

A PINAKIN MAHIPATRAY RAWAL
v.
STATE OF GUJARAT
(Criminal Appeal No. 811 of 2004)
B SEPTEMBER 9, 2013
[K.S. RADHAKRISHNAN AND
PINAKI CHANDRA GHOSE, JJ.]

C *Penal Code, 1860 - ss. 498A and 306 - Married woman*
D *committing suicide within 7 years of marriage, allegedly due*
E *to extra-marital relationship between her husband (A-1) and*
F *husband's colleague (A-2) - Suicide note left by the deceased*
G *- Conviction of A-1 u/ss. 498A and 306 - Justification - Held:*
H *On facts, not justified - A-1 did not ill-treat the deceased, either*
physically or mentally demanding dowry, who was living with
A-1, in the matrimonial home till the date, she committed
suicide - The alleged extra-marital relationship was not of
such a nature as to drive the wife to commit suicide - A-1
never intended or acted in such a manner which under normal
circumstances, would drive the wife to commit suicide - The
prosecution did not discharge the burden that A-1 had
instigated, conspired or intentionally aided so as to drive the
wife to commit suicide or that the alleged extra marital affair
was of such a degree which was likely to drive the wife to
commit suicide - At best the relationship of A-1 and A-2 was
a one-sided love affair, A-1 might have developed some liking
towards A-2, all the same, the facts disclose that A-1 had
discharged his marital obligations towards the deceased -
The suicide note completely exonerates A-1, which states that
he was not responsible for death of the deceased - Further,
no evidence forthcoming to show that A-2 ever evinced any
interest to marry A-1 - On the other hand, during subsistence
of the alleged relationship, A-2 herself got married - The
relationship A-1 had with A-2 was not of such a nature which

under normal circumstances would drive one to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet his wife to commit suicide - Evidence Act, 1872 - s.113A. A

Family Law - Matrimonial Law - Extra Marital relationship - Meaning of - Held: Extra-marital relationship as such is not defined in the IPC. B

Family Law - Matrimonial Law - Alienation of affection by stranger - Anglo-Saxon common law on alienation of affection - Applicability - Held: It does not have much roots in India, the law being still in its nascent stage. C

Family Law - Matrimonial Law - Alienation of affection by stranger - Liability - When arises - Held: A person is not liable for alienation of affection for merely becoming a passive object of affection - The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant - Acts which lead to loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection - For proving a claim for alienation of affection, it is not necessary for a party to prove an adulterous relationship - On facts, A-2 did not intrude into the family life of A-1 and his deceased wife, and the Court on evidence acquitted A-2 of all the charges levelled against her - Consequently, it cannot be said that A-2 had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of A-1 towards his deceased wife. D
E
F

The wife of A-1 committed suicide within seven years of marriage, allegedly due to extra-marital relationship between A-1 and his colleague, A-2. The prosecution case was that extra-marital relationship between A-1 and A-2 was of such a degree to disturb the mental balance of the deceased, which amounted to cruelty within the G
H

A Explanation to Section 498A IPC. It was submitted that the suicide note left by the deceased indicated that A-1 and A-2 were in love and that A-1 wanted to marry A-2 and it was for their happiness that the deceased committed suicide. It was alleged that due to the extra marital relationship, the wife of A-1 developed a feeling of alienation, loss of companionship, etc., which ultimately drove her to commit suicide by leaping out of the terrace of a flat.

C The trial court convicted A-1 under Sections 498A IPC and 306 IPC. A-2 and A-3, the mother of A-1 were, however, acquitted of the various offences alleged against them. The trial Court also acquitted A-1 of the offence charged against him under Section 304-B IPC. On appeal by A-1, the High Court confirmed the conviction of A-1 under Sections 498A IPC and 306 IPC.

E In the instant appeal preferred by A-1, the question which arose for consideration was whether the relationship between A-1 and A-2 was extra-marital leading to cruelty within the meaning of Section 498A IPC and also amounted to abetment leading to the act of suicide by the wife of A-1 within the meaning of Section 306 IPC. The question was required to be examined in light of the fact that A-2 was already found not guilty of the charges levelled against her under Sections 498A, 306 and 304-B read with Section 114 IPC.

Allowing the appeal, the Court

G HELD: 1.1. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. [Para 12] [319-A-B]

1.2. For successful prosecution of an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, initiation or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. [Para 14] [319-F-H]

1.3. A person is not liable for alienation of affection for merely becoming a passive object of affection. The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant. Acts which lead to the loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection. For proving a claim for alienation of affection, it is not necessary for a party to prove an adulterous relationship. [Para 16] [321-A-B]

1.4. In the instant case, it cannot be said that there was any willful or malicious interference by A-2 in the marital relationship between A-1 and the deceased. A-2, it has not been proved, had in any way caused any kind of mental harassment by maintaining any relationship with A-1 so as to cause any emotional distress on the deceased. No evidence had been adduced or proved to show that A-2 had alienated A-1, the husband from the deceased. Further, no evidence had been adduced to show that due to the wrongful conduct of A-2, the deceased had lost companionship, affection, love, sexual relationship. No evidence has been adduced to show that there has been any attempt on the part of A-2 to disrupt the marital relationship between A-1 and the deceased. A-2 has not intruded into the family life of A-1 and his

A deceased wife, and the Court on evidence acquitted A-2
of all the charges levelled against her. Consequently, it
cannot be said that A-2 had in any way contributed or
abetted the deceased in committing the act of suicide, or
had attempted to alienate the affection of A-1 towards his
B deceased wife. [Paras 11, 17] [318-F-H; 321-C-D]

Knight Vs. Woodfield 50 So. 3d 995 (Miss. 2011)
[decision in State of Mississippi, United States] and *Dare*
Vs. Stokes, 62 So. 3d 858 (Miss. 2011) [decision in State
C of Mississippi, United States] - referred to.

2.1. 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
D enjoyment of them, to have children, their up-bringing,
services in the home, support, affection, love, liking and
so on. Extra-marital relationship as such is not defined
in the IPC. [Para 18] [321-E-G]

2.2. The facts in the case have clearly proved that the
E A-1 has not ill-treated the deceased, either physically or
mentally demanding dowry, who was living with A-1, in
the matrimonial home till the date, she committed suicide.
Cruelty includes both physical and mental cruelty for the
F purpose of Section 498A. [Para 19] [322-B-C]

2.3. 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
G such a nature as is likely to drive the spouse to commit
suicide to fall within the explanation to Section 498A 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 498A IPC. Mental
H 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. On facts, it is 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. [Para 22] [323-F-H; 324-A-B]

2.4. Legislative mandate of the Section 113A of the Evidence Act, 1872 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 498A 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 498A IPC is on the prosecution. On facts, the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of such a degree which was likely to drive the wife to commit suicide. [Para 25] [325-A-D]

2.5. To constitute an offence under Section 306 IPC, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. In the instant case, but for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the

A prosecution to show that the accused had provoked, incited or induced the wife to commit suicide. [Para 26] [325-E-G]

2.6. At best the relationship of A-1 and A-2 was a one-sided love affair, the accused might have developed some liking towards A-2, his colleague, all the same, the facts disclose that A-1 had discharged his marital obligations towards the deceased. There is no evidence of physical or mental torture demanding dowry. Deceased might have been under serious "emotional stress" in the sense that she had undergone an abortion in the year 1992, and the year following that, though a daughter was born to her, the daughter also died few days of its birth. After one or two years, she committed suicide. Evidence, in any way, is lacking in this case to hold, that due to the alleged relationship between A-1 and A-2, A-1 had intended or intentionally inflicted any emotional stress on the deceased wife, so as to drive her to the extreme step of ending her life. In the suicide note (Ex.44), she had not made any accusations as such against A-1 or A-2, on the other hand she stated that it was she who was selfish and egoist. [Para 27] [325-G-H; 326-A-D]

2.7. The suicide note completely exonerates A-1, which states that he was not responsible for death of the deceased. On the other hand, the deceased described herself as extremely selfish, egoist and, therefore, not a match for A-1. She entertained the belief that her husband A-1 was in love with A-2 and wanted to marry A-2. Note states it was for their happiness she had decided to end her life. She also wanted to have the marriage of A-1 and A-2 solemnized with pomp and gaiety. On reading the suicide note, one can infer that the deceased was very possessive of her husband, and was always under an emotional stress that she might lose her husband. Too

much of possessiveness could also lead to serious emotional stress, over and above the fact that she had one abortion and her daughter died after few days of birth. No evidence is forthcoming in this case to show that A-2 ever evinced any interest to marry A-1. On the other hand, during the subsistence of the alleged relationship, A-2 herself got married. [Para 28] [326-G-H; 327-A-C]

2.8. The relationship A-1 had with A-2 was not of such a nature which under normal circumstances would drive one to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet the wife to commit suicide. The Courts below committed serious error in holding that it was due to the extra marital relationship A-1 had with A-2 that led the deceased to take the extreme step to commit suicide, and A-1 was instrumental for the said act. In the circumstances, the conviction of the appellant is set aside. [Para 29] [327-D-F]

Girdhar Shankar Tawade Vs. State of Maharashtra, (2002) 5 SCC 177; 2002 (3) SCR 376 and Gananath Pattnaik Vs. State of Orissa, (2002) 2 SCC 619; 2002 (1) SCR 845 - referred to.

Case Law Reference:

3d 995 (Miss. 2011	referred to	Para 15
3d 858 (Miss. 2011)	referred to	Para 15
2002 (3) SCR 376	referred to	Para 20
2002 (1) SCR 845	referred to	Para 21

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 811 of 2004.

From the Judgment and Order dated 25 & 27.11.2003 of the High Court of Judicature of Gujarat at Ahmedabad in Criminal Appeal No. 300 of 1998.

A Sanjay Visen (for Aniruddha P. Mayee) for the Appellant.
Sumita Hazarika, Shubhada Deshpande (for Hemantika Wahi) for the Respondent.

The Judgment of the Court was delivered by

B **K.S. RADHAKRISHNAN, J.** 1. We are in this case concerned with the question as to whether the relationship between A-1 and A-2 was extra-marital leading to cruelty within the meaning of Section 498A IPC and also amounted to abetment leading to the act of suicide within the meaning of
C Section 306 IPC.

2. A-1, the first accused, along with A-2 and A-3, were charge-sheeted for the offences punishable under Sections 498A, 304-B and 306 IPC. The Sessions Court convicted A-1 for the offence punishable under Section 498A IPC and
D sentenced him to suffer RI for three years and to pay a fine of Rs.5,000/- and in default to undergo further RI for six months. A-1 was also convicted for offence punishable under Section 306 IPC and sentenced to suffer RI for 10 years and to pay a fine of Rs.5,000/- and in default to undergo further RI for six
E months. A-2 and A-3, the mother of A-1 were, however, acquitted of the various offences alleged against them. The trial Court also acquitted A-1 of the offence charged against him under Section 304-B IPC. On appeal by A-1, the High Court though confirmed the conviction, modified the sentence under
F Section 498A IPC to two years' RI and a fine of Rs.2,500/- and in default to undergo further RI for six months, and for the offence under Section 306 IPC, the sentence was reduced to RI for five years and to pay a fine of Rs.5,000/- and in default to undergo RI for one year. It was ordered that the sentences
G would run concurrently. Aggrieved by the judgment of the High Court, this appeal has been preferred by A-1.

3. Shri Sanjay Visen, learned counsel appearing for the Appellant, submitted that the allegations raised against the accused in respect of the alleged extra-marital relationship with
H second accused would not constitute an offence under Section

498A IPC. Learned counsel also submitted that the suicidal death of the deceased was not a direct result of the alleged extra-marital relationship and would not constitute an offence punishable under Section 306 IPC. Learned counsel also submitted that even assuming that the Appellant was maintaining extra-marital relationship with the second accused, there is no mens rea proved to show that such relationship was maintained by the accused with an intention to drive the deceased to commit suicide. Placing reliance upon the suicide note Ex.44, learned counsel submitted that the deceased did not allege any cruelty or harassment on the part of the accused which led the deceased to commit suicide. Learned counsel submitted that in any view, the conduct of the accused or the alleged relationship he had with A-2 was not of such a degree that would incite/provoke or push the deceased to a depressed situation to end her life.

4. Mrs. Sumita Hazarika, learned counsel appearing for the State, on the other hand submitted that extra-marital relationship between the first and second accused was of such a degree to disturb the mental balance of the deceased, which amounted to cruelty within the explanation to Section 498A IPC. Referring to various letters written by the deceased to her father, learned counsel pointed out that those letters would clearly depict the trauma undergone by her, which ultimately drove her to commit suicide. Learned counsel also referred to the latter part of the suicide note and submitted that the same would indicate that A-1 and A-2 were in love and that A-1 wanted to marry A-2 and it was for their happiness that the deceased committed suicide. Learned counsel submitted that the Courts below have correctly appreciated the documentary as well as oral evidence of this case, which calls for no interference by this Court.

5. We may before examining the various legal issues refer to some relevant facts. A-1 married the deceased in the year 1989 and was leading a happy married life. A-1 while working

A as a Field Officer in the Life Insurance Corporation of India
came into contact with A-2, who was then unmarried and a
colleague, working with him in the Corporation. Official
relationship and contacts developed into an intimacy, which
according to the prosecution, was "extra marital". Due to this
B extra marital relationship, the deceased, the wife of A-1,
developed a feeling of alienation, loss of companionship, etc.,
which ultimately drove her to commit suicide on 18.3.1996 by
leaping out of the terrace of a flat leaving a suicide note Ex.44.

C 6. Prosecution in order to establish its case examined
altogether eleven witnesses and produced twenty two
documents. Prosecution, however, was not successful in
proving that A-1 or A-3 had caused any physical or mental
harassment to the deceased demanding dowry. A-3, the mother
of A-1, was acquitted of the charge and no evidence
D whatsoever was adduced to show that A-1 had also caused
any harassment physically or mentally demanding dowry.
Prosecution story entirely rests on the nature of relationship A-
1 had with A-2.

E 7. The prosecution in order to prove the relationship as
"extra marital", made reference to few letters exchanged
between the deceased and her father. Ex.27 is letter of the
deceased written on 2.7.1993 to her father informing him about
the relationship A-1 had with A-2, which also disclosed that the
F father of A-1 had gone to the house of A-2 twice to persuade
A-2 to withdraw from that relationship and advised early
marriage for A-2. Ex.28 is another letter dated 5.7.1993,
addressed by the deceased to her father, wherein she had
stated that she had also gone to the house of A-2 and told her
G that she was prepared to part with her husband A-1 and that
A-2 had told her that deceased had blindly placed faith on her
husband. Prosecution also made reference to Ex.29, letter
dated 26.7.1993, wherein the deceased had again made a
complaint to her father of the continued relationship of A-1 and
H A-2. Ex.30 is yet another letter dated 6.8.1993 written by the

deceased again to her parents, wherein she had indicated that even her father-in-law was fed up with the attitude of A-1 and that often he used to come to the house late in the night. Reference was made to another letter Ex.31 dated 17.8.1993 written by the deceased to her parents wherein also she had made grievance against the behavior of A-1 and the steps taken by the father-in-law to mend the ways of A-1. Letter also indicated that A-1 had made a suggestion to include A-2 also in their life, which she opposed.

8. Prosecution stand is that the above mentioned letters would disclose the feelings and sufferings of an unfortunate wife having come to know of the love affair between her husband A-1 and his colleague A-2, which ultimately led her to commit the act of suicide. Further, it is also the stand of the prosecution that the deceased died within seven years of marriage and hence under Section 113A of the Evidence Act, the Court can presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband.

9. We have to examine the question as to whether A-1 is guilty or not under Section 498A and Section 306 IPC, in the light of the fact that A-2 was already found not guilty of the charges levelled against her under Sections 498A, 306 and 304-B read with Section 114 IPC. Further, the Court has recorded a clear finding that the prosecution could not prove any immoral or illegal relationship between A-1 and A-2 or that A-1 had tortured mentally or physically his wife demanding dowry. Further, there is also a clear finding of the trial Court that A-2 had not contributed or caused any mental harassment to the deceased so as to drive her to commit the act of suicide. Further, the facts would disclose that during the period of alleged intimacy between A-1 and A-2, A-2 got married in November, 1993. Prosecution story is that the intimacy between A-1 and A-2 developed years prior to that and, of course, if the intimacy or relationship between A-1 and A-2 was so strong, then A-2 would not have got married in November, 1993. During the

A period of alleged relationship between A-1 and A-2, it is pertinent to note that the deceased got pregnant twice, once in the year 1992, which was aborted, and the year following when the wife delivered a baby girl, which unfortunately died two days after her birth. Prosecution has not alleged any hand or involvement on the part of A-1 on such abortion. Facts indicate that both A-1 and the deceased were staying under the same roof and that A-1 was discharging his marital obligations and was leading a normal married life.

10. A-1 had not caused any physical or mental torture on the deceased, but for the alleged relationship between A-1 and A-2. Parents of the deceased also did not make any allegation against A-1 of ill-treatment of wife or of dowry demand. Possibly, he might have caught up in a one-sided love affair with some liking towards A-2. Can it be branded as an "extra-marital affair" of that degree to fall within the expression "cruelty"? Extra-marital affair is a term which has not been defined in the Indian Penal Code and rightly not ventured since to give a clear definition of the term is difficult, as the situation may change from case to case.

ALIENATION OF AFFECTION

11. We are not prepared to say that there was any willful or malicious interference by A-2 in the marital relationship between A-1 and the deceased. A-2, it has not been proved, had in any way caused any kind of mental harassment by maintaining any relationship with A-1 so as to cause any emotional distress on the deceased. No evidence had been adduced or proved to show that A-2 had alienated A-1, the husband from the deceased. Further, no evidence had been adduced to show that due to the wrongful conduct of A-2, the deceased had lost companionship, affection, love, sexual relationship. No evidence has been adduced to show that there has been any attempt on the part of A-2 to disrupt the marital relationship between A-1 and the deceased.

12. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. Anglo-Saxon based action against third parties involving tortuous interference with the marital relationship was mainly compensatory in nature which was earlier available to the husband, but, of late, a wife could also lay such a claim complaining of alienation of affection. The object is to preserve marital harmony by deterring wrongful interference, thereby to save the institution of marriage. Both the spouses have a valuable interest in the married relationship, including its intimacy, companionship, support, duties, affection, welfare of children etc.

13. We notice, in this country, if the marital relationship is strained and if the wife lives separately due to valid reasons, the wife can lay a claim only for maintenance against the husband and if a third party is instrumental for disrupting her marriage, by alienating her spouse's affection, companionship, including marital obligations, seldom, we find the disgusted spouse proceeds against the intruder into her matrimonial home. Possibly, in a given case, she could question the extent, that such injuries can be adequately compensated, by a monetary award. Such an action, of course, may not protect a marriage, but it compensates those who have been harmed.

14. We are, however, of the view that for a successful prosecution of such an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, initiation or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. Few countries and several

A States in the United States of America have passed legislation against bringing in an action for alienation of affection, due to various reasons, including the difficulties experienced in assessing the monetary damages and few States have also abolished "criminal conversation" action as well.

B 15. We may, however, indicate that few States and countries strongly support such an action, with the object of maintaining and preserving the marriage as a sacred institution. Strong support comes from the State of Mississippi in the United States. In *Knight Vs. Woodfield* 50 So. 3d 995 (Miss. 2011), the husband filed a suit for alienation against his wife. The wife alleged paramour after gaining access to a phone call. Facts disclosed they had exchanged 930 text messages and talked more than 16 hours in two months. In that case jurisdictional issues were raised, but Court reaffirmed that law of alienation of affection is firmly established in State of Mississippi. Another case of some importance is *Dare Vs. Stokes*, 62 So, 3d 858 (Miss. 2011), where in a property settlement agreement of divorced couple, a provision was made that the husband would not bring suit against any other person for alienation of affection. Agreement was reduced to a final order by the trial Court. Later husband came to know that his wife had a love affair with one Dare and hence sought for a modification of the agreement. He also sent a notice to Dare as well of his intention to file a suit for alienation of affection. Dare's attempt to intervene and oppose the application for modification of the agreement was not favourably considered by the Court on the ground that he cannot middle with the marital relationship.

G 16. Action for alienation of affection lies for all improper intrusions or assaults on the marriage relationship by another, whether or not associated with "extramarital sex", his or her continued overtures or sexual liaisons can be construed as something akin to an assumption of risk that his/her conduct will injure the marriage and give rise to an action. But all the

H

same, a person is not liable for alienation of affection for merely becoming a passive object of affection. The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant. Acts which lead to the loss of affection must be wrongful, intentional, calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection. For proving a claim for alienation of affection it is not necessary for a party to prove an adulterous relationship.

17. We have on facts found that A-2 has not intruded into the family life of A-1 and his deceased wife, and the Court on evidence acquitted A-2 of all the charges levelled against her. Consequently, it cannot be said that A-2 had in any way contributed or abetted the deceased in committing the act of suicide, or had attempted to alienate the affection of A-1 towards his deceased wife. If that be so, we have to examine what type of relationship A-1 had with A-2. Can it be said as an "extra-marital relationship" of such a degree which amounted to "cruelty" falling within the explanation to Section 498A and also leading to an offence under Section 306 IPC.

EXTRA-MARITAL RELATIONSHIP

18. 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 up-bringing, services in the home, support, affection, love, liking and so on. Extra-marital relationship as such is not defined in the IPC. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the explanation to Section 498-A and that A-1 had abetted the wife to commit suicide. We have to examine whether the relationship between A-1 and A-2 amounted to mental harassment and cruelty.

19. We have to examine the correctness or otherwise of

A the findings recorded by the trial Court, affirmed by the High Court, as to whether the alleged relationship between A-1 and A-2 has in any way constituted cruelty within the meaning of explanation to Section 498A IPC. The facts in this case have clearly proved that the A-1 has not ill-treated the deceased,
 B either physically or mentally demanding dowry and was living with A-1, in the matrimonial home till the date, she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498A. Section 498A IPC reads as under:-

C "498A. Husband or relative of husband of a woman subjecting her to cruelty.-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be
 D liable to fine.

Explanation.- For the purposes of this section," cruelty" means-

E (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

F (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.

G 20. This Court in *Girdhar Shankar Tawade Vs. State of Maharashtra*, (2002) 5 SCC 177, examined the scope of the explanation and held as follows :-

H "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 hereinbefore. 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 498A."

21. In *Gananath Pattnaik Vs. State of Orissa*, (2002) 2 SCC 619, this Court held that the concept of cruelty under Section 498A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said Section need not be physical. Even mental torture or abnormal behavior may amount to cruelty or harassment in a given case.

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 498A 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 498A 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

A 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
B circumstances, would drive the wife to commit suicide.

23. We also notice in this case that the wife committed
suicide within seven years of the date of the marriage. Hence,
a presumption under Section 113A of the Evidence Act could
be drawn.
C

24. Section 113A which was inserted by the Criminal Law
(Second Amendment) Act, 1983, w.e.f. 26.12.1983, is given
below for easy reference :-

D **"113A. 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
E 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
F husband.

Explanation.-- For the purposes of this section, "cruelty"
shall have the same meaning as in section 498A of the
Indian Penal Code (45 of 1860).

G 25. Section 113A 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
H

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 498A 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 498A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of such a degree which was likely to drive the wife to commit suicide.

A
B
C
D

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

E
F
G

27. We have on facts found that at best the relationship of A-1 and A-2 was a one-sided love affair, the accused might have developed some likings towards A-2, his colleague, all the same, the facts disclose that A-1 had discharged his marital

H

A obligations towards the deceased. There is no evidence of physical or mental torture demanding dowry. Deceased might have been under serious "emotional stress" in the sense that she had undergone an abortion in the year 1992, and the year following that, though a daughter was born to her, the daughter
B also died few days of its birth. After one or two years, she committed suicide. Evidence, in any way, is lacking in this case to hold, that due to the alleged relationship between A-1 and A-2, A-1 had intended or intentionally inflicted any emotional stress on the deceased wife, so as to drive her to the extreme
C step of ending her life. In the suicide note she had not made any accusations as such against A-1 or A-2, on the other hand she stated that it was she who was selfish and egoist. Suicide note (Ex.44), which was translated by the High Court, reads as under :-

D "My husband Pinakin is a very good man and he is not responsible. I also love him. However, I am extremely bad, selfish and egoist and, therefore, not a match to him.

E He is in love with Priti Bhakt, serving in LIC and wants to marry her and, therefore, for their happiness, I am taking this step.

F No one of my house is responsible. Therefore, they may not be harassed. Kindly arrange their marriage with all pomp and gaiety. I gift my dead body to the medical students and I donate my eyes to the blinds.

Yours
Jagruti

G This is my last wish which be fulfilled for the peace of my soul."

H 28. Suicide note completely exonerates A-1, which states that he was not responsible for death of the deceased. On the other hand, the deceased described herself as extremely

selfish, egoist and, therefore, not a match for A-1. She A
entertained the belief that her husband A-1 was in love with A-
2 and wanted to marry A-2. Note states it was for their
happiness she had decided to end her life. She also wanted
to have the marriage of A-1 and A-2 solemnized with pomp and
gaiety. On reading the suicide note, one can infer that the B
deceased was so possessive of her husband, and was always
under an emotional stress that she might lose her husband. Too
much of possessiveness could also lead to serious emotional
stress, over and above the fact that she had one abortion and
her daughter died after few days of birth. No evidence is C
forthcoming in this case to show that A-2 ever evinced any
interest to marry A-1. On the other hand, during the subsistence
of the alleged relationship, A-2 herself got married.

29. We are, therefore, of the considered view that the D
relationship A-1 had with A-2 was not of such a nature which
under normal circumstances would drive one to commit suicide
or that A-1 by his conduct or otherwise ever abetted or intended
to abet the wife to commit suicide. Courts below, in our view,
have committed serious error in holding that it was due to the
extra marital relationship A-1 had with A-2 that led the deceased E
to take the extreme step to commit suicide, and A-1 was
instrumental for the said act. In the circumstances, we are
inclined to allow this appeal and set aside the order of
conviction and sentence imposed on the appellant, and he is
set at liberty. Ordered as above. F

B.B.B.

Appeal allowed.