

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.492 OF 2001

Kailas s/o Rambhau Nanaware
Age 30 years, Occ. Agriculture,
R/o Mahakheda, Tq. Badnapur,
District Jalna

... **APPELLANT**
(Orig. Accused)

VERSUS

The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)

... **RESPONDENT**

.....
Shri Joydeep Chatterji, Advocate for appellant
Shri K.S. Patil, A.P.P. for respondent/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 19th July, 2016.

Date of reserving judgment : 11th July, 2016

Date of reserving judgment : 19th July, 2016.

J U D G M E N T :

1. The appellant - original accused (hereinafter referred as - "accused") was prosecuted along with his mother in Sessions Case No.148/1996 before the 2nd Adhoc Additional Sessions Judge, Jalna for offence punishable under Sections 306, 304-B,

498-A read with Section 34 of the Indian Penal Code, 1860 (I.P.C. in brief) as well as for offence under Section 4 of the Dowry Prohibition Act, 1961 ("Act" in brief). His mother came to be acquitted. Even he was acquitted of other Sections and got convicted only for offence under Section 4 of the Dowry Prohibition Act. He has been sentenced to suffer rigorous imprisonment for six months and fine of Rs.500/- and in default, it has been directed that he will suffer rigorous imprisonment for one month. Thus this appeal.

2. Against the acquittal of the other accused and appellant-accused under Sections 306, 498-A and 304-B of I.P.C., the State did not prefer any appeal. Thus, in the present matter, my limited concern is to see if the offence under Section 4 of the Dowry Prohibition Act has been established against accused. I will refer to the facts for such limited purpose.

3. The case of prosecution in short can be stated to be as follows :

(a) On 21.4.1996, at about 11.00 a.m., complainant Dadabhau Ghayal (P.W.1) filed .F.I.R. at Police Station, Badnapur. He claimed that, he was resident of Rauna Parada, Taluka Ambad, District Jalna, but

was since five years residing at Jalna. He gave details of the children he had. Victim Dwarkabai was his daughter and married to the appellant-accused about five years back at Deo-Pimpalgaon and she has a daughter named Radha. For festivals, the victim was coming to his place. Victim was treated well for 3 1/2 - 4 years at the place of her husband. Thereafter the accused as well as his mother (original accused No.2) were asking her to bring Rs.5000-6000 from the place of her parents to bring crane, and for such reason, were beating her. She told this when she had come for Diwali in 1995.

- (b) As per F.I.R., then, the complainant had gone to the place of accused at the time of Shimga of 1996, but the victim was not sent with him. She told about her ill-treatment and demand of money at that time also. Then, for Padva of 1996, he had gone, but she was not sent. On 16.4.1996, his wife Suman (P.W.2) had gone to bring victim for Akhati, but she was not treated well and victim was not allowed to talk to her. On 19.4.1996, in the morning, the complainant came to know from some persons that his daughter was vomiting and was admitted to Government Hospital, Jalna. He went there with his wife and relatives and

found that she was dead. Accused told him that, on 18.4.1996 at about 8.00 p.m. victim had consumed poison when he and his mother were not at home. Thus, the complaint.

- (c) The F.I.R. as above was registered. The police investigated the offence and finding sufficient evidence, filed charge-sheet.

4. At the time of trial, in response to application under Section 294 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short), the counsel for accused admitted the spot panchanama Exh.49, inquest panchanama Exh.50, post mortem report Exh.51 and also C.A. report. The C.A. report is in the original record, but does not appear to have been given Exhibit. If these documents are perused, it does not appear to be in dispute that, on 18.4.1996 at about 9.00 p.m., when the accused reached back home, he found the victim sitting in the door of his house and although there was smell of poison, she claimed that she did not consume it. He went in the house and found poisonous medicine spilled on the ground. Recording this as background, spot panchanama came to be drawn. The victim was rushed to the hospital and subsequently died. It appeared that she had consumed organo phosphorous like substance. The C.A. report recorded that the contents contained organo phosphorous

insecticide. Trial Court came to the conclusion that the victim had committed suicide and that the death had occurred otherwise than in normal circumstances.

5. To prove cruelty and dowry death as well as abetment for the suicide which was committed, in the trial Court, evidence of only the complainant Dadabhau (P.W.1) and his wife Sumanbai (P.W.2) was led and no other evidence was led and even the investigation officer was not examined.

6. Before discussing the evidence to see if the offence under Section 4 of the Dowry Prohibition Act is established it would be appropriate to refer to the concerned law on the subject. Section 2 of the Dowry Prohibition Act defines "dowry" as under :

"2. Definition of "dowry" : In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but

does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II - The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

Section 4 reads as follows :-

"4. - Penalty for demanding dowry. - If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

7. It is clear that, there can be demand of dowry even at any time after the marriage, but it has to be in connection with the marriage. It is clear that, the demands directly or indirectly, of any property or valuable security given or agreed to be given either directly or indirectly, are prohibited. Learned counsel for the appellant-accused relied on the case of **Satvir Singh and others Vs. State of Punjab and another**, reported

in **AIR 2001 SC 2828** and referred to para 21, which reads as under :

"21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

8. Referring to the above paragraph, the learned counsel for the accused submitted that, although in the present matter prosecution brought evidence of parents to say that the accused at times asked for money, to buy crane or pay installments of the crane which had been purchased, merely asking for some help does not amount to demand of dowry. It is argued that, the demand has to be "in connection with the

marriage" and thus, it will have to be shown that the marriage was at stake.

9. The learned A.P.P., however, claimed that the evidence of the parents does show that the accused was demanding money from the victim and asking her to bring the same from her parents and when not brought, was ill-treating her. It showed that there was demand for dowry.

10. The judgment of the trial Court shows that, it relied on the judgment in the case of **Pavan Kumar and others Vs. State of Haryana**, reported in **AIR 1998 SC 958** to state that, dowry demand need not be the amount agreed by the parties at the time of marriage and even subsequent demands are included in the definition of the word "dowry". In this context, para 17 in the matter of "Pavan Kumar" needs to be reproduced.

"17. Reverting to the present case, the evidence of the aforesaid PWs are very clear. After few days of the marriage, there was demand of scooter and fridge, which when not being met lead to repetitive taunts and maltreatment. Such demands cannot be said to be not in connection with the marriage. Hence the evidence qualifies to be demand for dowry in connection with the marriage and in the circumstances of the case constitutes to be a case falling within the definition of 'dowry' under Section 2

of 1961 Act and Section 304-B, IPC."

11. The judgment in the matter of "Satvir Singh" (supra) relied on by the accused was considered by the Hon'ble Supreme Court in the subsequent matter of "**Ashok Kumar Vs. State of Haryana**" reported in **(2010) 12 SCC 350**. In the context of definition of dowry as referred above, the Hon'ble Supreme Court observed in para 14 of that judgment as under :

"14. The expressions "or any time after marriage" and "in connection with the marriage of the said parties" were introduced by the amending Act 63 of 1984 and Act 43 of 1986 with effect from 2-10-1985 and 19-11-1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression "in connection with the marriage" cannot be given a restricted or a narrower meaning. The expression "in connection with the marriage" even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be "in connection with the marriage" and not so customary that it would not attract, on the face of it, the provisions of this section."

12. The Hon'ble Supreme Court observed in para No.16 as under :

"16. Again, in *Satvir Singh V. State of Punjab*, this court held that the word "dowry" should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in connection with birth of a child or other ceremonies are not covered within the ambit of the word "dowry"."

13. Referring to the judgments of the Hon'ble Supreme Court, it was further observed in the matter of Ashok Kumar in para No.18 as under :

"18. The courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of "dowry" under the Act. Section 4 of the Act is the penal section and demanding a "dowry" as defined under Section 2 of the Act, is punishable under this section."

14. The above discussion makes it clear that, where the husband makes demand of a specific amount and when the same is not given, if he harasses or tortures the wife and after some

days she dies, such case would clearly fall within the definition of dowry referred above.

15. Keeping the position of law in view, now it would be appropriate to refer to the facts of the present matter to see if on facts the prosecution established its case.

16. It is necessary to see if there is evidence that any specific amount was demanded and on not being paid, the victim was being harassed or ill-treated. I have already referred to the F.I.R. which was filed, which stated that, for 3 1/2 - 4 years of the marriage the victim was treated well. From the evidence, what appears is that, the marriage lasted for something more than five years. The F.I.R. claimed first turmoil in the marriage reported around Diwali of 1995. The victim died on 18.4.1996 and thus, the alleged ill-treatment must be stated to be from around October/ November 1995 till April of 1996. During this period, the F.I.R. claims that, after Diwali, the complainant went to call his daughter at the time of festival of Shimga. Then, went at the time of Padva of 1996, (which would be around March of 1996), and again on 16.4.1996 for festival of Akhati P.W.2 claimed that, on all such occasions, the victim was not sent.

17. With such claims in the F.I.R., if the evidence is

perused, the complainant P.W.1 claimed that the happy marriage was only for a period of one year. Against this, P.W.2 Sumanbai at one place claimed that there were no complaints in the first two years of the marriage. P.W.1 claimed that, after one year of marriage, when victim came, she stated that, the accused had brought a crane on hire and was asking her to bring Rs.6000/- from him to pay the consideration and that she was being harassed for meeting the demand. Thus, in evidence, the complainant changed his stand which was taken in the F.I.R. to depose that from the end of first year of marriage till the fifth year, the victim was being put to such harassment. Against this, P.W.2 Sumanbai claimed that, there were no complaints for the first two years and then, when the victim was coming, she was saying that the mother-in-law was ill-treating her and her husband was also ill-treating. She gave particulars that though she was doing all the work, still her mother-in-law was scolding her. This mother referred to such trouble and further deposed that, after four years of marriage, they had brought the victim to house for Diwali. As per this P.W.2, mother of victim, at such time, the victim did not make any complaints. This P.W.2 claimed that, only at the time of next Shimga, when she went to the house of accused and the victim was not sent, the accused asked her to pay Rs.10,000/- to 15,000/- to purchase a crane. Her cross-examination shows that, such demand for money was

made for the first time on the occasion of Shimga. According to P.W.2, after her such visit at the time of Shimga about one month thereafter, at the time of Akshay Tritiya they got the message regarding victim not being well and her ultimate death. If the evidence of P.W.2 is read with the evidence of P.W.1, while the complainant claimed that it was he who went at the time of Shimga, the mother of the victim claims that rather she had gone at the time of Shimga.

18. In the F.I.R., it was claimed that, Rs.5000-6000 were demanded. In evidence, complainant claims that the specific Rs.6000/- were demanded. His wife P.W.2 went on to claim that, Rs.10,000-15,000 were demanded. These parents of the victim are not clear with reference to the amount. They are not clear even as to when the alleged demand/s were made. In their evidence, somewhere it is claimed that, the accused had already bought the crane and somewhere it is claimed that Rs.10,000-15,000 were asked for purchasing a crane. Thus, both these witnesses are not at all clear as to their evidence as regards alleged demand of dowry. While P.W.1 claimed that the victim had been complaining that she is being assaulted, P.W.2 claimed the ill-treatment to be of scolding. She did not claim in evidence that victim was complaining of assault. The trial Court considered the evidence of both these witnesses and their

various versions in order to give benefit to the accused persons with regard to the offences under the IPC, but when it came to conviction under Section 4 of the Dowry Prohibition Act, observed that, P.W.2, due to illiteracy, could not state the facts properly and so he was disbelieving her evidence. After recording such finding, the trial Court relied on the evidence of complainant and convicted the accused. In the evidence although certain contradictions and omissions were referred by the accused, the investigating officer was not examined, depriving the accused benefit of proving the contradictions and omissions. It is true, P.Ws.1 and 2 are illiterate and do not appear to have much sense of time. But then, the disparities in evidence are too many and just cannot be co-ordinated. I do not find that the conviction can be maintained.

19. In law, the findings recorded by the trial Court that, cruelty had not been established and abetment to commit suicide was not proved and such findings have become final as no appeal has been preferred. On facts, in such background, and even otherwise, independently scanning the evidence, I find it difficult to hold that demand of dowry has been established. In this context, one more important aspect has also to be kept in view. It is that, the evidence of P.W.1 shows that, when they came to know about the victim being in hospital, they had gone to the

hospital. His cross-examination shows that, when he had come to the Civil Hospital, Jalna along with his relatives and friends, the police had indeed made enquiries with them about the death of Dwarka, the victim. The evidence shows that, after taking the dead body from the hospital, complainant rather took the dead body to the place of the accused and last rites were performed at the village of the accused. He does not appear to have stated to the police at that time in Civil Hospital regarding cruelty or demand of dowry. Even the evidence of P.W.2 shows that, after the victim was cremated at Pimpalgaon at about 1.30 p.m., in the evening police had come to them for making enquiry and recorded their statements. It does not appear that, at such time, which would be on 19.4.2016, any such grievances regarding illegal demand or demand of dowry was made to the police. It is only subsequently on 21.4.1996 that P.W.1 went to the police station to lodge F.I.R. Exh.53. Looking to the type of evidence, which is available in the present matter and the delayed F.I.R., I do not find that, the same inspires confidence that there was demand of dowry.

20. For the above reasons, the conviction under Section 4 of the Dowry Prohibition Act, as recorded by the trial Court cannot be maintained.

21. I pass the following order :

The Criminal Appeal is allowed. The impugned judgment of the trial Court, recording conviction and sentence of the appellant - accused under Section 4 of the Dowry Prohibition Act, 1961 is quashed and set aside. The appellant-accused is acquitted of the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. Fine, if paid, be refunded to him.

The appellant-accused be set at liberty forthwith unless his presence is required in any other offence.

(A.I.S. CHEEMA, J.)