

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:
BHUBANESWAR.

PRESENT:-

Sri Ishan Kumar Das, LLB,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 8/122 OF 2012

(Arising out of GR case No. 223/12 committed by
the JMFC (O), Bhubaneswar)

Date of argument- 16.04.14

Date of Judgment- 24.04.14

S t a t e

Vrs.

1. Biswajit Mandal, aged about 27 years
S/o Sripad Mandal,
2. Mina Mandal, aged about 30 years
D/o: Sripad Mandal
3. Budhi @ Bina Mandal, aged about 34 years
D/o: Sripad Mandal
4. Saraswati Mandal, aged about 60 years
W/o: Sripad Mandal

All are of vill: Balichawkmundia Sahi, PS: Jatni, Dist: Khurda

....Accused persons

Advocate for the prosecution- Sri N.R. Ray, Advocate

Advocate for Accused persons Sri S.K. Pradhan, Advocate

Offence Under Sections:- Sec. 498A/304B/34 IPC and Sec. 4 of DP
Act

J U D G M E N T

The accused persons stand charged for the offence Under Sec. Sec.
498A/304B/34 IPC and Sec. 4 of DP Act in the instant trial.

2. Prosecution was initiated against all the four accused persons on the basis
of a written report lodged by one Santilata Das before IIC, Jatni PS on 4.4.2012.
It was alleged that the daughter of the informant namely, Sita Mandal was married

to accused Biswajit Mandal 6 years back. They were leading a happy conjugal life and were blessed with two children. From the date of their marriage, all the accused persons were torturing both physically and mentally to Sita Mandal on the demand of dowry. They also threatened her to bring dowry or else she will be charred to death. They further warned her to bring cash of Rs.50,000/- and a motor cycle or else she will be driven out from her marital house. Therefore, Sita requested many time to her parents to fulfill their demand. But, as the financial condition of the informant was not sound, she could not fulfill their demand and took some time. But, the accused persons did not listen to her request and they drove her from their house. Thereafter, Sita and her husband were staying separately in a rented house. FIR further reveals that on 21.3.2012 at about 11 AM, the mother in law and sister in law of Sita alongwith her husband were conspiring and thereafter, accused Biswajit Mandal poured kerosene on her body and set fire. All the accused persons leaving Sita in the same condition left the house and after sometime again came and took the injured to the hospital. As the condition of the injured was critical, she was referred from Capital Hospital to SCB Medical College & Hospital, Cuttack, but could not survive and succumbed to the injuries. Inquest and Post mortem of the dead body was conducted in presence of Mangalabag Police and thereafter, FIR was lodged through the mother of the deceased. Basing on which, IIC Jatni PS registered PS case No. 79/12 for the offence u/s 498A/302/304B/34 IPC and u/s 4 of DP Act.

During the course of investigation, police visited the spot, examined witnesses, collected inquest report and post mortem examination report from Mangalabag PS. The other medical papers were also collected from the respective hospital. Dowry articles were also seized alongwith two affidavits sworn by accused Biswajit and his deceased wife regarding their marriage and after completion of investigation, charge sheet was submitted against all the four accused persons for the offence u /s 498 A/304B/34 IPC and u/s 4 of DP Act basing on which charge was framed against the accused persons thereunder warranting their trial. Allegation for offence u/s 302 IPC against all the accused persons was not substantiated during investigation of the case.

3. Plea of the defence is complete denial to the allegation and of false implication.

4. In view of such allegation and counter allegation, the points of determination in this case are as under.

(i) Whether the accused persons being the husband, mother n law and sister in law (NANANDA) of deceased Sita Mandal, in furtherance of their common intention, demanded dowry of cash of Rs.50,000/- and one motor cycle during the period from 2006 to 2012 and subjected her to cruelty which was of such nature that such cruelty is likely to drive Sita to commit suicide or grave injury to her body and thereby committed an offence punishable u/s 498A/34 IPC ?

(ii) Whether the accused persons were demanding dowry from deceased Sita and subjected her to cruelty or harassment soon before her death in burn injury which occurred within 7years of her marriage with Biswajit Mandal and therefore, the accused persons being husband or relative of deceased Sita will be liable for such dowry death and thereby committed an offence punishable u/s 304 B/34 IPC ?

(iii) Whether the accused persons, being the husband, mother in law and sister in law (NANANDA) of deceased Sita Mandal, after her marriage till here death illegally tortured demanded cash of Rs.50,000/- and motor cycle towards dowry from her and thereby committed an offence punishable u/s 4 of DP Act ?

5. During the course of trial, prosecution examined 12 witnesses, but no witness has been examined from the side of the defence. Out of the prosecution witnesses, P.W.1 is the maternal uncle of the deceased being the brother of the informant. P.W.2 is the informant-cum-mother of the deceased. P.W.4 is the house owner in whose house the deceased and her husband were staying on rent. P.W.s3,5,6,7, and 10 are the basti people and neighbours of both Biswajit and his deceased wife at Jatni. P.W.8 and 9 are the sisters of the deceased and P.W.12 is the IO.

6. P.W.1, the brother of the informant is also the scribe of the FIR. In his evidence he said that the deceased Sita is his niece and Biswajit is the husband of Sita and other accused persons are family members of Biswajit. Deceased Sita married to Biswajit before 6 years at Bhuasuni temple and both of them also swore affidavit affirming their marriage before the Notary Public at Jatni. They were staying separately from their house in a rented house at Balichhakhmundasahi and were blessed with one son aged about 3 years and another daughter aged about 1 year. They were enjoying a very peaceful conjugal life after their marriage. But, thereafter, the accused persons demanded more dowry from Sita and tortured her physically and mentally. They demanded cash of Rs.50,000/- and one motor cycle and also threatened to kill her unless the demand is complied. Sita narrated all her sufferings before her mother Santilata and accordingly, Santilata requested the accused persons not to demand any dowry as she is financially poor. On 21.3.12 at about 11 AM, all the accused persons conspired with each other and thereafter, Biswajit came with a jarkin containing kerosene. He also sprayed kerosene oil on the body of Sita and set fire to her inside his house. Out of pain, Sita came outside and the local people called Santilata. Thereafter, all the accused persons and Santilata carried the injured to the hospital at Bhubaneswar and then she was shifted to SCB Medical College & Hospital, Cuttack and ultimately succumbed to her burn injuries on 25.3.12. It is his further evidence that he alongwith others cremated the dead body and as the mental condition of his sister was not in proper state, she lodged FIR on 4.4.12 at Jatni PS. He further said that he himself scribed the FIR on the instruction of his sister Santi vide Ext.1 and also signed thereon vide Ext.1/1. In his cross examination, this witness further said that he was not present during the solemnization of marriage in the temple. But, he met Sita number of times in her house and also visited the house of other accused persons 3 to 4 times. He said his sister Santilata is housewife and her husband was a paper hawker. Therefore, they are maintaining their family with financial restraint and at times, he was also helping them. He could know about the fact only before 4 days of death of Sita in the hospital. He also visited the hospital and found that his sister alongwith the

accused persons were taking care of Sita in the hospital. But, he did not prefer to lodge any FIR. He has also not requested the treating physician to ask Sita regarding the cause of injury on her body during her treatment. The mother of the deceased, Santilata in her evidence corroborated the FIR story regarding the marriage and separate residence of accused Biswajit and his wife. She said after one year of marriage, the accused persons demanded cash and motor cycle and she also requested not to torture her daughter as she was unable to fulfill the demand. Thereafter, the accused persons drove away her daughter from their house and hence, Sita and her husband continued to stay in a rented house. On the relevant day, all the accused persons poured kerosene on her daughter and set fire. By the time, she reached at the spot, she saw Sita was lying with burn injuries and no other was present. Later the accused persons and she herself carried the injured to the hospital for medical treatment. Her daughter expired at SCB Medical College & Hospital, Cuttack after four days of her admission and thereafter, she lodged a written report at Mangalabag PS. Police also conducted post mortem over the dead body and after returning back to Jatni she again reported at Jatni PS. In her cross examination, she said that she was staying in a Jhumpudi on a Government land from the date of her marriage. The accused persons were also staying in another Jhumpudi on the Government land. It is her admission that her family and the family of the accused persons were maintaining their family with daily labour. As Sita and Biswajit decided to marry each other, they married before Notary public in the year 2006 and continued to stay in another rented house at Mundiasahi. The distance between her house, house of the accused persons and the rented house of her deceased daughter are situated at a distance of 1/4th KM from each other. She further said that her daughter and accused Biswajit were also daily labourers and whenever they were going outside for their labour, they left their children with her and she was taking care of them. Before 15 days of her death, her daughter has not met with her nor accused Biswajit came to her house. At no point of time, she saw other accused persons in the rented house of Biswajit although, at many times she was visiting them. As regards the occurrence, she said one Lata told her at about 11 AM regarding the

burn injuries on the body of her daughter. She also immediately rushed to see her and saw accused Biswajit was running to the house at the same time. About 20 to 30 persons were also present at the spot. In the hospital, her daughter was able to talk and she alongwith the accused persons were taking her care. She denied the suggestion of learned defence counsel that the treating physician while asked her daughter regarding the cause of such injury, she told that her saree caught fire while cooking inside the house. She positively stated that she told the doctor that the members of her in laws house set fire to her. The doctor also noted the statement and took her LTI on it. But, no such dying declaration recorded by the doctor is available on record. She admitted that at no point of time, she enquired from her son in law regarding demand of dowry by him. But, once her son in law requested her to pay some money and the reason is not known to her.

7. Two other witnesses belonging to the family of the informant are P.Ws.8 and 9 being the two sisters of the deceased. P.W.8, Rita is staying at Bidyadharpur, Cuttack and said that the accused persons were demanding dowry, but her father was not in a position to comply such demand due to his poverty. Her sister disclosed before her about such torture by the accused persons and on the date of occurrence all the accused persons set fire to Sita. But, in her cross examination, she admitted that she has not witnessed the occurrence. Both the deceased and her husband were daily wage earner and married each other being eloped with love. All her family members were not accepting their such love marriage, but she had been to the hospital at Cuttack while Sita was under treatment at SCB Medical College & Hospital, Cuttack. P.W.9, Gitanajali is another sister of the deceased and she said in support of demand of dowry and torture on her sister by the accused persons. This witness also staying near the house of the deceased and therefore, the deceased was leaving her children with her when she was going to work as labourer. She suspected that the cause of death is due to dowry demand.

8. P.W.3 is residing at Mundiasahi Jatni adjacent to the rented house of the deceased. He said that on the relevant day at about 9.30 to 10 AM he was sitting on his verandah which is adjacent to the rented house of the deceased. He saw

fire in the house of the deceased Biswajit with his daughter were taking rice at the same time. Immediately, he shouted “fire, fire” and Biswajit lifted his son from out of the house and thereafter, lifted his wife. By that time, Sita was naked and Biswajit covered her body with a cloth to prevent fire. Thereafter, the matter was intimated to the parents of Biswajit and they also came to the spot and the injured was shifted to hospital by the accused persons. In his cross examination he said that although Biswajit and his deceased wife were having very good relation and were maintaining their family by daily wage. P.W.5 is the house owner where Biswajit and his wife were staying on rent. On the relevant day she was not present in the house but she heard Sita expired due to burn injury. She further admitted that both of them were maintaining very good relation and accused Biswajit himself carried Sita in an auto rickshaw for her medical treatment. P.Ws.4,7 and 10 are also staying in the same locality of the accused persons. They did not support the prosecution case and declared hostile. But, in their cross examination they said that both Biswajit and Sita were pulling well among themselves and there was no disturbance between them. P.W.6 is a post occurrence witness who said that by the time of his arrival he saw Sita was lying on the ground with burn injury. He has never seen Biswajit and Sita quarreling with each other. P.W.11 is a witness to the seizure and P.W.12, the IO supported his investigation. The IO in his evidence has admitted that he seized two affidavits sworn by the deceased and her husband which do not disclose regarding any demand of dowry. Accused Biswajit was all along present with the deceased during her hospitalization. The IO further admitted that accused Biswajit was occupying only one room and although the jarkin was seized there was no mark of kerosene in it and therefore, he has not forwarded the seized jarkin for its chemical examination. On the basis of such evidence adduced from the side of prosecution, learned Addl. PP has argued that the material on record is sufficient enough to prove that the accused persons were demanding dowry from the deceased and as because she was unable to pay the same she was killed by setting fire on her body which is one of the most heinous crime in the society. He relied on the evidence of the family members of the deceased and the investigation

conducted by the police.

9. On the other hand, learned defence counsel submitted that there is no impeaching evidence on record regarding demand of dowry nor there is any scope on the part of accused Biswajit to demand for a motor cycle and cash of Rs.50,000/- as all of them were daily labourers. The evidence of the witnesses that the accused persons sprayed kerosene and set fire to Sita is also not believable in nature in view of evidence of the eye witness to the occurrence, P.W.3 and the evidence of the house owner, P.W.5. It is argued that the allegation in FIR that accused persons set fire to Sita causing her death is not substantiated during investigation of case and therefore charge sheet u/s 302 IPC is not filed against any of the accused persons.

10. All the offences i.e. Sec. 304B/498A/34 IPC and Sec. 4 DP Act are interrelated with each other on the ground that demand of dowry and subjecting a woman to torture to fulfill the demand is the basic ingredient in order to constitute all the three offences. Therefore, let me examine first the evidence on record if the prosecution is able to prove that all the accused persons were demanding dowry of Rs.50,000/- and a motor cycle and torturing Sita as alleged in the FIR. Learned defence counsel has drawn the notice of the Court to the fact that Biswajit and Sita were in love and married each other against the wish of the family members. Hence, they preferred their marriage to be solemnized in a temple and they also swore affidavit in support of their marriage. The family of the accused persons and the informant are of the same standard as because both the family are daily wage labourers. It is also apparent on record that after some days of marriage both Biswajit and deceased Sita resided in a rented house at a distance of 1/4th KM from the house of other accused persons. In addition to such evidence the statement of local inhabitants that both Biswajit and Sita were pulling well without any quarrel at any point of time is also to be considered in its proper prospective to test the allegation that Biswajit and his family members were demanding dowry and were torturing Sita and ultimately, Sita committed suicide by setting fire on her body. When Biswajit and his wife Sita both of them were labourers and were going outside to earn their livelihood, they use to leave

their children with the family of the informant which is also at a distance of 1/4th KM from their rented house. I have gone through the affidavit marked as Ext.5 and Ext.6. As per the contents of the affidavit, Sita was 19 years old by the time she married Biswajit on dtd. 10th October, 2006. The affidavit was sworn on 16.10.2006 i.e. after a week of their marriage. As per the contents of the affidavit both Biswajit and Sita were leading a very peaceful conjugal life after their marriage. Although, many independent witnesses have been examined from the side of the prosecution in support of the prosecution case, none of them has stated in the Court that Biswajit or any other accused person demanded any dowry before the marriage or thereafter they lived separately in a rented house as because the only Jhumpudi would not be sufficient for occupation of all the family members. Number of witnesses examined from the side of the prosecution who are neighbours of the accused persons have stated in their evidence that both Biswajit and Sita were leading a peaceful conjugal life. P.W.1, the maternal uncle of Sita admitted in his evidence that he was visiting the accused persons in their house very rarely. His evidence does not reveal that Sita complained before him at any point of time regarding demand of dowry by the accused persons. The mother of the deceased although said that Sita disclosed before her that her husband was demanding a motor cycle and cash of Rs.50,000/- . She admits that at no point of time she enquired her son in law regarding such demand. Ofcourse she said one day her son in law called her through her daughter and requested her to give some money. She does not know why Biswajit was asking to help him and wanted to borrow the amount from her. The evidence of two sisters of the deceased appears to be hearsay evidence. I do not find any reason as to how both Biswajit and Sita were pulling well when there was rift between them in relation to demand of dowry. Such evidence does not allow to believe that in fact Biswajit was demanding dowry and therefore, he was torturing the deceased.

11. Learned defence counsel further pointed out that Sita survived for about five days after the burning injury. Prosecution could have taken steps to record her dying declaration which could have thrown light regarding involvement of

accused persons in this case. The mother and sisters of the deceased claimed that all of them were staying in the hospital with Sita and she was able to talk, but none of them asked her in the hospital regarding the cause of such burning injuries or regarding the demand of dowry. FIR was filed after the delay of about 15 days of occurrence. No reasonable explanation is given as to why FIR was not lodged immediately when Sita sustained burning injury. There is also no evidence from the mouth of family members of the deceased that Biswajit or his family members tortured Sita or physically assaulted her at any point of time with the demand of dowry. Again, learned defence counsel has submitted that one UD case was initiated at Mangalabag PS after the death of Sita at SCB Medical College & Hospital, Cuttack. After her death, inquest was conducted by Mangalabag Police in UD case No. 454 dtd. 25.3.12. The informant was also a witness to the inquest and put her LTI thereon. She stated before police that there was some domestic quarrel between Sita and her husband, but there is no mention of demand of dowry. Taking into consideration the above circumstance and evidence of witnesses, it cannot be conclusively said that Biswajit was demanding dowry and was torturing Sita which provoked her to commit suicide with burning injury.

12. As regards the occurrence on the alleged date, only one witness to the occurrence is examined as P.W.3 who witnessed the occurrence sitting on his varandah adjacent to the rented house of Biswajit. He categorically stated that while he was sitting on the varandah of his house, Biswajit and his daughter were taking meal and he saw fire inside the room and therefore, shouted. Biswajit himself lifted Sita while she was in naked condition with burns on her body and tried to extinguish fire by putting Chaddar on her body. The occurrence took place at about 10 AM and the house of the deceased is surrounded by many other residential houses. While prosecution witnesses said that Biswajit tried to save Sita from the fire, there is at all no evidence on record that Biswajit and his family members poured kerosene on Sita and set fire to her body. No evidence is available on record to say that accused persons were torturing Sita in such cruel manner that she committed suicide by setting fire on her body. The time of

occurrence being 10 AM and accused Biswajit and his son being present on verandah and another neighbour sitting in front of her house, it is also not believable that Sita tried to commit suicide at such time. Rather it is the evidence on record that after the witnesses reached at the spot, they intimidated the family members of Biswajit who were staying at a distance of 1/4th KM and thereafter, they came to the spot. Therefore, it cannot be said on the face of such evidence that the informant is deposing truth. Hence, it is difficult to believe the statement of informant and her daughters that all the accused persons conspires with each other poured kerosene on the body of Sita and set fire to her.

13. Now, it is to be examined if torture on Sita was so cruel with the demand of dowry that she was forced to set fire on her body and thereby committed suicide. I have already discussed above that there was no demand of dowry prior to the marriage, rather both Biswajit and his wife married each other against the wish of the family members and therefore, they married in a temple by swearing affidavit. Accused Saraswait, Mina and Bina being the mother and sisters of the Biswajit were living separately. There is no evidence that they were regularly visiting the rented house of the deceased and were demanding dowry and tortured Sita. On the other hand, it is the evidence of prosecution witnesses that whenever deceased was going outside as daily labourer she was living her son and daughter with the family of the accused persons to take care in her absence. It is not expected from a common man's behavior to behave in such way by reposing faith on accused persons when they were torturing her with the demand of dowry.

14. In order to prove a case u/s 304 B IPC, it is to be proved that soon before the death of the lady she was subjected to cruelty or harassment by her husband or relatives in connection to demand of dowry. I have examined the evidence on record. None of the neighbouring witness including the house owner deposed in the Court that at any point of time both Biswajit and Sita were quarreling with each other or Biswajit was demanding dowry. Rather, it is consistent evidence on record that both of them were leading a very peaceful conjugal life without any disturbance. Further, it is not the evidence of the informant or her sisters that they have any direct knowledge regarding demand of dowry by Biswajit to Sita and

torturing her on the same ground. Further, I noticed that starting from the FIR till the examination of witnesses it was the case that the accused persons set fire to Sita. But during investigation such allegation is not substantiated, rather the police after completion of investigation came to the finding that Sita committed suicide but not she was murdered by the accused persons. There is also no material on record that the accused persons were torturing Sita in such a manner that she was unable to bear with her life and therefore, she committed suicide. Thus, after perusal of material on record and the circumstances, I do not feel that prosecution has been able to prove its case against the accused persons beyond reasonable doubt.

15. Demand of dowry and torture are the principal ingredient to prove the offence u/s 498 A/34 IPC and Sec. 4 of DP Act. I have already observed above while discussing the material for the offence u/s 304 B IPC that prosecution failed to prove regarding any demand of dowry and torture by the accused persons which resulted in committing suicide by deceased Sita. Hence, when demand of dowry and torture is not well made about against the accused persons, they are also not found guilty of the offence u/s 498 A/34 IPC and Sec. 4 of DP Act.

16. In the result the accused persons are found not guilty for the offences u/s 498A/304 B/34 IPC and Sec. 4 of DP Act and they are acquitted therefrom in accordance with provision u/s.235 (1) of Code Criminal Procedure. They be set at liberty forthwith. Their bail-bonds be cancelled and surety be discharged. The UTP namely, Biswajit Mandal be set at liberty forthwith.

17. The zimanama be cancelled and the seized articles, if any be destroyed after four months of appeal period is over, if no appeal is preferred or in case of appeal the same be dealt with in accordance with the direction of the Hon'ble Appellate Court.

Pronounced in the open Court today this the 24th day of April, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

List of witnesses examined for the prosecution

P.W.1:- Prasanta Kumar Gochhayat
 P.W.2:- Santilata Das
 P.W.3:- Sadik Mohammad
 P.W.4: Saira Bibi
 P.W.5: Jarwan Kaur Bhatia
 P.W.6: Harbindar Kaur Bhatia
 P.W.7: Md. Kamran Ali
 P.W.8: Rita Das
 P.W.9: Gitanjali Das
 P.W.10: Basanti Pradhan
 P.W.11: Uma Sankar Mishra
 P.W.12: Mamita Kumari Pradhan

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: FIR
 Ext.1/1: Signature of P.W.1
 Ext.2: Signature of P.W.3
 Ext.3: Signature of P.W.3
 Ext.4: Seizure list
 Ext.4/1: Signature of P.W.9
 Ext. 5 and 6: Affidavits
 Ext.6/1: Signature of P.W.11
 Ext.1/2: Signature and endorsement of IIC
 Ext.7: Spot map
 Ext.7/1: Signature of P.W.12
 Ext.8: Seizure list
 Ext.8/1: Signature of P.W.12
 Ext.4/2: Signature of P.W.12
 Ext.2/1: Seizure list
 Ext.2/2: Signature of P.W.12
 Ext. 9: Zimanama
 Ext.9/1: Signature of P.W.12
 Ext. 10: Seizure list
 Ext.10/1: Signature of P.W.12
 Ext.11: Seizure list
 Ext.11/1: Signature of P.W.12
 Ext.12: Post mortem report
 Ext.13: Inquest report

List of exhibits marked for the defence

Nil

