(2013) 10 Supreme Court Cases 48

(BEFORE K.S.P. RADHAKRISHNAN AND P.C. GHOSE, JJ.)

PINAKIN MAHIPATRAY RAWAL .. Appellant;

Versus

STATE OF GUJARAT .. Respondent.

Criminal Appeal No. 811 of 2004†, decided on September 9, 2013

A. **Penal Code, 1860 — Ss. 498-A and 306 — "Cruelty" under S. 498-A — Meaning and scope — Alleged extramarital relationship of husband with another woman — If amounted to cruelty by husband — Husband if guilty of abetting the suicide of wife by virtue of the alleged act — Held, in order to fall within the term "cruelty" under S. 498-A Expln., the alleged extramarital relationship of husband with another woman must be of such a nature as is likely to drive the spouse to commit suicide — Mere fact that husband developed some intimacy with another woman during subsistence of marriage and failed to discharge his marital obligations would not amount to "cruelty"**

— In present case, except the alleged extramarital relationship between husband A-1 and his colleague A-2, no other allegations made against A-1 that he demanded dowry or caused any physical or mental torture to his wife — Prosecution failed to prove that A-2 alienated A-1 from his wife or attempted to disrupt their marital relationship — A-2 never evinced any interest to marry A-1 — On the other hand, during subsistence of alleged relationship, A-2 herself got married — No proof of any immoral or illegal relationship between A-1 and A-2 — A-1 might have developed some likings towards A-2 and his relationship with A-2 could at the best be described as one-sided love affair — A-1 discharged his marital obligations and was leading normal married life

— On said facts, held, the relationship between A-1 and A-2 was not of such a nature which under normal circumstances would drive the wife to commit suicide or that A-1 by his conduct or otherwise ever abetted or intended to abet the wife to commit suicide — Hence, courts below erred in holding that it was extramarital relationship of A-1 with A-2 that led the wife to commit suicide — In her suicide note wife completely exonerated A-1 — Suicide by her might have been the result of serious emotional stress which she might have undergone in view of the facts that: (i) she was too much possessive of her husband, and (ii) she had undergone one abortion and had also lost her daughter who died merely two days after her birth — In this view, conviction of A-1 under Ss. 498-A and 306 IPC, held, not sustainable — Hence, set aside — Words and Phrases — "Cruelty"

(Paras 10 to 30)

Allowing the appeal by setting aside the conviction of A-1, the Supreme Court

Held :

Cruelty includes both physical and mental cruelty for the purpose of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending

† From the Judgment and Order dated 25-11-2003 and 27-11-2003 of the High Court of Judicature of Gujarat at Ahmedabad in Crl. A. No. 300 of 1998

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 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. (Paras 20 and 23)

Girdhar Shankar Tawade v. *State of Maharashtra*, (2002) 5 SCC 177 : 2002 SCC (Cri) 971; *Gananath Pattnaik* v. *State of Orissa*, (2002) 2 SCC 619 : 2002 SCC (Cri) 461, *relied on*

Pinakin Mahipatray Rawal v. *State of Gujarat*, Criminal Appeal No. 300 of 1998, order dated 25-11-2003, *reversed*

B. **Evidence Act, 1872 — S. 113-A — Presumption as to abetment of suicide by a married woman — Invocation of — Prerequisites — Commission of offence under S. 498-A IPC by accused — Burden of proof — Held, is on the prosecutions — Prerequisites as stated in S. 113-A, Evidence Act must be established by prosecution before presumption thereunder can be invoked — Then only does burden shift onto accused to rebut the presumption**

Held :

The legislative mandate of Section 113-A 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 term 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. On facts, the prosecution has not discharged the burden that the husband had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extramarital affair between the husband and A-2 was of such a degree which was likely to drive the wife to commit suicide. (Para 26)

C. **Family and Personal Laws — Marriage — "Marital relationship" — Interference with — Affection of an spouse towards the other — Alienation of, by a stranger/third party — Nature of act as to — Held, is an intentional tort — Aggrieved spouse in such a case can prosecute for compensation — Requisite proof in respect thereof — Liability of stranger/third party — When arises — Held, 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 prove claim for alienation of affection, adulterous relationship need not be proved — Liability of stranger/third party arises only if there is any active participation, initiation or encouragement on its part — Penal Code, 1860 — S. 497 — Words and Phrases — "Marital relationship"**

D. **Tort Law — Alienation of Affection — Tort of — Interference with marital relationship — Alienation of affection of an spouse towards the other by a stranger/third party — Is an intentional tort — Aggrieved spouse**

in such a case can prosecute for compensation — Requisite proof in respect thereof — Liability of stranger/third party — When arises

Held :

"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. (Para 19)

Alienation of affection of an spouse towards the other 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 an "Heart balm" action. Anglo-Saxon common law on alienation of affection has not much roots in India, the law is still in its nascent stage. Anglo-Saxon based action against the third parties involving tortious 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. (Para 13)

Knight v. *Woodfield*, 50 So 3d 995 (Miss 2011); *Dare* v. *Stokes*, 62 So 3d 858 (Miss 2011), *approved*

In India 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, it is found that 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. (Para 14)

However, 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 tortious. (Para 15)

An action for alienation of affection lies for all improper intrusions or assaults on the marital 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 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. (Para 17)

W-M/52250/CRV

Advocates who appeared in this case :
Sanjay Visen (for Aniruddha P. Mayee), Advocate, for the Appellant;
Ms Sumita Hazarika and Ms Shubhada Deshpande (for Ms Hemantika Wahi), Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. Criminal Appeal No. 300 of 1998, order dated 25-11-2003 (Guj), *Pinakin Mahipatray Rawal* v. *State of Gujarat* **(reversed)** 51*f*
2. (2002) 5 SCC 177 : 2002 SCC (Cri) 971, *Girdhar Shankar Tawade* v. *State of Maharashtra* 57*a*
3. (2002) 2 SCC 619 : 2002 SCC (Cri) 461, *Gananath Pattnaik* v. *State of Orissa* 57*c-d*
4. 50 So 3d 995 (Miss 2011), *Knight* v. *Woodfield* 55*c-d*
5. 62 So 3d 858 (Miss 2011), *Dare* v. *Stokes* 55*d-e*

The Judgment of the Court was delivered by

K.S.P. RADHAKRISHNAN, J.— We are in this case concerned with the question as to whether the relationship between A-1 and A-2 was extramarital leading to cruelty within the meaning of Section 498-A IPC and also amounted to abetment leading to the act of suicide within the meaning of 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 498-A, 304-B and 306 IPC. The Sessions Court convicted A-1 for the offence punishable under Section 498-A IPC and sentenced him to suffer RI for three years and to pay a fine of Rs 5000 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 5000 and in default to undergo further RI for six 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.

3. On appeal by A-1, the High Court though confirmed[1] the conviction, modified the sentence under Section 498-A IPC to two years' RI and a fine of Rs 2500 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 5000 and in default to undergo RI for one year. It was ordered that the sentences would run concurrently. Aggrieved by the judgment of the High Court, this appeal has been preferred by A-1.

4. Shri Sanjay Visen, learned counsel appearing for the appellant, submitted that the allegations raised against the accused in respect of the alleged extramarital relationship with the second accused would not constitute an offence under Section 498-A IPC. The learned counsel also

1 *Pinakin Mahipatray Rawal* v. *State of Gujarat*, Criminal Appeal No. 300 of 1998, order dated 25-11-2003 (Guj)

submitted that the suicidal death of the deceased was not a direct result of the alleged extramarital relationship and would not constitute an offence punishable under Section 306 IPC. The learned counsel also submitted that even assuming that the appellant was maintaining extramarital 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, Ext. 44, the 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. The 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.

5. Mrs Sumita Hazarika, learned counsel appearing for the State, on the other hand submitted that extramarital relationship between the first and second accused was of such a degree as to disturb the mental balance of the deceased, which amounted to cruelty within the Explanation to Section 498-A IPC. Referring to various letters written by the deceased to her father, the learned counsel pointed out that those letters would clearly depict the trauma undergone by her, which ultimately drove her to commit suicide. The 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. The 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.

6. 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 as a Field Officer in 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 "extramarital". Due to this extramarital 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, Ext. 44.

7. The prosecution in order to establish its case examined altogether eleven witnesses and produced twenty-two documents. The 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 whatsoever was adduced to show that A-1 had also caused any harassment physically or mentally demanding dowry. The prosecution story entirely rests on the nature of relationship A-1 had with A-2.

8. The prosecution in order to prove the relationship as "extramarital", made reference to few letters exchanged between the deceased and her father. Ext. 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 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. Ext. 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 that she was prepared to part with her husband A-1 and that A-2 had told her that the deceased had blindly placed faith on her husband. The prosecution also made reference to Ext. 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 A-2. Ext. 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 Ext. 31 dated 17-8-1993 written by the deceased to her parents wherein also she had made grievance against the behaviour of A-1 and the steps taken by the father-in-law to mend the ways of A-1. The letter also indicated that A-1 had made a suggestion to include A-2 also in their life, which she opposed.

9. The prosecution stand is that the abovementioned 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 113-A 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.

10. We have to examine the question as to whether A-1 is guilty or not under Section 498-A 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 498-A, 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. The 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 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. The prosecution has not alleged

any hand or involvement on the part of A-1 in such abortion. The 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.

11. A-1 had not caused any physical or mental torture to the deceased, but for the alleged relationship between A-1 and A-2. The 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 "extramarital affair" of that degree to fall within the expression "cruelty"? "Extramarital 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

12. We are not prepared to say that there was any wilful 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.

13. 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 the third parties involving tortious 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.

14. 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.

15. 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 tortious. Few countries and several 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 a few States have also abolished "criminal conversation" action as well.

16. We may, however, indicate that a few States and countries strongly support such an action, with the object of maintaining and preserving marriage as a sacred institution. Strong support comes from the State of Mississippi in the United States. In *Knight* v. *Woodfield*[2], the husband filed a suit for alienation against his wife's paramour, Knight after gaining access to her cellular phone. Facts disclosed that Knight and the wife exchanged 930 text messages and talked for more than 16 hours in two months. In that case jurisdictional issues were raised, but the Court reaffirmed that law of alienation of affection is firmly established in the State of Mississippi. Another case of some importance is *Dare* v. *Stokes*[3], 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. The agreement was reduced to a final order by the trial court. Later the 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 meddle with the marital relationship.

17. 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 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.

2 50 So 3d 995 (Miss 2011)
3 62 So 3d 858 (Miss 2011)

18. 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 "extramarital relationship" of such a degree which amounted to "cruelty" falling within the Explanation to Section 498-A and also leading to an offence under Section 306 IPC?

Extramarital relationship

19. "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. Extramarital relationship as such is not defined in the Penal Code. 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.

20. We have to examine the correctness or otherwise of 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 the Explanation to Section 498-A IPC. The facts in this case have clearly proved that A-1 has not ill-treated the deceased, 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 498-A. Section 498-A IPC 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 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."

21. This Court in *Girdhar Shankar Tawade* v. *State of Maharashtra*[4], examined the scope of the Explanation and held as follows: (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 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 498-A."

22. In *Gananath Pattnaik* v. *State of Orissa*[5], this Court held that the concept of cruelty under Section 498-A 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 behaviour may amount to cruelty or harassment in a given case.

23. 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 extramarital 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.

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

25. Section 113-A which was inserted by the Criminal Law (Second Amendment) Act, 1983, w.e.f. 26-12-1983, is given below for easy reference:

4 (2002) 5 SCC 177 : 2002 SCC (Cri) 971
5 (2002) 2 SCC 619 : 2002 SCC (Cri) 461

"**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)."

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. 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 extramarital affair was of such a degree which was likely to drive the wife to commit suicide.

27. 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. 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 extramarital 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.

28. 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 obligations towards the deceased. There is no evidence of physical or mental torture demanding dowry. The 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 after few days of its birth. After one or two years, she committed suicide. The 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.

29. 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. The suicide note (Ext. 44), which was translated by the High Court, reads as under:

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

The suicide note completely exonerates A-1, which states that he was not responsible for the 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. The 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 solemnised with pomp and gaiety. On reading the suicide note, one can infer that the 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 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.

30. We are, therefore, of the considered view that 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, in our view, have committed serious error in holding that it was due to the extramarital 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.

31. 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.