



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 169 OF 2002

Kailash s/o Venkati Moralwar
Age 28 yrs, Occ. Business,
R/o Juna Kautha, Tq. & Dist. Nanded. ... Appellant

Versus

The State of Maharashtra ... Respondent

.....
Mr. Akash Gade, Advocate for the Appellant (appointed through High
Court Legal Service Sub-Committee].
Mr. S. M. Ganachari, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 06.09.2024

Pronounced on : 18.09.2024

JUDGMENT :

1. Instant appeal is by convict Kailash, husband of deceased Vanmala, who jumped along with her minor daughter in Godavari river and committed suicide. Therefore, the conviction is for offence under Sections 498-A and 306 of the Indian Penal Code [IPC] recorded by learned IInd Adhoc Additional Sessions Judge, Nanded in Sessions Case No. 15 of 1997.

2. Deceased was married to appellant in 1993. After a period of six months, husband and in-laws put up demand of money for

running shop and for coercing her to meet their demand, they subjected her to maltreatment. Twice informant father (PW1) met the demand by paying Rs.5000/-. However, still the demand continued, followed by cruelty. Deceased reiterated the demand and treatment meted out to her. Understanding was given through independent persons to the accused, but they did not mend their ways. On 01.10.1996, Vanmala went missing and on 02.10.1996, dead bodies of Vanmala and her daughter were traced and fetched out of the river water. Therefore, father lodged report Exhibit 21, on the basis of which, crime came to be registered and finally, investigated by PW10. Accused husband and in-laws came to be chargesheeted. At the time of charge, father-in-law expired and therefore, only husband and mother-in-law faced trial before learned IInd Adhoc Additional Sessions Judge, Nanded vide Sessions Case No. 15 of 1997 for offence under Sections 498-A and 306 r/w 34 of IPC.

3. In support of its case, prosecution adduced oral evidence of 10 witnesses and also sought reliance on documentary evidence. Defence also adduced evidence of in all 6 witnesses. After appreciating the evidence adduced by both sides, learned trial court vide judgment and order dated 16.03.2002, acquitted accused no.3 mother-in-law, but convicted husband for cruelty and abetment to suicide. Such

judgment is the subject matter of appeal before this Court vide instant appeal.

SUBMISSIONS

On behalf of the appellant :

4. According to learned counsel for the appellant, here, prosecution had miserably failed to establish its case beyond reasonable doubt. He pointed out that there is no evidence, and even required ingredients for attracting Sections 498-A or 306 of IPC are patently missing in the evidence. However, still learned trial court has convicted husband alone and has acquitted accused no.3 i.e. on the same set of evidence. He pointed out that there are general, vague and omnibus allegations of cruelty. He pointed out that witnesses are not consistent. Independent pancha witnesses, though speak about informant giving Rs.5,000/- on two occasions, he submitted that in fact it has also come in the evidence of very independent witness that they both being in business of grocery shop, had distinct financial transactions between them. Therefore, such payments cannot be attributed to any demand. Learned counsel submitted that shop of appellant husband was since much prior to marriage. That, report is out of annoyance.

5. He pointed out that defence witnesses, including relatives of very informant, speak about cordial relations and happy married life. On the contrary, it is submitted that defence taken in trial court was that deceased was upset for not getting admission in 11th standard in the college of her desire. Therefore, there is possibility of committing suicide. He further submitted that necessary ingredients for attracting Section 306 of IPC are patently missing. He further submitted that even there is no evidence to suggest cruelty of such nature that deceased was forced to end up her life. No such case is put forth by prosecution, but according to learned counsel, learned trial court has accepted the prosecution version and has recorded guilt against husband alone. He submitted that learned trial court has merely appreciated evidence of prosecution and has not dealt and discussed evidence of defence. Consequently, it is his submission that, there is no proper application of mind and rather, there is improper appreciation of available evidence and hence, he prays to allow the appeal by setting aside the impugned judgment.

In support of his contentions, learned counsel for the appellant sought reliance on the following rulings :

1. *Tukaram s/o. Trimbak Aaghav v. State of Maharashtra*
2024 All.M.R.(Cri.)2107 : 2024 (3) Mh.L.J.(Cri.) 660.
2. *Naresh Kumar v. State of Haryana* (2024) 3 SCC 573.
3. *Mangat Ram v. State of Haryana* (2014) 12 SCC 595.
4. *Munshi Prasad and others v. State of Bihar* (2002) 1 SCC 351.

On behalf of the respondent-State :

6. In answer to above, learned APP would submit that after 6 month of marriage, husband and in-laws had put up demand of money for running shop. That, it was sort of capital to run the shop. That, she reported about such demand to her parents. That, her father-informant twice met the demand in presence of independent witnesses. Such witnesses are examined by prosecution. Therefore, there is corroboration to the testimony of informant. In spite of meeting demand, cruelty and harassment continued. That, it was of such extent that deceased was constrained to commit suicide. Husband and in-laws are solely responsible and therefore, are rightly held guilty and hence, he prays not to interfere with the sound judgment and to dismiss the appeal.

BRIEF ACCOUNT OF THE EVIDENCE IN TRIAL COURT

- PW1** Informant Kerba (father of deceased) at Exhibit 20 gave evidence that after marriage of his daughter in 1993, she was properly treated for 6 months, but thereafter she was subjected to cruelty on account of demand of money for capital to run shop. Twice, through and in presence of Gyanoba Kadam and Govindrao Patil, he met the demand by giving Rs.5,000/-. However, ill-treatment continued. On 01.10.1996, husband came in search of Vanmala. Finally, dead bodies of Vanmala and her daughter were traced in Godavari river. According to him, husband and in-laws are responsible.
- PW2** Vimalbai, mother of deceased, also stated that for 5 to 6 months after marriage, her daughter cohabited properly. Even she stated that on account of the demand of money for shop, twice Rs.5,000/- were paid. 20 days prior to the incident, daughter had come and stayed for 10 to 12 days and that time she had reported about cruelty and demand. Husband of this witness (PW1) had dropped Vanmala and her child to the house of accused. 5 to 6 days thereafter, they got news of Vanmala going missing and subsequently, dead bodies were traced in the river water. According to this witness, her daughter committed suicide by jumping in river due to intolerable cruelty by husband and in-laws.

- PW3** Brother Rajeshwar, in his evidence at Exhibit 33, stated that after 6 months of marriage, there was ill-treatment on account of demand of money. Whenever his sister came for festivals, she reported it. Their father paid Rs.5,000/-. On 01.10.1996, husband came in search of Vanmala. Dead bodies of his sister and niece were found in Godavari river. According to this witness, his sister committed suicide by jumping in river due to cruelty at the hands of husband and parents-in-law.
- PW4** Dhondiba is the pancha to inquest panchanamas Exhibits 36 and 37.
- PW5** Topaji is the pancha to spot panchanama Exhibit 39.
- PW6** Gyanoba is an acquaintance of PW1. He stated that husband of Vanmala went on raising demands of money. 5 to 6 years back, he had accompanied Kerba (PW1) to Kautha to meet daughter and there, Kerba gave Rs.5,000/- to Venkati (father-in-law of deceased Vanmala). He claims that he persuaded Venkati to lead happy life and to treat daughter of Kerba properly.
- PW7** Sister of deceased, namely, Shobha, testified that there was cruelty and ill-treatment to her sister on account of demand. Her sister had sent letter Exhibit 42 regarding ill-treatment and demand.
- PW8** Rajendra Kagne is the autopsy doctor, who conducted postmortem on dead bodies of Vanmala and her daughter.

PW9 Govindrao, an acquaintance of informant, stated that he had been to the house of Venkati with Kerba. That time, informant Kerba gave Rs.5,000/- to Venkati. He further stated that they had some money transactions.

PW10 P.I. Rathod is the Investigating Officer.

WITNESSES ON BEHALF OF THE DEFENCE

DW1 Devidas is the nephew of informant. He, in his evidence at Exhibit 57, stated that Vanmala was married to Kailash 8 years prior. He claims that he visited her house and even she visited their house. His mother was her aunt and she reported that she was leading happy married life. 15 days prior to the incident, she had met at Wadepuri and stayed for about 15 days and at that time, had stated that she was to take admission in 11th standard at Sonkhed, but she did not get admission. During her stay at Wadepuri, she did not report anything about her married life.

DW2 Anusayabai claims that she knew both the families. There were cordial relations between accused and Vanmala. 15 days prior to the incident, she had been to the house of accused to attend birthday of daughter of Vanmala and Kailash. During her visit, Vanmala had told that she was keen in taking admission in 11th standard.

DW3 Baliram deposed that he does not know about relations between Kailash and his wife.

- DW4** Shivaji Ladane, Assistant Teacher, stated that appellant being photographer and his student, was called to the school for functions. At that time, he heard from Kailash that his wife was keen in taking admission in 11th standard and had made inquiries regarding it.
- DW5** Kailash – accused appellant, in his evidence at Exhibit 61 stated that after marriage, relations were cordial. They had a daughter, namely, Maya. Vanmala expressed desire to appear for 11th standard and he took efforts to seek admission in Yeshwant College, but wife had expressed that she will seek admission only at Sonkhed and so he had taken her there. But she did not get admission and so she was nervous. He told his wife that he would take efforts to get her admission after approaching Ladane Sir (DW4). On 01.10.1996, he left house and went to photo studio. Around 7.30 p.m. when he reached home, his wife was not in the house. She was searched but was not found. Dead bodies of his wife and daughter were found floating in the Godavari river. According to him, she used to go for washing clothes regularly at river.
- PW6** Uttam, a friend of DW5, also stated that wife of his friend was keen in taking admission to 11th standard, but at Sonkhed. But she did not get admission. That, she met and told in painful manner that she did not get admission and dead bodies of Vanmala and her daughter were found in Godavari river.

7. Going by the prosecution version, here, husband and in-laws were booked for commission of offence under Sections 498-A and 306 r/w 34 of IPC. Before commencement of trial and framing charge, accused father-in-law reported to have died and therefore, only husband and mother-in-law faced charges and also faced trial. On appreciation of entire evidence, learned trial Judge has acquitted mother-in-law and held appellant husband alone guilty for both the charges.

8. It is further emerging that marriage of deceased and appellant is of 1993. Alleged suicide is of 01.10.1996. Therefore, apparently, cohabitation is for three years. Appellant and deceased had a daughter. Evidence of prosecution could be categorized as ; **first set** comprising of family members i.e. parents, brother and sister of deceased ; **second set** comprising acquaintances and friends of informant i.e. PW6 Gyanoba and PW9 Govindrao ; and **third set** of panchas and Investigating Officer.

APPRECIATION OF ORAL EVIDENCE

9. PW1 father-informant at Exhibit 20 stated that after 6 months of marriage, his daughter was subjected to **cruelty for demand of**

money i.e. towards capital for running shop. He claims that his daughter used to inform that money was **for starting shop**. He claims that twice, in presence of PW Gyanoba and PW Govindrao, he handed over Rs.5,000/-. But according to him, again after 6 months, there was cruelty to his daughter. In para 2 of his examination-in-chief, he clarified that cruelty was in the form of beating and starvation.

He was subjected to lengthy cross of which, the portion relevant to the prosecution case is that, in para 3, he answered that he sold house for giving money to the accused persons. He spent consideration received from sale of house towards marriage expenses. He answered that son-in-law Kailash (appellant) was running a photo studio named as Maya Photo Studio at Dattanagar, Nanded. Then he answered that said photo studio was started after birth of daughter of deceased and it was started in her name. He further answered that Kailash had his business of photography since his marriage with his daughter. He also answered that deceased father-in-law Venkati had provisions shop at Kautha. In further cross, he answered that **first Rs.5,000/- were given after about two years of marriage** of Vanmala and Kailash. He further answered that when he gave first amount of Rs.5,000/-, accused Kailash had not come to his house. He is unable to give date on which he paid Rs.5,000/- to the accused persons. In

further cross, he stated that he had received Rs.10,000/- from one Jankiram Dalve and therefore, he gave Rs.5,000/-. He further answered that he had given Rs.10,000/- to Jankiram as hand loan for his daughter's marriage. He again answered that the amount of Rs.5,000/- handed by Jankiram was given to accused and at that time, Gyanoba (PW6) handed the cash to accused. He further answered that he placed the amount in the hands of Gyanoba and **Gyanoba handed it over to Venkati**. In para 4 he further answered that he gave Rs.5,000/- on the second occasion after lapse of two months of giving Rs.5,000/- on the first occasion. He answered that he did not inform his wife and sons and even Gyanoba about giving Rs.5,000/- on the second occasion. He further answered that he also does not remember the day, date and year when he gave the amount of Rs.5,000/- for the second time. He answered that he gave the amount through PW9 Govindrao. To a question, "whether Venkati had demanded the money?", he answered that his daughter had demanded money and not Venkatrao.

10. Now, if we visit the testimony of wife of informant, i.e. PW2 Vimalbai (mother of deceased), who is examined at Exhibit 32, even she stated that after 5 to 6 months of marriage, accused nos. 1, 2 and 3 started ill-treating her daughter by making illegal demand of money

for their shop. According to her, accused persons used to beat and starve her daughter. They gave Rs.5,000/- to accused. Again accused demanded money and again Rs.5,000/- were given. About 20 days prior to the incident, accused husband had brought daughter and her child to their house. She stayed for 10 to 12 days and during such stay, she told that **accused treated her with cruelty by demanding money**. Thereafter husband of this witness (PW1 Kerba) took Vamala and her child to accused persons. After 5 to 6 days, appellant came in search of her daughter and when they all went, her dead body was removed from Godavari river.

In cross, she denied that any letter was sent by deceased to them but, according to her, it was sent to her another daughter i.e. sister of deceased. Then, she again stated that she did not seek the letter. Even she is unable to give dates on which amounts of Rs.5,000/-, on two occasions, were given to the accused. **According to her, the amounts were given after lapse of one year from the marriage**. She answered that she had not made inquiry with her husband as to from which source he raised amount of Rs.5,000/- on two occasions to give it to accused.

11. PW3 Rajeshwar, brother of deceased, in his evidence at Exhibit 33 deposed that after 6 months of marriage, there was ill-treatment on account of demand. Whenever his sister visited for festivals, she reported ill-treatment by accused persons. According to this witness, his father told him that he had given Rs.5,000/- to the accused persons and **such amount was given about one year prior to the incident**, but again accused persons put up demand and his father gave Rs.5,000/- without informing them. On 01.10.1996, his sister was missing and was found with daughter in Godavari river. He stated that his sister jumped in the river only due to cruelty at the hands of husband and in-laws.

In cross he stated that **first amount of Rs.5,000/- was given by his father to the accused after one year of marriage.**

12. PW7 Shobha is sister of deceased. She stated that after marriage, husband ill-treated Vanmala by demanding money from her. That, her sister used to tell about ill-treatment on account of demand of money by husband, father-in-law and mother-in-law. Her father gave Rs.5,000/- twice but husband and in-laws subjected her to cruelty to bring more money from parents. According to her, Vanmala had also sent her a letter to her. In that letter dated 03.09.1996, her

sister had conveyed that she was subjected to cruelty for demand of money and had further requested her to convey the message to her father. She identified the letter Exhibit 42.

In cross, she stated that she handed over letter Exhibit 42 after two days of death of her sister. She handed over Exhibit 42 to her father. She answered that her husband had read over the letter to her, wherein it was stated that their father had given money on two occasions. She admitted that in previous letters, her sister had not mentioned about any ill-treatment at the hands of accused and the demand of money.

ANALYSIS OF EVIDENCE OF PARENTS, BROTHER AND SISTER

13. On carefully sifting the above discussed evidence of parents, brother and sister of deceased, it is noticed that all of them are merely speaking about deceased being subjected to cruelty and accused persons putting up demand of money. Though informant claims that there was beating and starvation, who beat her or whether they all together beat her, who kept her starved and when, has not been stated by either informant or his wife. Though informant claims that money was for capital to run shop, in cross para 3, he has candidly answered that accused husband had his business of photography since

his marriage with the daughter, i.e. since the beginning. Quantum of amount demanded by way of capital for shop is not stated by informant, or even for what purpose money was demanded has not come in his evidence. It is pertinent to note that in para one of examination-in-chief he has deposed that when he went to drop his daughter, he gave her Rs.500/- for expenses, and he has stated that, he persuaded his daughter to stay properly. His such version gives different and distinct meaning as it seems to be suggesting his own daughter to cohabit properly. Though he claims that twice he gave Rs.5,000/-, when amount was paid has not been stated by him. According to him, he paid Rs.5,000/- after selling his house, but he has not substantiated the sale transaction of house. In cross, he answered that first time, payment was given by him after two years of marriage, whereas, his wife PW2 contradicts him as she speaks of handing Rs.5,000/- for the first time after one year of marriage. In his cross, he has stated that Rs.5,000/- were paid to accused after amount was received from one Jankiram, to whom he had extended hand loan. But said Jankiram is not examined. On the one hand he stated that the amount of sale proceeds received by him was spent on marriage expenses. Therefore, he has given contradictory versions.

Likewise, when asked whether deceased Venkati had demanded money, informant has answered that his daughter had demanded the money and not Venkati. Such answer also gives a distinct complexion to his version.

14. PW2 Mother also stated that there was beating and starvation, but amongst three accused, who did what has not been stated by her. In cross, she answered that she did not make inquiry with her husband as to from which source he paid Rs.5,000/- on both occasions, to give it to accused. She does not depose, like her husband, that amount of sale consideration and amount received back from Jankiram which was given by way of hand loan, was used to pay the demand. Therefore, both parents, who are residing under one roof, are not found to be consistent.

15. As regards PW3 Rajeshwar is concerned, he also stated that his sister was ill-treated and there was cruelty on account of demand of money. He claims that his father told him that he gave Rs.5,000/- to the accused and even according to him, the amount was given one year before the incident. His such version is contrary to the version of his father.

16. PW7 Shobha claims that at the time of festivals, when her sister used to come, she used to tell about ill-treatment meted out to her on account of demand by husband and in-laws. But her testimony is silent about nature of ill-treatment or quantum of amount demanded. She has not stated, like her parents, that there was beating or starvation.

17. Therefore, parents, brother and sister are not lending support to each other. General allegations are levelled that there was demand and cruelty. Quantum of amount demanded has not been stated by any of them. Merely they are stating that amount was demanded by way of capital to run the shop. But there is no distinct evidence as to capital in what form and for what purpose.

SECOND SET OF EVIDENCE : ACQUAINTANCES/FRIENDS

18. Second set of evidence comprises of PW6 Gyanoba and PW9 Govindrao. They are said to be acquaintances of informant and were party to the alleged handing over of cash of Rs.5,000/- on two distinct occasions.

19. PW6 Gyanoba in his evidence stated that husband of daughter of informant went on raising demands of money. 5 to 6 years back, informant came to him and requested him to accompany him to village Kautha. He accordingly went there i.e. Kautha. At Kautha, **informant gave Rs.5,000/- through him to Venkati.** He further deposed that he persuaded Venkati to lead happy life and to treat daughter of Kerba properly.

While under cross, he is unable to give day, date, month or year of their visit to Kautha. He claims to have handed over bundle of amount, but he answered that he did not count it. He answered that there was no discussion regarding the amount demanded by Venkati. That, when they visited Kautha, even Venkati did not demand any money in his presence on his own. He answered that even informant did not express as to why Venkati was demanding money. He further deposed that there was no exchange of words between informant, his daughter and Venkati when the amount of Rs.5,000/- was given.

20. PW9 Govind, in his evidence at Exhibit 48, stated that he was called at the house of accused Venkati by informant while he was on the way to the temple of Lord Maroti. He stated that at that time,

informant gave Rs.5,000/- to Venkati. He further answered that they had some money transactions. While under cross, he again stated that Venkati and Kerba had some money transaction between them and they used to take and give money mutually. Both, informant and Venkati, had their grocery shop business.

21. On appreciating the evidence of these independent witnesses, it is emerging that, firstly, PW6, though claims to have accompanied informant to the house of accused, apparently, he has handed over Rs.5,000/- to Venkati and not the appellant husband. His cross clearly shows that he is unable to state the day, date and time or year of such visit and even his answers in cross show that he does not know that the amount given was towards any demand made by accused for running shop. Likewise, PW9 Govind has given totally different version as he has stated that in his presence, amount was given to Venkati and not husband. He further stated that there were money transactions between Venkati and informant Kerba. In cross he candidly stated that Venkati and Kerba had money transactions in between them as they both run grocery shop.

22. Another piece of evidence which prosecution seems to be catching hold of is the letter Exhibit 42 allegedly written by deceased

Vanmala to her sister PW7 Shobha. PW7 Shobha has deposed about receiving letter from her sister wherein it was alleged that there was demand and ill-treatment. However, it is noticed that Exhibit 42 is handed over to police after two days and the same is not seized by drawing any panchanama. Said letter was handed over by PW7 to informant and informant further claims to have handed it to police. Apparently said Exhibit 42 is addressed to the husband of PW7 and he is not examined for the best reasons known to prosecution. The investigating machinery does not seem to have taken pains to get authorship of said letter proved by referring the said Exhibit 42 to handwriting expert. All above aspects create doubt about Exhibit 42 and cannot be straightway accepted.

23. To sum up, here, unfortunate incident had taken place. Dead bodies of Vanmala and her minor daughter were traced and fetched from the river water. What preceded the incident has unfortunately not come on record. How and why deceased went towards the river, is not getting clear. Unless there is material suggesting instigation, abetment or inducement or cruelty to be of such nature that deceased was left with no alternative but to end up her life, charge of Section 306 IPC cannot be said to be attracted. In the light of above material, essential ingredients for attracting Sections 498-A and 306 of IPC are

not available and so, it would be unjust to hold prosecution case proved, as is held by the trial Judge.

24. After going through the impugned judgment, in the considered opinion of this Court, above aspects noticed on re-appreciation are not considered by the trial court. The aspect of general and vague allegations are given undue importance. Learned trial Judge has not justified why Section 498-A of IPC gets attracted. In absence of any evidence of abetment to commit suicide, charge of Section 306 IPC seems to have been applied. Above all, on same set of evidence, mother-in-law is acquitted, but husband alone is convicted without assigning any plausible or convincing reason. Hence, such judgment cannot be allowed to be sustained. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Kailash s/o Venkati Moralwar, by learned IInd Adhoc Additional Sessions Judge, Nanded in Sessions Case No. 15 of 1997 under Sections 498-A and 306 r/w 34 of IPC on 16.03.2002 stands quashed and set aside.

- III. The appellant stand acquitted of the offence punishable under Sections 498-A and 306 r/w 34 of IPC.
- IV. The bail bond of the appellant stands cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

[ABHAY S. WAGHWASE, J.]

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