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THE PROSECUTION RESPECTFULLY ASK THE HON'BLE DISTRICT & SESSIONS COURT:

1. WHETHER THE SAID ACCUSED IS GUILTY TO HAVE COMMITTED ATTEMPT TO MURDER AS DEFINED UNDER SECTION 307 OF THE INDIAN PENAL CODE
2. WHETHER THE SAID ACCUSED PERSON IS GUILTY TO HAVE COMMITTED CRUETY AS DEFINED UNDER SECTION 498A OF INDIN PENAL CODE

- **PRAYER FOR RELIEF**

LIST OF ABBREVIATIONS

¶	Paragraph
A.C.	Court of Appeal
A.I.R.	All India Reporter
A.P.	Andhra Pradesh
Art.	Article
Bom LR	Bombay Law Reporter
Bom.	Bombay
CCC	Criminal Court Cases
Cr. L. J	Criminal Law Journal
Cr.P.C	Code of Criminal Procedure
DB	Division Bench
DB	Division Bench
Dist.	District
Ed.	Edition
Guj.	Gujarat
H.C	High Court
H.P.	Himachal Pradesh
Hon'ble	Honourable
i.e.	that means
I.P.C	Indian Penal Code
ILR	Indian Law Reporter
J.	Justice
Kant.	Karnataka

Ker.	Kerala
M.P.	Madhya Pradesh
Mad.	Madras
Misc.	Miscellaneous
Ori.	Orissa
Ors.	Others
P&H	Punjab and Haryana
Para.	Paragraph
Pg.	Page
PLR	Punjab Law Reporter
pp.	Pages
R/w	Read With
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
U.P.	Uttar Pradesh
UOI	Union of India
U/s	Under Section
Vol.	Volume
vs.	Versus
www	World Wide Web
¶	Paragraph

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STATEMENT OF JURISDICTION

THE STATE HAS APPROACHED THE HON'BLE DISTRICT AND SESSIONS COURT, UNDER SCHELDULE 1 AND 2 OF C.R.P.C,1973 WHICH READS AS HEREUNDER:

“Ordinary Place of Inquiry & Triable by Court of Session.”

(1) Every offence shall ordinary be inquired into and tried by a court within whose local jurisdiction it was committed¹.

(2) As per the schedule I of CRPC relating to the calcification of offences cases following under section 307 of IPC for which Ramesh is charged are triable by the Court of Session. Thus, the following procedure shall be followed. In response to the case filed by the Prosecution (State) the Accused (Ramesh) have accepted the jurisdiction of this Hon'ble District & Sessions Court

¹ 177. Ordinary place of inquiry and trial.

SYNOPSIS OF FACTS

- ❖ Ramesh and reena were working together in private company. Reena belonged to rich family whereas ramesh held the financial position of mediocre.
- ❖ Having been liked by each other they got married in 2005, after sometime ramesh became harsh and started demanding dowry and property of her parents. He used to put pressure of the aforesaid, and on account of non acceptance by reena on demands of ramesh they started having quarrel which later became physical as ramesh used to often beat reena.
- ❖ In consequence of which reena also became harsh on ramesh. On 19th November ramesh threw stone of statute on reena knowing the consequence in heat of passion which got reena unconscious, however fortunately she was saved on time at the hospital.
- ❖ An FIR was registered against ramesh under section 307 and 498A of I.P.C. during investigation it was revealed that ramesh was already married to roopa in 2003.
- ❖ Ramesh contends that 498A cannot be applied in this case and hitting of statute was accidental and unintentional.

STATEMENT OF ISSUES

THE PROSECUTION RESPECTFULLY ASK THE HON'BLE DISTRICT & SESSIONS COURT:

3. WHETHER THE SAID ACCUSED IS GUILTY TO HAVE COMMITTED ATTEMPT TO MURDER AS DEFINED UNDER SECTION 307 OF THE INDIAN PENAL CODE
4. WHETHER THE SAID ACCUSED PERSON IS GUILTY TO HAVE COMMITTED CRUETY AS DEFINED UNDER SECTION 498A OF INDIN PENAL CODE

ARGUMENTS ADVANCED

I. THAT THE SAID ACCUSED IS GUILTY TO HAVE COMMITTED ATTEMPT TO MURDER –

The accused is guilty to have committed attempt to murder as defined u/s 307 of Indian Penal Code

1. The mental element in culpable homicide i.e. the mental attitude of the agent towards the consequences of his conduct is one of intention or knowledge or both². Austin defined intention as “the aim of the act, of which the motive is the spring”.³ It is most humbly submitted before the Learned Bench that the accused have committed attempt to murder punishable under section 307 of the Indian Penal Code. The following are the essential ingredients of “Section 307 – Attempt to murder⁴ - To constitute an offence u/s 307 IPC the following ingredient are to be proved: The death of a human being must be attempted. The accused must have made the attempt. The act must be done with the intention of causing death, or it be done with the intention of causing bodily injury as the accused knew to be likely to cause death, and that it was sufficient in the ordinary course of nature to cause death.
2. The accused attempted to cause such death by doing an act know to him to be so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.
3. In the instant case the act of Attempting murder of Reena squarely falls under the clauses of Section 307. In the light of the above mentioned fact the prosecution would further elaborate on the issues.

• **Intention or knowledge to cause death -**

4. An intention to kill a person brings the matter so clearly within the general principles of *mens rea* as to cause no difficulty. In other words, it is the cause in which the attempt to death caused is clearly traceable to the murderous intention. In a case of attempt to murder, intention is one of the essential elements of the offence. It is always necessary that there should be a definite finding as to whether the necessary guilty intention is or is not present.⁵ The definition in this clause is direct and without any subtleties about it. It is the action of a

² *Anada v. State*, AIR 1966 SC 148.

³ AUSTIN, LECTURES ON JURISPRUDENCE 165 (Students edition), 1920.

⁴ Whoever does any act with such **intention** or knowledge, and under such circumstances that, if he by that act **caused death**, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

⁵ *Srikantiah v. State of Karnataka*, AIR 1958 SC 672.

person with the clear intention of killing a person. 'Intention is what intention does.' So, the intention of the person can be gathered from the action of the person. If a person administers a deadly poison to a man, then it is very clear that he has an intention to kill that man, because the cause and effect of the act are very clear. It is evident that one of the cause of death is opium and effect of drug is to cause instant death. Intention to cause death can be inferred from the act. If the identity of the person who has administered the opium is known, then the case is all neatly wrapped. However, seldom are cases in real life so simple to come by.

5. Since intention is always a state of mind, it can be proved only by its external manifestations. When injuries are inflicted on vital parts of the body with sharp edged instruments then the intention to kill can be attributed to the offender. In *Vasnath v. State of Maharashtra*⁶, there was previous enmity between the accused and the deceased. The accused and the deceased were seen grappling with each other. In the case of *Gurmukh Singh v. State of Haryana*⁷ the Apex hon'ble court quoted that following tests could determine the intention of a person: *Motive or previous enmity*⁸, *whether incident took place in spur of the moment*, *The gravity, dimension and nature of injury*, *Adverse history of the accused*, *the conduct and behavior of accused towards the deceased*, *Nature of injuries*⁹ *Circumstance in which incident took place*.
6. In *B.N Srikanathiah v. State of Mysore*¹⁰, there were as many as 24 injuries on the deceased and of them 21 were incised. They were on his head, the neck, the shoulders, and the forearms. Since, most of the injuries were on vital parts, it was held that the intention of causing bodily injuries was established; bringing it under the cover of S. 307.
 - **Intention or knowledge of causing bodily injury sufficient in the ordinary course of nature to cause death**
7. The essence of the clause is the sufficiency of the injury in the ordinary course of nature to cause death. In *Gudar Dusadh v. State of Bihar*¹¹ when the word 'sufficiency' is used, it means where there is a very high probability of the injury resulting in attempt to murder. In *Virsa Singh v. State of Punjab*¹², the Supreme Court laid down that in order to bring a case within s. 307 the prosecution must prove the following:

⁶ AIR 1988 SC 699.

⁷ SLP (Crl.) No.7898 of 2008.

⁸ *Subash Chandra v. Krishnan Lal*, AIR 2001 SC 1903; *Rajesh Govind Jageshwar v. State of Maharashtra*, AIR 200 SC 160; *State of Haryana v. Sher Singh*, AIR 1981, SC 1021.

⁹ *Parsuram Pandey v. State of Bihar*, AIR 2004 SC 5608.

¹⁰ AIR 1958 SC 672.

¹¹ (1972) 3 SCC 118.

¹² AIR 1958 SC 465.

- It must establish, quite objectively, that a bodily injury is present,
- The nature of the injury must be proved.
- It must be proved that there was an intention to inflict that particular bodily injury, that is to say; that it was not accidental or unintentional, or some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further, and

It must be proved that the injury of the type just described made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature.”

8. The Apex Court also stressed that once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective what is required to prove is the intention to cause particular injury and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death¹³.
9. In *Thangaiya v. State of Tamil Nadu*¹⁴, the Supreme Court categorically ruled that s. 307 I.P.C would be applicable where the act or intention of the offender as to the probability of death of a person approximates to a practical certainty. Such act on the part of the offender must be of the highest degree of probability.
10. Further Section 307 IPC requires the proof that the accused incurred the risk of causing death or bodily injury without any excuse¹⁵. It is very evident from the facts¹⁶ that at the time of attempting murder remesh through statue of stone at reena and thereby collateral head injuries were found. In the light on further investigation it was revealed ramesh often used to have heated arguments with Reena which used to be physical, hence when there was evidence as to how bodily injury came about, evidence relating to charge of attempt to murder was held to be sufficient and acceptable¹⁷.
11. In deciding the question of knowledge, the nature of the weapon used, the part of the body on which the blow is given, the force of the blow and its number are some of the factors which assume importance.¹⁸In the light of above judgments the intention and knowledge of the accused is established beyond reasonable doubt. Also when injuries are inflicted on the vital parts of the body with sharp edged instruments then the intention and knowledge to kill can

¹³ (2004) 12 SCC 269; *Shankar Narayan Bhadolkar v. State of Maharashtra*, AIR 2004 SC 1966; (2005) 9 SCC 71; *Thangaiya v. State of Tamil Nadu* (2005) 9 SCC 650; *Rajinder v. State of Haryana*, AIR 2006 SC 2257; *Raj Pal & Ors. v. State of Haryana* (2006) 9 SCC 678; *Abbas Ali v. State of Rajasthan*, (2007) 9 SCC 129; *Chacko @ Aniyam Kunju & Ors. v. State of Kerala*, 2001 Cri.L.J. 1179 (SC).

¹⁴ (2005) 9 SCC 650.

¹⁵ *Emperor v. Dhirajia*, AIR 486.

¹⁶ Fact sheet para 10.

¹⁷ *Kedar Nath v. State of Madhya Pradesh*, (1991) Cr.L.J 989 (SC).

¹⁸ *Ghasi Ram v. State*, AIR 1952 Bhopal 25 at p. 29.

be attributed to the offender.¹⁹ It has also been held by the Supreme Court that when an accused hit the deceased on the vital part of the body with the blade of the sword was plainly one of murder.²⁰

12. In the case of Parasuram Pandey vs. State of Bihar²¹, the Hon'ble **Supreme Court** inter alia has held that to constitute an offence under Section 307, two ingredients of the offence must be present:

1. An intention of or knowledge relating to commission of murder;
2. The doing of act towards it.

13. The purpose of Section 307 IPC, what is material is the intention or the knowledge and not the consequence of the actual act done, for the purpose of carrying out the intention. The consequence clearly contemplates the act which is done with the intention of causing death, but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such, as is necessary to constitute murder. In the absence of intention or knowledge, which is the necessary ingredients of Section 307, there can be no offence of attempt to murder.

14. The intention of knowledge of accused must be such as is necessary to constitute murder²². The question of intention to kill or knowledge of death in terms of s. 307 is a question of fact and not one of law. It would depend upon facts of given case²³.

15. It is very evident from the facts²⁴ that at the time of attempting murder ramesh through statue of stone at reena and thereby collateral head injuries were found. In the light on further investigation it was revealed ramesh often used to have heated arguments with Reena which used to be physical, moreover the accused kept pressurising for dowry demands which establishes sufficient motive, hence when there was evidence as to how bodily injury came about, evidence relating to charge of attempt to murder was held to be sufficient and acceptable.

¹⁹ Chahat Khan v. State of Haryana, AIR 1972 SC 2574.

²⁰ Rau Bahagwanta Hargude v. State of Maharashtra, AIR 1979 SC 1224.

²¹ (2004) 13 SCC 189

²² Hari Krishnan & state of haryana v. Sukhbir Singh, AIR 1988, SC.

²³ Vasanth Virthu v. State of maharashtra, 1997, crimes599.

²⁴ Fact sheet para 10.

II. THAT THE ACCUSED IS GUILTY TO HAVE COMMITTED CRUELTY –

The accused is guilty to have committed cruelty as husband of women subjecting her to cruelty as defined u/s 498A of Indian Penal Code²⁵

16. For the purposes of this section, "cruelty" means-
- (a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
 - (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
17. It is evident from the facts that reena belonged to very rich family, he therefore married her and later started making demands for money. Moreover he also started putting pressure on reena to ask her parents for property. Reena did not accept the unjustified demands of Ramesh in consequence of which they used to have quarrel and ramesh used to give physical beating to reena.
18. It is evident that demand of dowry amounts to cruelty as observed in the case of State of Punjab v. Daljit singh²⁶. The defendants contend that since marriage with reena was void on account of second marriage hence s. 498A of Indian penal code has lost its application. But the hon'ble Supreme court in various judgements have interpreted and defined the very meaning of husband u/s 498A of I.P.C and has broadened the definition of 498A to avoid the evil consequences and technicalities as present in the instant case.
19. In Reema Aggarwal v. Anupam,²⁷ the hon'ble Apex court observed "The question as to who would be covered by the expression 'husband' for attracting Section 498A does present problems. Etymologically, in terms of the definition of "husband" and "marriage" as given in the various Law Lexicons and dictionaries – the existence of a valid marriage may appear to be a sine quo non for applying a penal provision." Thus, the petitioner can get relief in this petition to the extent of offence punishable under Section 498A IPC

²⁵ 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 purposes of this section, "cruelty" means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

²⁶ 1999 CrLJ 2723.

²⁷ AIR 2004 SC 1418,

20. The Delhi High Court, in *Narinder Pal Kaur Chawla v. M S Chawla*²⁸, declared that a second wife duped by the husband through concealment of his first marriage *can* be treated as a legally wedded “Hindu wife” and *is* entitled to claim maintenance under the Hindu Adoption and Maintenance Act.
21. The Supreme Court, in *Reema Aggarwal v. Anupam*²⁹, had to deal with the question of interpreting the expression “husband” in the context of the offences of dowry death and cruelty in a case where the validity of the marriage was in question. The facts of case are that Reema got married to Anupam on January 25, 1998; it was the second marriage for both. On June 13, 1998, Reema consumed poison and was admitted to Tagore Hospital, Jalandhar. According to her, Anupam, his mother, father and brother harassed her for not bringing in enough dowry. On June 13, 1998, all four forced an acidic substance into Reema’s mouth to kill her. Reema began vomiting and was taken to hospital in an unconscious state. A case of attempt to murder, under Section 307 of the Indian Penal Code (IPC), and subjecting a woman to cruelty by her husband and relatives in connection with a demand for dowry, under Section 498A of the IPC, was registered against Anupam and the in-laws.
22. It was argued on behalf of the accused that both provisions of the IPC - Section 304B dealing with dowry death and Section 498A dealing with cruelty presuppose a valid marriage between the victim-woman and the offender-husband. Therefore, it was required to be established whether the victim was indeed the legally married wife of the accused. It was submitted that Reema had married Anupam while his first wife was still alive and that the prosecution had not put forward any material to demonstrate that the first marriage stood dissolved. The validity of the second marriage to Reema, therefore, was not established.
23. The trial court held that the offence of attempt to murder, under Section 307 of the IPC, was not established. It accepted the submission on behalf of the accused that the validity of Reema’s marriage to Anupam was not established and acquitted the accused of the offence of cruelty by husband and relatives, under Section 498A of the IPC. The Punjab and Haryana High Court dismissed an appeal against the acquittal of the accused, and the matter reached the Supreme Court.
24. It was submitted on behalf of Reema that the expression “husband” and “woman”, in Section 498A of the IPC, are to be interpreted and read in a manner so as to give effect to the purpose for which the provision, making the subjection of a woman to cruelty for dowry punishable was enacted into law in 1983. The accused submitted that to constitute a marriage in the eyes

²⁸ 148 (2008) Delhi Law Times 522 (DB),

²⁹ Ibid.

of the law it had to be first established that the marriage was valid. That the Hindu Marriage Act stipulates the conditions of a valid marriage, the circumstances in which marriage becomes void, and makes provisions to provide protection to children of void and voidable marriages. It was argued that where the legislature wanted to provide for contingencies it had made a specific provision, as in the case of Section 16 of the Marriage Act which deems children of void and voidable marriages to be legitimate regardless of the marriage being declared null and void. Section 498A of the IPC uses the expression “husband or the relative of the husband” and does not contain any such provision with respect to an invalid marriage. The contention made was that marriage is the legal union of a man and a woman as husband and wife and cannot extend to a woman whose marriage is void and not a valid marriage in the eyes of the law.

25. The Supreme Court observed that the concept of marriage to constitute the relationship of “husband” and “wife” may require strict interpretation where claims for civil rights and property are concerned, but does not preclude a different approach when the question of curbing a social evil is concerned. Giving the example of the Dowry Prohibition Act 1961, the court observed that it is a piece of social legislation that aims to check the growing menace of the evil of dowry. In addition to receiving dowry, the very demand for dowry “at or before or after the marriage” has been made punishable. The court held that purposive interpretation that furthers the intention of the legislature to curb a social evil should be preferred to a technical legalistic approach which would sabotage the working of the legislation. Marriage, in this context, would include proposed marriage, particularly in a situation where non-fulfilment of the demand for dowry leads to the wedding not taking place at all.
26. The judgment observes that the purpose of introducing provisions like Section 304B of the IPC dealing with dowry death, Section 498A of the IPC dealing with cruelty by husband and relatives, and Section 113-B of the Indian Evidence Act laying down presumption in case of dowry death has to be taken into account during interpretation. Legislation enacted to effectuate a public purpose and curb a social evil needs to be interpreted with an element of realism, “not merely pedantically or hyper technically”. The objective of bringing in these provisions is to prevent harassment of a woman who enters a marital relationship and then becomes a victim of the greed for money.
27. A hair-splitting legalistic approach that allows a person who enters a marital arrangement and demands money to shelter behind the contention that since there was no valid marriage the question of “dowry” does not arise was held to be against the purpose of enacting the

provisions, as it encourages harassment of women over demands for money. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with women in a purported exercise of the role and status of a husband was held to be no grounds to exclude them from the purview of penal sections such as 304B or 498A of the IPC.

28. The judgment declares that a person who enters into a marital relationship and, in the guise of the proclaimed or feigned status of a husband, subjects the woman to cruelty would be covered by the sections dealing with dowry death (304B of the IPC) and subjecting a woman to cruelty for dowry (498A of the IPC) regardless of the issue of the marriage's legitimacy. Applying the law to the facts of the present case, the Supreme Court sent the matter back to the high court to decide on merit rather than uphold the acquittal under Section 498A on the plea that the prosecution had not established the validity of the marriage between Reema and Anupam.
29. Three Judges' Bench of the Supreme Court in *Shivcharan Lal Verma & Anr. v. State of M.P.*³⁰ wherein the Apex Court held that in order to attract an offence under Section 498 A of the Indian Penal Code, the subsistence of a valid marriage is required. According to the learned counsel for the petitioner, a valid marriage is a necessary ingredient to invite an offence under Section 498 A of the Indian Penal Code. At the same time, the learned counsel for the defacto complainant has strenuously contended that any valid marriage is not required to invite the offence under Section 498 A of the Indian Penal Code, whereas a long cohabitation in the form of a marriage is sufficient.
30. In *Subbharao v. State of A.P.*³¹, wherein it was held that the absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of s. 498A IPC.
31. Applying the above precedents in the present instant case it can therefore be said that contention of defendants to exclude from the preview of s. 498A I.P.C is inescapable.

³⁰ (2002 (2) Crimes 177 SC =JT (2002)2 SC 641)

³¹ 2009 (2) KLT 531 (SC)

PRAYER

Wherefore in the light of the issues raised, argument advanced, reasons given and authorities cited, this Hon'ble court may be pleased to:

- **TO HOLD** that prosecution has successfully established and proved the charged levelled against the accused Ramesh under section 307 of IPC beyond reasonable doubt. Accused Ramesh maybe held guilty of attempt murder and be convicted and sentenced under S.307 as per the settled norms and parameters of criminal jurisprudence.
- **TO HOLD** that Ramesh is guilty of committing cruelty and may kindly be awarded the punishment u/s. 498A of IPC for committing cruelty along with attempt to murder.
- **TO ORDER**, that the charge may be altered³² and new issues be raised against the accused u/s 415³³, 494³⁴, 495³⁵, 497³⁶ contended by the prosecution, by bringing the first wife Roopa as party in s.497 and than an appropriate action be taken accordingly.
- **ANY OTHER ORDER THIS HON'BLE COURT** finds proper for conviction of the accused in appropriate sections of Indian Penal Code may kindly be passed.
- **AND ANY OTHER RELIEF** And any other relief including the order for payment of reasonable compensation to the Reena on account of the aforesaid offence as per the new development in the criminal jurisprudence, that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience.
- For this the counsel for the prosecution shall forever pray.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.
COUNSEL OF PROSECUTION.

³² S.216, Court may alter charge.

³³ Offence of Cheating.

³⁴ Marrying Again during lifetime of husband and wife.

³⁵ Concealment of former marriage,

³⁶ Adultery