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Kamal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-22-1999

Reported in : I(2000)DMC236

Judge : R.S. Garg, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 306 and 498A

Appeal No. : Criminal Appeal No. 808 of 1995

Appellant : Kamal

Respondent : State of M.P.

Advocate for Def. : None

Advocate for Pet/Ap. : G.S. Ahluwalia, Adv.

Judgement :

R.S. Garg, J.

1. By this appeal under Section 374(2) of the Code of Criminal Procedure, the appellant seeks to challenge the conviction recorded on 21.4.1995 by the IInd Addl. Sessions Judge to the Court of District and Sessions Judge, Chnindwara in Sessions Trial No. 23/94 convicting the appellant under Sections 306 and 498A, I.P.C. and sentencing him to undergo R.I. for 7 years and pay fine of Rs. 250/- and

undergo R.I. for 2 years and pay fine of Rs. 250/- respectively; in default of payment of fine to undergo R.I. for six months under each default.

2. The prosecution case in brief is that within about 2 years of 1st/2nd July, 1993, the accused and his parents were harassing and maltreating the deceased Heera @ Meerabai, wife of the present appellant. According to the prosecution, the appellant and the acquitted accused persons were making demand of money for purchasing a motor pump and as the deceased was unable to arrange the money and the relations of the deceased could not meet the demand, the girl was continuously harassed and tortured which ultimately persuaded and abated the girl to commit suicide to find ultimate solace. After completion of the investigation, the prosecution agency filed the challan. Each of the accused denied the commission of the offence, therefore, the learned Trial Court proceeded with the trial. After hearing the parties the learned Trial Court acquitted Kishna and Smt. Gendabai, parents of the present appellant but, however, convicted the appellant for the offences as mentioned above.

3. Learned Counsel for the appellant submits that from the evidence available on record, a case under Section 306, I.P.C. is not made out. According to him, the statements of the witnesses suffer from the vice of contradictions, omissions amounting to contradictions and illegal developments, therefore, and as the prosecution has failed to bring home the guilt, the accused is entitled to be acquitted. Further submission of learned Counsel for the appellant is that from the statements of the witnesses it does not appear that what persuaded the present appellant/ accused to make a demand almost after about 6-7 years of the marriage. According to him, present is a concocted and cooked up case, therefore, and as there is no legal evidence available on the record, the appellant deserves to be acquitted.

4. Learned Counsel for State submits that from the statements of the witnesses specially the statement of P.W. 1 Sripat and P.W. 11 Nausain, mother of the deceased, it would clearly appear that there was a continuous demand of money and as the girl and the relations of the girl could not meet the demand, the present accused was continuously torturing the girl; was not giving the food properly; was

beating her regularly and as he created a situation where the girl had no option but to commit suicide, therefore, the appellant does not deserve to be acquitted. I have heard the parties at length.

5. From the statement of P.W. 11 Nausain, one can clearly read that the marriage was solemnised about 10/11 years prior to the date of the statement recorded by the Court. She had further stated that for about 7-8 years the couple enjoyed the marital relations, but thereafter a demand was made. From paragraph 5 of the statement of P.W. 11 Nausain it would appear that the alleged demand was made at least one year prior to the date of death. In paragraph 3 she had stated that the accused was making a demand but for what he needed the money was not known to her. In paragraph 3 she has also said that about Rs. 24,000/- were given to the accused and the accused was demanding money from her whenever he came to the in laws place. In paragraph 8, she has said that the fact of the demand was narrated to her by the deceased in presence of Sripat (P.W. 1). According to her, the demand was not for a motor pump, but the accused was demanding a sum of Rs. 20,000/- or in the alternative some agricultural land. She has further stated that her daughter did not inform her that sum of Rs. 10,000/- was demanded for purchasing the motor pump. If her statements are read with the statements of P.W. 1 Sripat, it would clearly appear that these statements cannot be conciled. In paragraph 2, P.W. 1 Sripat has stated that for a period of 1-2 years the couple lived peacefully, but thereafter the girl started complaining that her in laws and husband were not treating her properly. According to him, the deceased had informed that the in laws and the husband wanted a sum of Rs. 10,000/- for purchasing a motor pump. This statement runs contrary to the statement of P.W. 11 Nausain. In paragraph 3, the witness has stated that about 15-20 days before the date of death he was informed by the girl that her husband and in laws were treating her cruelly. According to him, he went to the in laws place collected some Panch and took them to the house of Sarpanch. According to him, the Panch and Sarpanch enquired from the girl as to what were her problems; on which she informed that she was not provided proper food and was compelled to eat Roti with salt only and she was being beaten for not bringing money from her parents. According to him, Panch Pandhari Jaiswal, Madan Dhayre, Namdeo Dhayre and Sudhakar Dhayre had gone with him to the house of Sarpanch for pacifying the

matter. Out of these Panch Madan and Sudhakar Dhayre are his brothers-in-law (brothers of wife); Namdeo is also some cousin of his in laws. This witness somehow or the other tried to implicate the accused firstly by saying that his sister was murdered; 'she was found in sitting posture in the well; thereafter he started asserting that the death was within seven years of the marriage and then thereafter he wanted the Court to believe that the girl was of very tender age; The witness was not ready and willing to give the correct age of the deceased. Though ordinarily these facts would not affect the merits of the matter, but on a deep scrutiny these would show that the witness P.W. 1 Sripat was bent upon taking some revenge from the appellant and his family. The statement of Nausain gives a dent to the statement of Sripat when she says that at least for a period of 6-7 years the couple lived peacefully. The witness was confronted with his police statement contained in Ex. D1 marked as 'B to B'. In Ex. D1 marked as 'B to B' the witness had stated that at least for six years after the marriage the girl did not make any complaint. This statement recorded by the police by which the witness was confronted runs with the statement of Nausain. I am unable to understand as to what persuaded the accused persons to make a demand after 6-7 years of the marriage. The prosecution has not brought on record any fact or circumstances to show that the accused suffered some financial set-back or problems, therefore, he was compelled to make demand of Rs. 10,000/-. From the statement of P.W. 1 Sripat in paragraph 13, one can clearly read that at the time of marriage the accused person did not make any demand of dowry. He has clearly stated that whatever was given to the accused and the sister of the witness was given voluntarily. The fact still is shrouded under the suspicion as to why a family which was so good, was not making any demand of dowry, would abruptly become bad and start making demand for the money. In absence of any circumstances available on record it is unpalatable to accept that the accused started making demand.

6. From the statements of the other witnesses specifically the Panch who had gone to the house of Jagannath, it would clearly appear that when the appellant was summoned he clearly stated before them that the wife was not working properly and after the death, of the son and after she was blessed with the second daughter, she became mentally derailed. The learned Judge of the Court below

has rejected this plea simply on the ground that if she was mentally derailed, she could not go to the fields for doing the regular works. I am unable to accept the said finding. The accused did not come with the case that the deceased had become mad; he had come with the case that she was mentally derailed and started suffering some degeneration. The learned Court below has not appreciated the behaviour of a psycho patient during lucid intervals.

7. Chetram P.W. 2 on whose statement very strong reliance was placed by the learned Govt. Advocate, in the opinion of this Court, is not reliable. He is the next door neighbour who could very honestly say to the police that he was not maintaining good relations with the accused, but during the Court statements started asserting that he was not having smooth and regular relations with the accused; he thought that this amounted to bad relations. In the case diary statement, he had stated that there was some Manmatao, but in the Court statements he started asserting that there was nothing like that. He has not stated that the accused was demanding the dowry. According to him, the accused was maltreating the deceased. Looking to the conduct of this witness, I am unable to rely upon his statement.

8. P.W. 3 Namdeo who is the relation of P.W. 1 Sripat has stated that Madan and Sudhakar came to his house and informed him that accused Kamal was maltreating his wife, therefore., they were required to go to the house of Pandhari. From the house of Pandhari each of them went to the house of Jagannath. In paragraph 1 of the examination-in-chief the witness clearly stated that the brother of deceased (P.W. 1) asked the accused Kamal as to why he was beating the deceased; on which the accused said that the deceased was behaving abnormally. According to this witness, the accused had asked Sripat to take away the deceased. In paragraph 2 the witness has said that the deceased made a complaint that she was being beaten by the accused, but according to the witness, the deceased did not say as to why she was beaten. In paragraph 6, the witness has clearly admitted that the accused made a statement before them hat for more than one month the deceased was not behaving properly; she was behaving abruptly and was not taking food regularly. In presence of the witness, the accused informed that whenever he asked the deceased to go for the treatment,

the deceased refused every time. It has also come in the statement of this witness that the accused asked the brother of the deceased to take the deceased with him for the treatment. In paragraph 7, P.W. 3 Namdeo has stated that but for the maltreatment and beating, deceased Hirabai did not say anything. From these facts, it would clearly appear that in the said Panchayat nobody ever made any complaint that there was a demand of dowry. P.W. 4 Jagannath is the Sarpanch. Learned Counsel for the State wanted to say that as this witness is relation of the accused his statement must be thoroughly scrutinised. From the statement of this witness, it would clearly appear that certain queries were made from Hirabai; on which Hirabai informed the Panchayat that accused was scolding her every now and then. At that time, the accused informed the Panchayat that after the death of the minor son, Hirabai became mentally derailed and started behaving abnormally. True it is that Jagannath is relation of the accused, but if he is not declared hostile by the prosecution, then his statement cannot be brushed aside. At this stage this Court cannot lose sight of the fact that the prosecution is placing its strongest reliance upon the witnesses who are related to each other and are interested in P.W. 1, P.W. 11 and the deceased. From the statement of Jagannath, one is unable to hold that any complaint was made to the Panchayat that some dowry was demanded. From the statement, it would only appear that after the death of the only son the deceased started behaving abnormally and to control her the accused gave her certain punishments.

9. P.W. 6 Madan, brother-in-law of the deceased is unable to say as to what was the cause of death. In paragraph 6 of his statement, he has stated that in the said Panchayat Kamal had said that Hirabai was not doing the domestic work, therefore, certain fights were going on. Hirabai in reply to the query informed that proper food was not supplied to her, therefore, she was unable to work. In the meeting, according to the witness, the accused has asked Sripat that he could take away his sister.

10. In paragraph 13, P.W. 6 Madan has clearly admitted that Kamal had informed all concerned that when he wanted to take the deceased for treatment she was not ready and willing to go. According to witness, the accused had asked Sripat to take away his sister for treatment; on which Sripat informed that he would not take

away his sister. When the witness was confronted with his earlier police statement regarding non-supply of the food, he had to say that though he had informed the police but the fact is not to be found in his police statement Ex. D2. From his statement also it would not appear that the accused or his family members were constantly and continuously persuading the deceased or the relations of the deceased to pay money. The only complaint was that the deceased was maltreated and food was not supplied to her. The fact would also float on the surface of the records that the accused was repeatedly asking everybody that after the death of the son, his wife, that is the deceased, had become mentally derailed and was behaving abnormally.

11. P.W. 7 Pandhari, in paragraph 3 of the statement, has said that the deceased only made the complaint to the Panchas that food was not provided to her. He had also stated that Kamal admitted before him that as the deceased was committing mistakes she was beaten. In paragraph 4, he has clearly admitted that the appellant asked the brother of the deceased to take his sister with him; on which Sripat informed the accused that he would take his sister after 8 days. In the statement of Pandhari, I am unable to find that demand of dowry was an issue. From the statement of Pandhari, as contained in paragraph 9, it would clearly appear that the accused was making a complaint that after the death of the son and after the deceased was blessed with another daughter, she was behaving abnormally. Regarding the other suggestions, he had no courage to say 'no', but he simply said that he was unable to remember the facts.

12. P.W. 8 Sudhakar, another brother-in-law of P.W. 1 Sripat, also nowhere says that either Kamal or deceased Hirabai ever made a complaint regarding demand of dowry. In paragraph 2, this witness had clearly stated that on being asked as to why he was maltreating the deceased, the accused said that as she was not working properly his mother was scolding her. Deceased Hirabai made only a complaint she was being beaten and proper food was not provided to her. From his statement also it would not appear that demand of dowry was made or the deceased was being treated cruelly for non-payment of the money or for any other reason.

13. The defence has examined Ramesh Amle s/o Vamanrao Amle, Ramesh s/o Mahadeo and Subhash as defence witnesses. Each of the witnesses had clearly stated that after the death of the son and after the deceased was blessed with another daughter, she started behaving abnormally. In the opinion of this Court, their statements could not be brushed aside simply on the ground that if she was attending to her regular works; was going to the field for agricultural operations, therefore, she was not mentally derailed. I have already observed that the defence of the accused was not that the deceased became mad or berserk. The defence is that she became a psychic case. After the death of the only son she started behaving abnormally. It is not unknown to the medical science that a person who suffers with mental derailment would behave properly during intervals, but if the tender point is tickled or touched, such person would start behaving abnormally. Be that as it may, lam unable to hold that there was a continuous and constant demand of dowry and for pursuading the demand the present appellant was maltreating or harassing the deceased.

14. The question still to be considered is whether this Marpeet was a matter which could lead or persuade the deceased to commit suicide. Once the demand factor is disbelieved, then we are left with the behaviour of the accused and the complaints made by the deceased. According to witnesses, the complaint of the deceased was that she was beaten by the accused and food was not provided to her; while the complaint of the accused was that the girl was behaving abnormally and was not working properly. From these facts it would not appear that the accused constantly harassed the deceased or created the circumstances which persuaded the deceased to commit suicide. Because of behaviour of the deceased if the accused maltreated her, it cannot be held that he persuaded her to commit suicide. Being in disagreement with the findings recorded by the learned Trial Court, I hold that the prosecution has failed to bring home the guilt under Section 306, I.P.C.

15. So far as Section 498A is concerned, there is ample evidence on the record that the accused maltreated and mistreated the deceased. The accused knew that his wife had suffered great shock because of the death of the only son. Undisputedly a person who suffers a mental shock is entitled to an extra care, love

and affection. In the present case from the statement of the witnesses, it would appear that the accused started beating his wife and was not looking after her properly; though he knew that the wife had become a psychic case. True it is that the wife was not ready and willing to undergo some treatment, but that would not give an authority to the husband to harass, maltreat or mistreat the wife. From the statement of the witnesses and the facts available in the records, it would clearly appear that the accused was not properly treating his wife and was in fact maltreating her. Section 498A of I.P.C. provides that 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. According to the explanation, 'cruelty' means 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. So far as the first part of the explanation is concerned the same would not be applicable because I have already acquitted the accused of the charges punishable under Section 306, I.P.C. The records would show that the deceased was being regularly harassed; while in fact she needed proper nursing, care, love and affection. In the opinion of this Court, the accused can safely be held guilty under Section 498A, I.P.C.

16. The appeal deserves to be and is partly allowed. The conviction and sentences recorded under Section 306, I.P.C. are set aside, but the conviction and sentences recorded under Section 498A are maintained.

17. A release warrant be sent to the jail where the accused is lodged, immediately because the accused appear to be in jail for almost about four years.

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