

IN THE HIGH COURT OF ORISSA, CUTTACK

CRA No.10 of 2001

From judgment and order dated 02.01.2001 passed by the learned Sessions Judge, Mayurbhanj, Baripada in S.T. Case No.78 of 1998.

Bhanu Charan Pradhan Appellant

-Versus-

State of Odisha Respondent

For Appellant: - Mohammed Faradish
Advocate
For Respondent: - Mr. Priyabrata Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 02.11.2023

S.K. SAHOO, J. The appellant Bhanu Charan Pradhan along with co-accused Basanti Naik and Kailash Chandra Naik faced trial in the Court of learned Sessions Judge, Mayurbhanj, Baripada in S.T. Case No.78 of 1998 for commission of offences punishable under sections 498A/304-B/302/34 of the Indian Penal Code (hereinafter 'I.P.C.').

Learned trial Court vide impugned judgment and order dated 02.01.2001 acquitted the co-accused persons, Basanti Naik and Kailash Chandra Naik of all the charges and also acquitted the appellant of the charge under section 302 of the I.P.C., but found him guilty under sections 498-A/304-B of the I.P.C. and sentenced him to undergo rigorous imprisonment for seven years for commission of offence under section 304-B of the I.P.C. and rigorous imprisonment for one year for the commission of offence under section 498-A of the I.P.C. and both the sentences were directed to run concurrently.

Prosecution Case:

The prosecution case as per the first information report (hereinafter 'F.I.R.') lodged by Rama Chandra Mohanty (P.W.6) before the O.I.C., Kaptipada police station on 27.09.1997 is that the marriage of his daughter namely, Minoti Pradhan (hereinafter 'the deceased') was solemnized in the month of Asadha, 1996 with the appellant and on account of domestic quarrel, the appellant and the deceased were remaining separately from other family members of the appellant in village Bada Simulia since four months prior to the lodging of F.I.R. after constructing a house there. On 27.09.1997, the informant (P.W.6) got a message about the death of the

deceased. Hearing such news, P.W.6 along with his brother came to the village Bada Simulia and found the deceased was lying dead in the house and the appellant was sitting by her side. When the informant (P.W.6) asked the appellant about the cause of death of the deceased, he informed that the deceased consumed poison and died. However, P.W.6 suspected that the appellant had killed the deceased after assaulting her. P.W.6 left his brother near the dead body of the deceased and came to report the matter in the police station and on the way, he met head man of the village Bada Simulia, namely, Banshidhar Patra (P.W.1), who told him that the deceased was being regularly tortured for which she died. It is further stated in the F.I.R. that at the time of marriage, as per demand from the side of bridegroom, all articles were given, but the demand of golden chain could not be fulfilled and it was assured that such demand would be fulfilled at a later stage. Since it could not be fulfilled, the in-laws family members including the appellant were subjecting the deceased to torture and in connection with such torture, a meeting was convened in the gram panchayat on the application submitted by P.W.6 whereafter the deceased was taken back to her in-laws' house and thereafter she came to stay with the appellant at village Bada Simulia. It is further stated

that the appellant used to assault the deceased and sometimes the family members of the appellant also came to visit him and on 20.08.1997, the deceased had written a letter to P.W.6 in connection with the assault made by the appellant. It is further stated that on account of demand of gold chain, the appellant and his family members subjected the deceased to cruelty and harassment and being unable to bear the torture, the deceased consumed poison and died. On the basis of such written report, Kaptipada P.S. Case No.91 dated 27.09.1997 was registered under sections 498-A/304-B/302 of the I.P.C. and section 4 of the D.P. Act.

The O.I.C., Kaptipada Police station (P.W.14) after registration of the F.I.R., took up investigation of the case and during the course of investigation, he examined the informant and other witnesses, issued requisition for deputation of a Magistrate to remain present at the time of inquest. P.W.14 visited the spot and prepared the spot map marked as Ext.17 and seized some sample earth and vomiting soaked earth from the spot under seizure list Ext.15. The appellant was arrested on 28.09.1997 and P.W.14 seized one letter written by the deceased to her father dated 20.08.1997 and a list of articles given at the time of marriage and a Panchayat Patra of Pedagadi

gram panchayat dated 01.06.1997 under seizure list Ext.13. He also seized the dowry articles from the house of the appellant under seizure list Ext.11 and released those articles in favour of P.W.6 after executing zimanama marked as Ext.18. He held inquest over the dead body and prepared the inquest report (Ext.2) and after holding the inquest, he sent the dead body for post mortem examination. Some letters were seized and then the appellant was forwarded to the Court. The wearing apparels of the deceased and command certificate were seized. The exhibits were sent for chemical examination to S.F.S.L., Rasulgarh through Court and since the co-accused persons could not be traced, after completion of investigation charge sheet was submitted against the accused persons including the appellant on 24.12.1997 under sections 498-A/304-B/302/34 of the I.P.C. showing the co-accused persons as absconders. The co-accused persons subsequently surrendered before the learned S.D.J.M., Udala and then the case was committed to the Court of Session where the learned trial Court framed charges as aforesaid against the appellant and the co-accused persons to which they denied and pleaded not guilty and claimed to be tried and therefore, the sessions trial procedure was resorted to establish their guilty.

Prosecution Witnesses & Exhibits:

During course of the trial, in order to prove its case, the prosecution examined as many as fourteen witnesses.

P.W.1 Banshidhar Patra is a villager of Badasimulia where the appellant and the deceased went to stay about four months prior to the occurrence. He further stated that 15 to 20 days prior to the date of incident, a panchayat meeting was convened in his village to settle a dispute between a married couple where the deceased had informed that the appellant was assaulting her as she had not brought gold necklace in dowry.

P.W.2 Bhaskar Behera is a villager of Bada Simulia where the appellant and the deceased went to stay about four months prior to the occurrence. He further stated that about a month prior to the death of the deceased, a panchayat meeting was convened in his village to settle a dispute between a married couple where the deceased had informed that the appellant was assaulting her. He is a witness to the seizure of gold and silver ornaments from the dead body of the deceased as per Ext.1 and also a witness to the preparation of inquest report as per Ext.2.

P.W.3 Ninimani Behera is a villager of Bada Simulia who stated that on the day of her death at about 9 a.m., when she was going to take bath, she saw the deceased vomiting on

the 'pinda' of her house and when she returned after taking bath, she found that the deceased had already died. She was declared hostile by the Public Prosecutor and cross-examined.

P.W.4 Achyutananda Das was declared hostile and the Public Prosecutor was permitted to cross-examine him.

P.W.5 Manika Behera stated that though she knew the appellant and the deceased but she had no knowledge about the case.

P.W.6 Rama Chandra Mohanty is the father of the deceased and the informant in the case. He supported the prosecution case.

P.W.7 Paresh Kumar Behera is a businessman who stated that the appellant was working in his house on the date of death of the deceased. He further stated that at about 9 a.m., the deceased came to his house and called the appellant, after which the appellant went with her and returned within 2/3 minutes and after one hour, the co-accused Kailash came to inform him that the deceased was vomiting and requested him to bring his motorcycle for taking her to hospital.

P.W.8 Gourahari Barik is a barber who was present in the marriage of the appellant and the deceased. He stated that at the time of marriage, cash of Rs.7000/- and other customary

articles were given to the appellant and there was a talk that a gold chain would be given at a later point of time.

P.W.9 Govinda Chandra Naik stated that at the time of marriage, cash of Rs.7000/- and other customary articles were given to the appellant and there was a talk that a gold chain would be given at a later point of time. He further stated that the deceased came to her father's house after her marriage and informed that she was being tortured by her in-laws and a panchayat meeting was called by Pedagadi gram panchayat to discuss the matter and that he had given his signature on the Panchayat Patra (Ext.10). He is also a witness to the inquest over the dead body of the deceased and seizure of customary articles and some letters as per seizure list Exts.11 and 12.

P.W.10 Anupama Mohanty is the sister-in-law (wife of her brother) of the deceased who stated that after the marriage of the deceased, whenever she used to come to her father's house, she used to tell her about the torture meted out to her by her husband, mother-in-law and father-in-law for not bringing gold chain and for some other reasons. She further stated that she had visited the deceased at her in-laws' house two to three times but after her departure, the in-laws of the deceased used to scold her.

P.W.11 Somanath Patra is witness to the seizure of some letters written by the deceased and faisala patra of Pedagadi gram panchayat under the seizure list Ext.13. He is also a witness to the seizure of wearing apparels of the deceased and the command certificate under the seizure list Ext.14 and seizure of sample earth and earth mixed with vomit of the deceased under the seizure list Ext.15.

P.W.12 Akshaya Kumar Panigrahi stated that whenever the deceased was coming to her father's house, she was complaining about the torture meted out to her by her in-laws as the demand for a gold chain was not met. He further stated that he himself, P.W.6, P.W.9 and paternal uncle of the deceased went to the house of the appellant to pacify the matter and left the deceased at their house three to four months before her death. He further stated that four months prior to her death, the dispute between the deceased and her in-laws was resolved at the Pedagadi gram panchayat meeting.

P.W.13 Dr. Kamalakanta Nayak was the Asst. Surgeon in Udala Hospital who, on police requisition, conducted autopsy over the dead body of the deceased on 28.09.1997 and proved his report vide Ext.16.

P.W.14 Prafulla Kumar Baliarsingh was the O.I.C. of Kaptipada police station and he is the investigating officer of the case.

The prosecution exhibited twenty two numbers of documents. Exts.1, 11, 12, 13, 14, 15 & 21 are the seizure lists, Ext.2 is the inquest report, Ext.3 is the F.I.R., Exts.4 to 8 are the letters, Ext.9 is the application written by P.W.9 to the Sarpanch of Pegagadi gram panchayat, Ext.10 is the Panchayat Patra, Ext.16 is the post mortem examination report, Ext.17 is the spot map, Exts.18 & 19 are the zimanamas, Ext.20 is the dead body challan and Ext.22 is the chemical examination report.

Defence Plea:

The defence plea of the appellant is one of complete denial. It is further pleaded that he was absent from the house and had gone to his work and nobody was present in the house with the deceased and that he could not say as to how the deceased died.

Findings of the Trial Court:

The learned trial Court, after assessing the oral as well as the documentary evidence on record, came to hold that from the evidence of the doctor (P.W.13) and post mortem

examination report (Ext.16), it is clear that the death of the deceased had occurred otherwise than under normal circumstances within seven years of her marriage. It was further held that soon before the death of the deceased, she was subjected to cruelty and harassment by the appellant in connection with demand of dowry. Accordingly, the learned trial Court found the appellant guilty under sections 498-A/304-B of the I.P.C. while acquitting him under section 302 of the I.P.C. and the Court also acquitted the co-accused persons from all the charges.

Contentions of the parties:

Mohammed Faradish, learned counsel for the appellant contended that the learned trial Court seems to have relied upon the letters which were written by the appellant to the deceased or by the deceased to P.W.6 and the Panchayat Patra marked as Ext.10. On a plain reading of the contents of those documents would reveal that whatever quarrel was there between the deceased and in-laws family members, it was on account of domestic problems and there was nothing in those documents that in connection with demand of gold chain, there was any torture on the deceased by the appellant. Learned

counsel further submitted that in view of the evidence of P.W.7, it appears the appellant was not present in the company of the deceased when the occurrence in question took place and there is lack of evidence that soon before the death of the deceased, she was subjected to physical cruelty and mental torture in connection with demand of dowry, which is one of the basic ingredients to be proved to attract the offence under section 304-B of I.P.C. and therefore, even though the prosecution has proved that the deceased died within seven years of marriage and her death was otherwise than under normal circumstances, but the same cannot be held sufficient to establish the charge under section 304-B of the I.P.C. Learned counsel further argued that from the contents of the letters, it would appear that there was cordial relationship between the parties and there was no torture given by the appellant to the deceased. Therefore, the offence under section 498-A of the I.P.C. would not also be attracted and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Priyabrata Tripathy, learned Additional Standing Counsel on the other hand supported the impugned judgment and submitted that the deceased was staying alone with the appellant at the relevant point of time and the doctor (P.W.13)

has noticed a number of injuries on different parts of the body including fracture of hyoid bone and cause of death was shown to be due to asphyxia as a result of compression of air passage of the throat which was sufficient in ordinary course to cause death and the appellant has not discharged his burden of proof as to how in his absence, the deceased sustained injuries and she was strangled to death. Learned counsel for the State further submitted that from the letter, which was marked as Ext.4 addressed to P.W.6 by the deceased, it was clearly mentioned that she was subjected to torture by the appellant and therefore, the learned trial Court is quite justified in convicting the appellant under sections 498-A/304-B of the I.P.C.

Whether the ingredients of offence under section 304-B of the I.P.C. are fulfilled?:

Adverting to the contentions raised by learned counsel for the respective parties, there is no dispute that in order to make out a case under section 304-B of the I.P.C., the prosecution is required to prove the following ingredients:

- (i) That the death of the deceased took place within seven years of marriage;
- (ii) that the death was otherwise than under normal circumstance;

(iii) that soon before the death, she was subjected to cruelty or harassment;

(iv) that such cruelty or harassment was in connection with demand for dowry.

Section 113B of the Indian Evidence Act reads as follows:

"113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

The statutory presumption as to 'dowry death' as provided under section 113-B of the Evidence Act would get activated only upon the proof of the fact that the deceased woman was subjected to cruelty or harassment for or in connection with any demand for dowry by her husband or her in-laws and that too in the reasonable contiguity of death.

Keeping in view the ingredients of the offences, if the prosecution case is analyzed, it is found that the marriage of the deceased was solemnized with the appellant in the month of

Asadha, 1996 and she died on 27.08.1997. Thus, one of the requirements under section 304-B of the I.P.C. that the death of the deceased should occur within seven years of marriage is satisfied in this case.

The evidence of the doctor (P.W.13), who conducted the post mortem examination over the dead body on 28.09.1997 indicates that he noticed multiple crescentic marks arranged in a curved line were situated below the left angle of mandible, multiple abrasions on the nape of the neck, one contusion was situated over larynx extending to the both sides and there was fracture of hyoid bone at its right corner and also there was fracture of laryngeal cartilages and there were multiple abrasions on the middle of the medial aspect of the left thigh and the injuries were ante-mortem in nature and death was caused due to asphyxia as a result of compression of air passage in the throat which was sufficient in ordinary course to cause death. The doctor's evidence has almost remained unchallenged in the cross-examination. The post-mortem report has been marked as Ext.16. In view of the evidence of the doctor and the post-mortem report findings, the learned trial Court came to the conclusion that the death of the deceased has occurred otherwise than under normal circumstances within seven years

of marriage. Though it was told to P.W.6 by the appellant that the deceased died by taking poison, but the viscera report indicates that common insecticidal, alkaloidal and metallic poison could not be detected in the viscera and therefore, I am of the humble view that the learned trial Court has rightly arrived at the conclusion that the death of the deceased was otherwise than under normal circumstances.

P.W.6, the father of the deceased, is the star witness on behalf of the prosecution and he has stated that at the time of marriage, he had given Rs.7,000/- and other household articles, but it was decided to give a gold chain at a later stage which he could not fulfill due to his poverty for which the deceased was subjected to cruelty and she was complaining before him against her in-laws. He further stated that on account of such dispute, he submitted an application before the Pedigadi gram panchayat to settle the dispute and in the said meeting of the gram panchayat, the appellant was told not to ill-treat the deceased and an agreement was written and four months prior to the death of the deceased, the appellant and the deceased went to stay in the village Bada Simulia. P.W.6 proved some of the letters as well as the application made by him before the panchayat and the Panchayat Patra. However, he admits in the

cross-examination that in the letters marked, there is no mention regarding demand of gold chain by the appellant and in Ext.9, there was no mention that for the gold chain, the deceased was being tortured, which also did not find place in Ext.10. He further stated that in the letter marked as Ext.8, the appellant had requested to give him Rs.15,000/- for his service and that he would repay the same and the letter under Ext.6 contains narration about household affairs. He further stated that due to domestic quarrel, both the appellant and deceased came from Ratipur to stay at Bada Simulia and at times, they used to visit his house. Letters written by the appellant to the deceased, appellant to P.W.6 and deceased to P.W.6 prior to her death of the deceased give immense assistance for digging out the truth by the Court. It is aptly said that "men may tell lies, but circumstances do not." Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail.

After perusing the Exts.5, 6, 7, 8, 9 & 10 carefully and minutely, I find that there is nothing written against the conduct of the appellant rather it shows a cordial relationship between the appellant and the deceased and the deceased and her in-laws family members. The appellant had requested in a

letter vide Ext.8 so also in Ext.5, which was addressed to the deceased, to arrange a sum of Rs.15,000/- from the in-laws for giving donation to get a job which he assured to repay at a later point of time.

In the case of **Appa Sahed and another -Vrs.- State of Maharastra reported in (2007) 9 Supreme Court Cases 721**, the Hon'ble Supreme Court held that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. In the case of **Vipin Jaiswal -Vrs.- State of A.P. reported in (2013) 3 Supreme Court Cases 684**, it was held that the demand of Rs.50,000/-, if at all made by the appellant to the deceased was for purchasing a computer to start a business six months after the marriage and thus it was not in connection with the marriage and was not really a 'dowry demand' within the meaning of section 2 of the Dowry Prohibition Act.

In the case in hand, the request for arranging money for getting a job was not there at the time of marriage. It was also assured by the appellant to repay such amount as soon as possible. There is nothing on record as to when these two letters

Exts.5 and 8 were written. In my humble view, this request of money by the appellant to arrange a job for himself cannot come within the definition of 'dowry' as per section 2 of the Dowry Prohibition Act.

Ext.4 is a letter which was addressed to P.W.6 by the deceased in which it is mentioned how she was tortured by the appellant to go to work in the field and false allegation was leveled against her for selling of rice and no medicine was provided to her even though she was having blood in the stool for three to four days. In that letter there is no mention of any demand of gold chain or any other demand and that she was being tortured by the appellant in connection with demand of gold chain which was made at the time of marriage or for non-payment of Rs.15,000/- which was asked for to get a job with assurance to refund it soon.

P.W.10, who is the sister-in-law of the deceased, has stated that the deceased was telling her that she was being tortured in her husband's house as the gold chain was not given. It has been confronted to P.W.10 by the learned defence counsel and proved through the I.O. (P.W.14) that she had not stated in her statement recorded under section 161 of Cr.P.C. about the

deceased being tortured by the appellant in connection with demand of a gold chain.

P.W.1 stated that the deceased told before the panch that she was being assaulted by the appellant as she had not brought gold necklace from her father's house, however, the learned defence counsel confronted the previous statement made by P.W.1 before the police to him and it has been proved though the I.O. (P.W.14) that he has not stated so before the police.

Similarly though P.W.8 and P.W.9 have stated that at the time of marriage, there was a talk for giving gold chain to the appellant, but the learned defence counsel confronted the previous statements made by these two witnesses before the police to them and it has been proved though the I.O. (P.W.14) that they have not stated so before the police.

Therefore, there is lack of clinching evidence regarding demand of a gold necklace from the side of bridegroom and that since such demand was not fulfilled, in connection with such demand, there was torture to the deceased by the appellant. 'Soon before' as appears in section 304-B of the I.P.C. is a relative term and it is not synonymous with 'immediately before'. There must be a proximate link in

existence between the facts of cruelty in connection with the demand of dowry and the death. The time-lag may differ from case to case. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. The demand for dowry should be the continuing cause for the death of the married women. Cruelty can be mental or it can be physical. Every instance of cruelty and related harassment has a different impact on the mind of a woman.

In absence of any clinching evidence on record that soon before the death of the deceased, she was subjected to cruelty and harassment by the appellant in connection with any demand of dowry, I am of the humble view that even though the prosecution has proved that the deceased died within seven years of marriage and that her death was otherwise than under normal circumstances, since all the ingredients of offence under section 304-B are not satisfied, the conviction of the appellant for such offence is not sustainable in the eye of law and is hereby set aside.

Whether the appellant is liable under section 498-A of the

I.P.C.?:

So far as the offence under section 498-A of the I.P.C. is concerned, not only the witnesses, but also the letter vide Ext.4, which was written one week prior to the death of the deceased, clearly indicates regarding cruelty on the deceased.

The definition of cruelty, as mentioned under the explanation to section 498-A of the I.P.C., is as follows:

“Explanation.— For the purposes of this section, ‘cruelty’ means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

The concept of cruelty and its effect varies from individual to individual and also depends upon the social and economic status to which such person belongs. It need not be physical always. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

In my humble view, from the oral as well as documentary evidence, the overt act committed by the appellant to the deceased particularly in view of the contents of the letter Ext.4, would squarely clearly come within the explanation (a) enumerated under section 498-A of the I.P.C. Therefore, the learned trial Court has rightly found the appellant guilty under section 498-A of the I.P.C. The sentence passed under section 498-A of the I.P.C. is quite justified.

In the result, the appeal is allowed in part and the conviction of the appellant under section 304-B of the I.P.C. is hereby set aside and the conviction of the appellant under section 498-A of the I.P.C. and sentence imposed for such offence by the learned trial Court stands confirmed.

The appellant was taken into judicial custody on 20.08.1997 and he was directed to be released on bail on 17.06.1998 and after pronouncement of the judgment he was taken into judicial custody on 02.01.2001 and again released on bail by this Court on 11.07.2001 and as such he has already undergone the sentence of one year as imposed by the learned trial Court which was confirmed today. Therefore, the appellant shall not be taken into judicial custody in connection with this case.

Before parting with the case, I would like to put on record my appreciation to Mohammed Faradish, learned counsel for the appellant for rendering his valuable assistance towards arriving at the decision above mentioned. This Court also appreciates the able assistance provided by Mr. Priyabrata Tripathy, learned Additional Standing Counsel.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 2nd November 2023/Amit

