

2024:BHC-AUG:7664



CriAppeal-706-2002

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 706 OF 2002**

01. Tukaram s/o Trimbak Aaghav  
Age : 45 years, Occu : Agri.,  
R/o : Saradgaon, Taluka Parali,  
District Beed.

02. Mandabai w/o Trimbak Aaghav.  
Age : 55 years, Occu : Household,  
R/o : As above.

... Appellants  
[Orig. Accused]

Versus

The State of Maharashtra

... Respondents

.....

Mr. U. B. Bondar, Advocate for the Appellants.

Mr. N. D. Batule, APP for Respondent-State.

.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 05.04.2024

Pronounced on : 12.04.2024

**JUDGMENT :**

1. Husband, mother-in-law and sister-in-law of deceased Tulsabai, who died unnatural death, were tried for commission of offence punishable under Sections 302 and 498-A r/w 34 of the Indian Penal Code [IPC] vide Sessions Case No. 15 of 1997. Learned Additional Sessions Judge, Ambajogai, vide judgment and order dated 25.11.2002, acquitted accused no.2 Shobhabai from all charges, but convicted present appellants, i.e. husband and mother-in-law of

deceased, for commission of offence punishable under Section 498-A r/w 34 of IPC and sentenced them to suffer rigorous imprisonment for three years and to pay fine. Aggrieved by the same, instant appeal has been preferred.

### **CASE OF PROSECUTION BEFORE TRIAL COURT**

2. Deceased Tulsabai was married to appellant/accused no1 Tukaram. During their 13 years' cohabitation, they had three daughters and one son. According to prosecution, accused husband developed intimacy with accused no.2, i.e. wife of his younger brother Shivaji. Whenever Tulsabai went to her brother's place, she duly reported such relation. Informant brother and other villagers gave understanding to accused to sever relation with accused no.2 and to discontinue said relation. Further, according to prosecution, all accused persons considered Tulsabai as a hurdle and they feared that she would broadcast such illicit relation and therefore they manually strangulated her.

After funeral, brother set law into motion, on the strength of which crime was registered and PW10, police officer posted at Parali Police Station, who was entrusted with the investigation, carried out the same and on its completion, chargesheeted accused.

3. Trial was conducted by learned Additional Sessions Judge, Ambajogai, who, on appreciation of evidence, vide judgment dated 25.11.2002, acquitted accused no.2 from all charges but convicted husband and mother-in-law for commission of offence under Section 498-A r/w 34 of IPC and acquitted them of charge under Section 302 of IPC. Hence the appeal.

### **SUBMISSIONS**

#### **On behalf of appellants :**

4. Learned counsel for the appellants would submit that case of prosecution has not been proved beyond reasonable doubt. According to him, false allegations are levelled on mere suspicion of illicit relation between accused nos. 1 and 2. He pointed out that in fact, accused husband was elder and accused no.2 was wife of his younger brother and moreover, they were all residing separately. Therefore, allegations of illicit relation are false, baseless and concocted. He further pointed out that moreover, accused husband and deceased Tulsabai had cohabited for more than a decade and also have children. Therefore, accusations are patently false.

5. He next submitted that deceased went missing on 20.09.1996 and after search when she was not found, husband himself reported

missing to the police station on 22.09.1996. Dead body was found on 23.09.1996 and till conducting postmortem and funeral, there was no lodgment of complaint. Even prior to that, there were no allegations of illicit relation or ill-treatment. Such allegations are subsequently raised with ulterior motive on account of losing Tulsabai. FIR was lodged on 24.09.1996. Thus, according to him, there is inordinate delay in lodging FIR and there is no plausible explanation for the same.

6. Learned counsel took this court through the testimony of PW5 informant brother Pandharinath and PW2 Mokind as crucial witnesses for prosecution, but, according to him, the answers given by them in cross patently show that their testimonies are full of material omissions, contradictions and improvements.

7. He further pointed out that, here, there are omnibus allegations of ill-treatment and harassment without specifying in what form ill-treatment was inflicted to deceased Tulsabai. He pointed out that very essential ingredients for attracting Section 498-A IPC being patently missing and there being little or weak evidence in support of such accusation, learned trial court ought not to have recorded guilt and hence he criticizes the judgment of trial court on such count.

8. Lastly, he submitted that evidence of prosecution was patently weak and prosecution having not proved its case beyond reasonable doubt or by adducing convincing evidence, the judgment under challenge being patently illegal, erroneous and not sustainable in the eyes of law, he prays to set aside the same by allowing the appeal.

**On behalf of the State :**

9. Per contra, learned APP fervently opposed by submitting that here, though accused and deceased had cohabited for 13 years, but deceased had noticed and realized illicit relation developed by her husband with his own sister-in-law accused no.2. Learned APP submitted that she had personally seen both of them in compromising position and had promptly reported it to her brother and family members. According to learned APP, villagers who were apprised about such relation, had joined complainant in giving understanding to accused. However, he did not pay heed and moreover issued threats to kill and further, all accused persons subjected deceased to maltreatment and harassment. That, she was considered as a hurdle in their said illicit relationship and therefore she was done to death by strangulation and there is postmortem finding to that extent. He pointed out that only because deceased had become obstacle in the

illicit relationship, she was ill-treated and done to death. According to learned APP, maintaining illicit relation amounts to mental cruelty. Lastly, supporting the findings and conclusion reached by learned trial court, he prays to dismiss the appeal.

### **EVIDENCE BEFORE THE TRIAL COURT**

10. It seems that prosecution has adduced evidence of as many as ten witnesses to establish its case. Their role and status as well as sum and substance of their evidence is as under:

**PW1** Yogiraj is the pancha to inquest panchanama Exhibit 18.

**PW2** Mokind is an acquaintance of informant. In his evidence at Exhibit 20 he deposed that he knew deceased who was married to accused 13 years prior to the incident. According to him, deceased met him four to five months prior to the incident. Complainant had called him to his house after arrival of deceased at Nandnaj from Saradgaon and had informed about accused no.1 maintaining illicit relation with accused no.2 and to get it personally confirmed from Tulsabai. According to him, Tulsabai disclosed that husband Tukaram was having illicit relation with accused no.2 and she had personally witnessed there relation. This witness claims that she further told him that she was being harassed under the impression of disclosing said relation to others. According to him, two months prior to the incident, he himself, pandhari, Nathrao, Ranba and others

visited Saradgaon, i.e. village of accused, to give him understanding and convince him not to continue illicit relation, it being totally immoral. He further deposed that about two months back, he learnt from Pandhari that his sister Tulsabai had disappeared therefore, he accompanied complainant to Saradgaon, but she was reported to have gone for common meal at the village and had not returned. Later on, it was learnt that dead body of Tulsabai was found in the field of accused at Saradgaon. After postmortem, last rituals were performed. According to him, accused nos. 1, 2 and 3, in furtherance of common intention, caused death of Tulsabai by manually throttling her.

**PW3** Sominath is pancha to memorandum of disclosure at the instance of accused Tukaram regarding showing spot where the incident took place. The memorandum is at Exhibit 22 and panchanama is at Exhibit 23.

**PW4** Nathrao deposed that he is Police Patil of village Nandnaji. According to him, he met Tulsabai at the time of Diwali festival. When invited for tea, she told that she was not happy in matrimonial house and she being maltreated by her husband and in-laws on account of her husband having illicit relation with accused no.2. That, he himself, complainant Pandhari, Dattu, Mokinda and others went to Saradgaon to give understanding to the accused. After two to three days, Tulsabai went missing and finally her dead body was found in the field of Tukaram. According to him, death of Tulsabai was caused by accused nos. 1, 2 and 3 by strangulating or by throttling.

**PW5** Pandharinath, informant brother, at Exhibit 28 deposed about cohabitation of his sister with accused Tukaram for 13 years, they residing at Saradgaon and having three daughters and a son. According to him, one and half years prior to the incident, his sister visited village Nandnaj and disclosed that accused husband had developed intimacy with accused no.2, i.e. wife of his brother Shivaji, and that she had personally witnessed it. Therefore, accused nos. 1, 2 and 3 ill-treated her and harassed her on allegation of defaming them about having illicit relation. He further deposed that he gave understanding to the accused not to behave in such manner and at that time accused gave threats to finish Tulsabai if she continues defaming him. According to him, accused nos. 2 and 3 threatened to cause death of Tulsabai if she continue disclosing illicit relation. He deposed that ill-treatment continued and she was even driven out of the house 7 to 8 times. He also deposed that he took Nathrao, Mokind, Dnyanoba, Dattu, Ranba to give understanding to accused. Accused did not pay heed to the request and on the contrary, he gave threats to Tulsabai. On 20.09.1996 accused husband and Dnyanoba came in search of Tulsabai. According to him, on that day itself accused no.3 had come to Nandnaj and had requested this witness to give understanding to his sister to behave properly and on failure, they would direct husband to beat her. He stated that therefore he suspected some foul play. On 22.09.1996, his sister was reported to be missing. Her dead body was found on 23.09.1996 in the field. He alleged that accused nos. 1, 2 and 3, to remove hurdle in illicit relation between accused nos. 1

and 2 and to avoid defamation, finished his sister and after last rituals, he lodged report with Parali police station on 24.09.1996 vide Exhibit 29.

**PW6** Dr. Goli is the autopsy doctor, who conducted postmortem and issued postmortem report opining death to be due to manual strangulation.

**PW7** Vitthal did not support prosecution as he denied Tulsabai disclosing anything against her husband and mother-in-law.

**PW8** Dehu stated that accused are having field in his neighbourhood. Two days back, Tulsabai had come along with Anusayabai and other labours in the field of *Awalichamala*. Two days thereafter, he had seen dead body of Tulsabai and had reported it to the police patil.

**PW9** Dnyanoba also did not support prosecution as he deposed that Shivaji never told him about extra-marital relation between his wife and his brother Tukaram.

**PW10** API Shaikh is the Investigating Officer.

11. On conducting trial for offence punishable under Sections 302 and 498-A of IPC, learned trial Judge, on conclusion, reached to the finding that prosecution failed to establish the charge under Section 302 IPC against all the accused and gave them clean chit. However,

husband and mother-in-law of Tulsabai are held guilty for offence under Section 498-A of IPC and are accordingly sentenced.

Therefore, the only point for consideration here is, whether cruelty as contemplated under Section 498-A of IPC has been meted out to deceased Tulsabai so as to uphold the conviction recorded by the learned trial Judge.

#### LEGAL POSITION

12. Before advertng to the evidence and testing it, it would be apt to give a brief account of the settled law, judicial precedents as well as essential requirements for attracting offence under Section 498-A of IPC.

Law is fairly settled that, for attracting the charge under section 498A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
  - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*

(ii) *harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand ;*

(iii) *the woman was subjected to such cruelty by her husband or any relation of her husband.”*

**JUDICIAL PRECEDENT :**

13. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

*“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed in 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. [emphasis added]

Similar views are echoed in **Gurnaib Singh v. State of Punjab** (2013) 7 SCC 108, wherein it is held as under:

*“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”*

*In State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582, the Hon'ble Apex Court has observed that, *“Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC”.*

In **Bhaskar Lal Sharma v. Monica** (2009) 10 SCC 604, the Hon'ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452, following observations are made:

*“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”*

#### ANALYSIS

14. As stated above, here, evidence of PW2 Mokind, PW4 Nathrao and PW5 Pandharinath-informant brother is of relevance and significance as they are crucial witnesses on the point of 498-A of IPC. Let us analyze evidence evidence of PW5 informant brother first.

15. According to PW5 Pandharinath, married life of his sister Tulsabai and accused Tukaram was of 13 years and they had three daughters and a son. It is specific accusation that one and half years prior to the death, Tulsabai had come to his place at Nandnaj and had disclosed that her husband Tukaram had developed intimacy with his sister-in-law accused no.2 Shobhabai i.e. wife of his own younger brother Shivaji. That, she had personally witnessed it. According to him, accused nos. 1 to 3 therefore ill-treated and harassed Tulsabai on

the allegation of defaming them about having illicit relation between accused nos. 1 and 2. He claims that he personally approached accused and gave him understanding to him but according to this witness, at that time, accused Tukaram gave threats to finish Tulsabai if she continues defaming him for such relation. According to him, even Shobhabai and Mandabai both threatened to cause death of Tulsabai in case she continues to disclose defamatory relation. According to him, ill-treatment continued at the hands of accused. His sister was driven out by beating 7 to 8 times. That, he along with Nathrao, Mokind, Dnyanoba, Dattu, Ranba went to persuade Tukaram to treat Tulsabai well but he did not pay heed and on the contrary, he gave threats to Tulsabai, and on 20.09.1996 she went missing and was finally found lying dead in the field on 23.09.1996 and therefore he lodged report Exhibit 29.

But while under cross, in para 10, following omissions are brought :

- i) giving threats by Tukaram “in case Tulsabai has not stopped defaming him, then he would finish her off”.
- ii) That, Shobhabai and Mandabai giving threats of causing death of Tulsabai in case of defaming them about illicit relation”.

He is unable to state when there was ill-treatment or beating. In para 17, he admitted that he did not approach police on 20.09.1996 and 21.09.1996. He even admitted that he did not lodge complaint either on 22.09.1996 or even on 23.09.1996 in spite of meeting police. He further admitted that even after seeing dead body he did not immediately made complaint at the spot to the police up to the night of 23.09.1996 and did not lodge report even in the morning of 24.09.1996.

In para 24, again omissions are brought to the following extent as regards the FIR is concerned :

- i) “even my sister Tulsabai has disclosed with me regarding personally witnessing the illicit affair of Shobhabai and Tukaram”.
- ii) “request made by Tulsabai to advise Tukaram and to take assurance of ceasing his relation with Shobhabai”.
- iii) “During visit along with others at Saradgaon, accused gave threats since trying to advise him.

16. PW2 Mokind, who is examined at Exhibit 20, deposed that four to five months prior to the incident, informant called him and informed about illicit relation between accused nos. 1 and 2 and

further asked him to get it confirmed from Tulsabai who had come him. According to him, deceased disclosed him that accused no.1 was having illicit relation with accused no.2 and she had personally witnessed their relation. According to him, she further told that she was harassed under impression of disclosing such relation to others. He claims that two months prior to the incident, he accompanied informant Pandhari, Nathrao, Ranba and others to give understanding to the accused. Then he claims that after two months, he learnt from informant that his sister has disappeared and finally her dead body was found in the field. According to him, accused nos. 1 to 3, in furtherance of common intention, caused death of Tulsabai by throttling.

While under cross, PW2 answered that even prior to learning from informant, he was knowing about illicit relation between accused nos. 1 and 2. He is unable to state on which festival or which date Tulsabai had come to village Nandnaj. In para 10 of his cross, he admitted that he did not disclose to police regarding ill-treatment to deceased Tulsabai by accused husband Tukaram, i.e. when he first noticed the dead body and when police were already present in the field. He answered that police interrogated with him on 3<sup>rd</sup> day of cremation. In further cross para 11, he admitted that on 25<sup>th</sup>

September 1996, police were present at the time of last rituals but he had not stated to the police about deceased disclosing him regarding illicit relation of her husband with accused no.2. He also admitted about not disclosing to police that Tulsabai has disclosed about personally witnessing the illicit relation of accused Tukaram and Shobhabai. He answered that he has stated to police that Tulsabai has disclosed that she was being harassed on the count of not to make disclosure to anybody about illicit relation between her husband with Shobhabai, but said material is not finding place in his statement. He is unable to assign reason for the same.

17. PW4 Nathrao, Police Patil, who has deposed that on the previous Diwali, he had met Tulsabai when she had come to Nandnaji and when she was invited for tea, she allegedly told him that she is not happy in the matrimonial home, but is being ill-treated by her in-laws and husband on the count of her husband having illicit relation with Shobhabai. He again claims that during second visit of Tulsabai to Nandnaji, she again complained about illicit relation being continued. He claims that he had accompanied informant Pandhari, Dattu, Mokinda and others to give understanding to accused and that, two to three days thereafter, Tulsabai went missing and her dead body was found in the field of accused.

In cross, he admitted that deceased was his cousin sister. He admitted that in his statement to police dated 25.09.1996, he has not stated the portion marked "B" regarding removal of dead body from the spot. In para 5, he admitted not informing police about they all going to village Saradgaon to convince Tukaram to cease illicit relation., or about learning from Tukaram and Dnyanoba regarding Tulsabai to be missing.

18. On carefully sifting the evidence of PW5 informant, PW2 and PW4, it is noticed that they are merely making omnibus allegations about ill-treatment and harassment. Except PW5 informant, none of the other witnesses are consistent about ill-treatment so as to constitute offence under Section 498-A IPC. Even brother does not specify the nature of ill-treatment. PW2 Mokind has not stated anything except stating that she was harassed by accused. Moreover, evidence of PW2 and PW5 is found to be full of material omissions and contradictions. Resultantly, there is no incessant ill-treatment or tormenting of such nature that it would amount to cruelty.

19. PW2 in para 10 has candidly admitted about not disclosing police about ill-treatment to deceased at the hands of accused. Therefore, whatever he deposed in the witness-box is an improvement. Similarly, para 11 of his cross shows that there are

material omissions about deceased informing him about she personally witnessing illicit relationship between her husband and Shobhabai. It is also not disclosed in his statement that deceased was harassed for not disclosing anyone about said illicit relation between accused nos. 1 and 2.

20. Likewise, brother PW5 alone is found to be deposing about accused Tukaram giving threats to finish Tulsabai and even Shobhabai and Mandabai giving threats to cause death of Tulsabai, in case she continues to disclose defamatory relation. It is surprising that in spite of hearing threats from accused persons, brother has not promptly reported life threats to the sister by approaching police. In cross para 10, he has admitted that FIR is silent about threats given by Tukaram that in case Tulsabai did not stop defaming him, he would finish her. In para 17, he has admitted that in spite of learning about deceased going missing on 20.09.1996, and in spite of arrival of police at the spot at the time of inquest and last rituals, no allegations about illicit relation or ill-treatment was made to the police. Rather, complaint was lodged in the evening of 24.09.1996 i.e. after four days of deceased going missing. Likewise, para 24 of his cross shows that FIR Exhibit 29 is silent about his sister disclosing him regarding she personally witnessing illicit relation of Shobhabai and Tukaram.

21. Resultantly, evidence of brother PW5, PW2 and PW4 is not convincing as regards commission of offence under Section 498-A of IPC is concerned. Their testimonies are patently shown to be full of material contradictions, omissions and improvements.

22. Learned APP would strenuously submit that deceased had reported brother as well as PW2 Mokind about she personally witnessing accused husband to be in compromising position with accused no.2. On re-appreciating the testimonies, it is revealed that these witnesses are not speaking about seeing accused nos. 1 and 2 in compromising position. Rather, they are merely deposing about hearing from deceased that she had personally witnessed the intimacy. This is omnibus allegation. What exactly she witnessed, has not come on record.

According to learned APP, because of illicit relation, deceased was mentally harassed and was done to death. He seeks reliance on the ruling of Hon'ble Madras High Court in *Mrs. Pista Kanwar v. The Inspector of Police, M-6, Manali Police Station, Chennai* [Crl.A.No.211 of 2022 decided on 25.09.2023].

23. Therefore, precise allegation of prosecution is that illicit relation between accused nos. 1 and 2 amounted to mental cruelty to deceased and also she was done to death for the said reason. Hence, Section 498-A is attracted. Admittedly, here, learned trial Judge already acquitted all accused from charge under Section 302 of IPC. Accused no.2 sister in law of accused is already acquitted from 498-A IPC also.

24. In the line of above indictment, if evidence is put to minute and careful scrutiny, it is emerging from informant brother's evidence that marriage between accused husband and deceased was already 13 years old. It is his evidence that one and half years prior to the incident, his deceased sister reported about illicit relation between accused nos.1 and 2. Deceased allegedly went missing on 20.09.1996. Informant himself speaks about accused husband coming to informant in search of deceased. Missing has not been placed on record, which is said to be lodged on 22.09.1996. Further, according to prosecution, deceased was found dead in the very field of accused on 23.09.1996. PW8 Dehu, an independent witness, has deposed that two days back deceased had come along with Anusayabai. Said Anusayabai is not examined for best reasons known to the prosecution even when PW8 deposed about deceased and Anusayabai rendering labour work in the

field knows as Awalichamala, and dead body of deceased said to be found in said Awalichamala. According to PW8, two days thereafter, he had seen dead body of Tulsabai and he had given report to Police Patil. Therefore, last person in the company of deceased was said Anusayabai. But as stated above, she is not examined. There is nothing to show what investigation was carried out on missing report allegedly lodged on 22.09.1996. How deceased reached the spot where she was found dead, is obscure. No incidence in proximity to the day when dead body was noticed, about accused nos. 1 and 2 continuing or indulging in affair, has apparently come on record. In the considered opinion of this court, it was essential in view of the precise allegation of prosecution.

25. Similar situation was before the Hon'ble Apex Court in the case of *Pinakin Mahipatray Rawal v. State of Gujarat* (2013) 10 SCC 48. The Hon'ble Apex Court, while dealing with the issue as to whether relationship in the form of extra-marital affair leads to cruelty within the meaning of Section 498-A IPC, held that, *"mere fact that husband has developed some intimacy with another woman, during subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such nature as is likely to drive the spouse to commit suicide to fall*

*within the explanation to Section 498-A IPC*". The Hon'ble Apex Court further elucidated that, harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A of IPC. Mental cruelty, of course varies from person to person, depending upon the intensity and 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.

26. Likewise, in the case of *Ghusabhai Raisangbhai Chorasiya v. State of Gujarat* (2015) 11 SCC 753, the Hon'ble Apex Court opined that, even if illicit relationship is proven, **unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted.**

The relevant para is reproduced hereunder :

*"True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved,*

would be illegal and immoral, as has been said in **Pinakin Mahipatray Rawal** (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted.”

27. Similarly, in the recent case of **K. V. Prakash Babu v. State of Karnataka** [Criminal Appeal No(s). 1138-1139 of 2016 decided on 22.11.2016], the Hon’ble Apex Court in para 16 observed as under:

“16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one’s endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture

*or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case.....” [emphasis laid]*

28. Keeping above settled legal position in mind, as stated above, here, firstly the alleged disclosure by deceased to brother and PW2 about personally witnessing illicit relationship, is shown to be material omission and it is got proved through the Investigating Officer. It is not finding place in the FIR as well as their statement to police under Section 161 of Cr.P.C. Therefore, the allegation of personally witnessing extra-marital relation between accused nos. 1 and 2 has no supporting evidence. It seems to be a mere suspicion entertained by deceased. Brother has not specified exactly when ill-treatment was given or when deceased was beaten. He speaks of she being driven out of the house 7 to 8 times. But this is not coming from the testimony of PW2 and other witnesses.

29. PW2 has admitted that he has not disclosed to the police at any point of time about ill-treatment at the hands of accused. Therefore, taking such circumstances into consideration, there is no evidence on the point of subjecting deceased to cruelty so as to attract Section 498-A IPC.

30. Went through the judgment in *Mrs. Pista Kanwar* (supra) relied by learned APP and referred in para 22 above. However, in that case, facts were distinct. Moreover, observations of the Hon'ble Apex Court referred to in forgoing paras 25 to 27 would obviously prevail.

31. To sum up, here, there is no convincing and legally acceptable evidence to accept the prosecution case as regards the charge under Section 498-A is concerned. The essential ingredients to attract the charge are patently missing and therefore, in the considered opinion of this Court, guilt so recorded by the trial court for said offence cannot be allowed to be sustained.

32. Learned trial court has failed to appreciate the evidence and the material contradictions, improvements and omissions and even failed to apply correct law before reaching to the conclusion. Hence appellants succeed. Accordingly, I proceed to pass the following order:

#### **ORDER**

I. The appeal is allowed.

- II. The conviction awarded to the appellants i.e. 1) Tukaram s/o Trimbak Aaghav and 2) Mandabai w/o Trimbak Aaghav, by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 15 of 1997 under Section 498-A r/w 34 of IPC on 25.11.2002 stands quashed and set aside.
- III. Both the appellants stand acquitted of the offence punishable under Section 498-A r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

**[ABHAY S. WAGHWASE, J.]**

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