2008) 11 SCC 215 reference was made to the judgment of Hon'ble Supreme Court in **Mahendra Singh v. State of MP** 1995 Supp (3) SCC 731 wherein it was elucidated that "*In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough.*" It was also observed that it was common knowledge that the words uttered in a quarrel or in the spur of the moment or in anger could not be treated as constituting mens rea and in the said case, the conviction was set-aside as there was no

element of mens rea. Again in **Bhagwan Das** v. **Kartar Singh & Ors.** (2007) 11 SCC 205 it was opined that mere harassment of wife by husband due to differences per se did not attract Section 306 read with Section 107 IPC, if the wife commits suicide

149. The Ld. Sr. Advocate for the accused had referred to various judgments where even in cases of extra marital relations of one spouse leading to suicide by the other, it was held that offence under Section 306 IPC was not made out. This was so held in **Pinakin Mahipatray Rawal** v. **State of Gujarat (supra).** In **State of Punjab** v. **Kamaljit Kaur alias Bholi and Another** 2008 SCC OnLine P&H 331 : (2008) 2 (RCR) (Cri) 562 : 2008 Cri LJ 2104 : (2008) 3 ALT (Cri) (NRC 2) wherein a person committed suicide leaving a suicide note to the effect that his wife was a woman of bad character and that his wife had illicit relations, it was observed as under:

> *"...For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of frustration has not only committed suicide but has also snuffed the life of his son.*
>
> *xxx*

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

xxx

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another, abetment of suicide cannot be imputed to the other spouse.

6. Suspicion by one spouse regarding moral character of another if lead to commission of offence of suicide to say that other is guilty of abetment will be of far reaching consequences."

Thus, in this case the discharge of the accused was upheld. In the present case as well, the deceased might have felt distressed or mentally disturbed with the alleged extra marital relation of the accused but mental disturbance does not constitute the offence of abetment as held in the aforesaid judgment. Likewise in **Saroj Sharma** v. **State of Rajasthan** 1998 SCC OnLine Raj 347 it was observed that there has to be some relationship between the act of suicide and the conduct of the petitioner, else the charge under Section 306 IPC could not be sustained against the petitioner and it was found that except for stating that there was illicit relationship between the petitioner and another person, there was no averment against the petitioner. The order framing charge against the petitioner under Section 306 IPC was set aside by the Hon'ble High Court of Rajasthan. Thus, even in those cases where there was an illicit relationship which resulted

in suicide by a spouse, in absence of anything against the accused, he had been discharged.

150. The Ld. Sr. Counsel for the accused had then referred to judgments in which accused had been either acquitted or discharged or the proceedings had been quashed as the ingredients of Section 306 IPC were held to be not satisfied. In **The Public Prosecutor, High Court of AP** v. **Jangili Sammaiah alias Babu** 2004 SCC OnLine AP 1138, the mere fact that some allegation was made against the deceased that she was unfit for conjugal happiness and the mere fact that some panchayat was held in that regard was held not sufficient to attract the ingredients of Section 306 IPC or Section 107 IPC and the acquittal was upheld; in **V. Venkataraman** v. **State** 2015 SCC OnLine Mad 13892 the conviction under Sections 498-A and 306 IPC were set aside; in **Krushanahari Debnath & Ors.** v. **State** 1995 SCC OnLine Ori 314 the conviction was set aside in absence of evidence to allege the commission of suicide; in **State of Kerala & Ors.** v. **S. Unnikrishan Nair & Ors.** (2015) 9 SCC 639, where no prima facie case of abetment was made out against the accused, the order quashing the proceedings under Section 482 Cr.P.C. was upheld; in **M. Mohan** v. **State (supra)** it was held that the appellants were not even remotely connected with the offence under Section 306 IPC and the proceedings against them should have been quashed and that they should not have been compelled to face the rigmaroles of a

criminal trial. In **Madan Mohan Singh** v. **State of Gujarat & Anr.** (2010) 8 SCC 628, while quashing the proceedings, it was observed as under:

> *"13. ... In the prosecution under Section 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant- accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant- accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta v. State of W.B. (2005) 2 SCC 659, this Court had quashed the proceedings initiated against the accused."*

In **Netai Dutta** v. **State of WB** (2005) 2 SCC 659 wherein there was no allegation that the accused was in any way harassing the deceased, it was held that the case was without any factual foundation and the criminal proceedings were quashed observing that the prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In **Laxmi & Anr.** v. **State** 2000 (53) DRJ 814, the Hon'ble High Court of Delhi quashed the proceedings; in **V. Shankaraiah** v. **State of AP** 2002 (2) A.P.L.J. 195(HC); and in **A.R. Madhav Rao & Ors.** v. **State of Haryana & Anr.** CRM M-2068 of 2012 (O&M) decided on 22.05.2018 as well the proceedings were quashed.

151. In **Swamy Prahalad Das** v. **State of MP & Anr.** 1995 Supp (3) SCC 438 which was a case of sexual jealousy between two alleged paramours of one married lady and one of them had uttered to the other to go and die who thereafter went home and committed suicide, it was held that it was difficult to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide and it could not be said that the suicide by the deceased was the direct result of the words uttered by the appellant; in **Cyriac & Anr.** v. **The SI of Police & Anr.** 2005 SCC OnLine Ker 346 the charge under Section 306 IPC was set aside; in **Arvind** v. **State** 2014 SCC OnLine Chh 12 and in **Khyaliram & Ors.** v. **State of MP** 2007 SCC OnLine MP 624 the petitioners were discharged for the offence punishable under Section 306 IPC; in **Ajay Singh Praveen & Anr.** v. **State of UT Chandigarh** (2011) 2 RCR (Cri) 405 the accused was discharged for the offence under Section 306 IPC and 3 (2) (vii) of SC/ST Act; and in **Manish Kumar Sharma** v. **State of Rajasthan** 1994 SCC OnLine Raj 138, the charge framed against the accused for the offence under Section 306 IPC was quashed. Without doubt, the court has the power to discharge the accused for an offence under Section 306 IPC, if the ingredients of the said offence are not shown, even prima facie.

152. In the instant case, there are no instances or illustrations of instigation or aiding pointed out against the accused which would be covered under 'abetment'

as interpreted in a catena of judgments. There is no material whatsoever against the accused much less any positive act to instigate or aid the deceased in committing the suicide, even if it is assumed that the death was a suicide. As such, it is not shown, even prima facie that the offence under Section 306 IPC is made out against the accused.

CONCLUSION

153. The Ld. Addl. PP for State had submitted that the accused could seek discharge only where the material on record was wholly or absolutely insufficient. The present clearly is one such case. It was also submitted that where two views were possible, at the stage of framing of charge, the view favourable to the prosecution is to be taken, but as submitted by the Ld. Sr. Counsel for the accused, in the present case, only one view can be taken which points towards the discharge of the accused.

154. Before parting, this Court would like to place on record appreciation for the painstaking efforts put in by the Investigating Officer initially and then the SIT to collect, analyze and review all available material meticulously. Thereafter, the charge-sheet appears to have been filed in the hope that perhaps the Court would find some material to proceed with the trial against the accused. However, criminal trials require evidence. No doubt a precious life was lost. But in the absence of specific allegations and sufficient material to make out the

ingredients of the various offences and on the basis of which the court could, at this stage presume that the accused had committed the offence, the accused cannot be compelled to face the rigmaroles of a criminal trial.

155. In view of the above discussion, the uncontroverted allegations made as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie disclose the commission of offences punishable under Sections 498-A or 306 of IPC against the accused. Accordingly the accused Shashi Tharoor is discharged for the offences under Sections 498-A and 306 IPC. Bail bond is cancelled. Surety is discharged.

Accused is directed to furnish a bond in terms of Section 437-A Cr.P.C.

GEETANJLI GOEL
Digitally signed by GEETANJLI GOEL
Date: 2021.08.18 14:38:56 +0530

Announced
On this 18th day of August, 2021

(Geetanjli Goel)
ASJ/Spl. Judge (PC Act) (CBI)-24
(MPs/MLAs Cases),
Rouse Avenue District Court,
New Delhi