

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 01/01 OF 2013

(Arising out of Mahila P.S Case No. 231/2012,
corresponding to G.R case No. 1572 of 2012,
committed by the SDJM, Bhubaneswar)

Date of argument- 28. 11. 2013

Date of Judgment- 30. 11. 2013

- S t a t e -

- V e r s u s -

1. Jyotiranjan Sahu, age- 30 years, S/o- Dasarath Sahu,
2. Shantilata Sahu, age-48 years, W/o- Dasarathi Sahu,

Both are of village-Karanda, P.S- Balani, Dist-
Dhenkanala, At present, At- Palla, P.S /Dist- Khurda,

3. Babaula Sahu, age-32 years, S/o- Late Sukadev, At – Saramunda, P.S- Balani, Dist – Dhekana, At present At -Palla, P.S/ Dist – Khurda.

....Accused persons.

Counsel for the prosecution : Sri R.R. Brahma, Addl. P. P

Counsel for the defence : Sri Ashish Ku. Das and
assts.

Offence U/ss.: Sec.498-A/302/304-B/34,IPC/4. D.P. Act

J U D G M E N T

The aforesaid accused persons have faced
their trial being charged U/s.498-A/302/304-B/34, of Indian

Penal Code, read with section 4 of Dowry Prohibition Act.

2. The case of the prosecution in short is that the informant namely, Abhimanyu Patra had lodged a written report before IIC, Mahila P.S, Bhubaneswar alleging that his daughter Chinmayee Sahu was given in marriage with the accused Jyotiranjana Sahu of village, Palla, PS/Dist – Khurda which was solemnized on 3.3.2009. At the time of marriage, cash of Rs. 1,00,000/- along with gold ornaments and other house hold articles were given. After marriage, the deceased lady Chinmayee resided in the house of her in laws along with her husband. In course of time accused Santilata, brother of the Santilata and accused Jyotiranjana, the husband of the deceased lady were in habit of subjecting the victim lady to torture and cruelty compelling her to procure further dowry cash. Hence, the informant had intervened into the matter and accused Jyotiranjana and the victim lady resided at Chilipokhari area of Bhubaneswar in a rented house. During the month of April, 15th, 2012, the victim lady came to the informant and asked him to give a further cash of Rs.50,000/- which was required by the accused persons for the construction of house. While the informant expressed his inability the victim lady returned back. It is alleged further in the F.I.R that during night of 15/16.5.2012, at about 2 A.M, the accused persons had committed the murder of the victim lady by throttling her neck. While the informant came to know that the victim lady had died at

Vivekanda Hospital, Bhubaneswar, he had gathered information about the facts of the case and thereafter, he lodged a written report before IIC, Mahila P.S, Bhubaneswar on 16.5.2012 basing on which a case was registered U/s.498-A/302/304-B/34, IPC r/w. Sec.4 D. P. Act and investigation was taken up. During course of investigation, the I.O has visited the spot, examined the witnesses, recorded the statement of the independent and other witnesses, conducted the inquest in respect of the dead body of the victim lady in presence of the witnesses after observing all the formalities and sent the dead body for post mortem examination, and received the P.M examination report seized the dowry article list, one joint photo of the victim lady with accused Jyotiranjana on production of the complainant, and seized the dowry articles on production by the accused Shantilata, prepared the seizure list, release the dowry articles in zima of the complainant after execution of proper zimanama. He had also examined the priest and barber who had solemnized the the marriage of the victim, seized the bed head ticket of the deceased from Vivekananda Hospital, sent the seized saree to the medical officer who had conducted the autopsy, and made a query whether the injuries on the neck of the victim could be caused by the saree, and he received the query from the M.O and sent the viscera to SFSL, Bhubaneswar, arrested the accused persons and forwarded them to the Court, and on completion of

investigation submitted charge sheet against the accused persons U/s.498-A/302/304-B/34,IPC/ 4 D. P. Act. Hence, the case.

3. The plea of the accused is that of complete denial of the prosecution story.

4. The points for determination in this case are :

- i) Whether since 3.3.2009 till 16.5.2012 at Chilipokhari, Tankapani road, the accused persons being the husband and other relatives of the husband of deceased Chinu Sahu had subjected her to mental and physical cruelty in-furtherance of their common intention ?
- ii) Whether on 16.5.2012 at Chilipokhari, Tankapani road, Bhubaneswar, the accused persons in-furtherance of their common intention committed murder of the deceased Chinmayee Sahoo?
- iii) Whether on 16.5.2012, at about 6 P.M the accused persons in-furtherance of their common intention committed dowry death in respect of the deceased lady Chinmayee Sahu ?
- iv) Whether since 3.3.2009 to 16.5.2012 the accused persons have demanded further dowry cash of Rs.50,000/- from the deceased Chinmayee and her parents ?

5. In order to prove its case prosecution has examined as many as 10 witnesses. Out of whom PW.1 is an independent witness, P.W.2 is a seizure witness, P.W.3, P.W. 4, P.W. 5, P.W. 6, P.W. 7 are the independent witnesses, who belong to the case locality. P.W. 8 is the informant of this case. P.W. 9 is the M.O, who had conducted postmortem examination. P.W. 10 is the I.O of this case. Ext.1 to Ext.15 series are marked on behalf of the prosecution. On the other hand no witness has been examined on behalf of the accused persons Ext. A and Ext. B are marked on behalf of the defence.

6. P.W.1 who belongs to the case locality was the mediator to the marriage of the deceased and the accused Jyotiranjana. He had deposed that at the time of marriage, a cash of Rs.1,00,000/- along with other articles were given. After marriage, the victim lady and her husband resided peacefully in the parental house of accused Jyotiranjana. After one year they resided together in the case locality near the house of P.W.1. Excepting this she has not uttered anything against the accused persons. In her cross-examination indicates that at no point of time, the deceased had complained of torture being meted out to her by the accused persons.

P.W.2 who is a seizure witness and belongs to the case locality has stated that police has not made seizure of any article in her presence. But police has obtained her signature on a paper.

P.W.3 has stated to have no knowledge about the case. She was subjected to leading questions U/s.154, I.E. Act but nothing fruitful could be obtained from her mouth in support of the prosecution case.

P.W. 4 has deposed that on the date of occurrence on hearing about it he came to Vivekananda Hospital and heard that the hospital authority had declared the body to be dead. On his arrival at the hospital, the dead body was also packed and the dead body was not visible to him but police has obtained his signature on a paper. The witness has identified his signature appearing on the inquest report. His cross-examination indicates that police has not examined him in connection with this case.

P.W. 5 deposed to have no knowledge about the case.

P.W. 6 has deposed that about 1 and ½ years back during night time, at about 2 A.M while she got up from her sleep and came out side the house and found the door of the house of the deceased, was opened, she heard the cries of the minor son of the deceased, and she entered in side the house and found that the deceased had already hanged herself. She called P.W.1 and her husband who came to the spot, and unfastened the ligature from the neck of the deceased. The deceased was hanged from the ceiling fan of the house by using rope. She was immediately shifted to Capital Hospital,

Bhubaneswar. As hospital authority refused to admit her she was brought to Vivekananda Hospital, Bhubaneswar. She also stated that the husband of the deceased was not in the house as he was driving an auto rickshaw. On receiving the information, the husband of the deceased lady came to the hospital, and during morning hour she left the hospital and by that time the deceased was alive. But she was not in a position to speak. About 12 noon, she heard that the deceased had expired. She has also stated that police had obtained her signature on a paper. The witness was subjected to leading questions u/s.154, I.E.Act but she has denied to have suppressed the truth. The cross-examination of P.W. 6 indicates that she was residing in the locality of the parental house of the deceased lady. She had visited term in respect the house of the deceased. According to her deceased lady had never complained before her to have been tortured by the accused persons on demand of dowry.

P.W. 7 witness Suresh Panda, who belongs to the case locality has stated that the occurrence took place on 12.5.2013. On hearing hullah coming from the house of the accused persons, he reached there, and found that the deceased lady had put on a saya and blouse, and lying on the ground, and many persons had gathered there and she was shifted to medical. The informant had requested him to accompany him to the medical. Accordingly, they arrived at Capital Hospital, and from

there they had gone to Vivekananda Hospital for the treatment of the victim lady. But they returned back to the house for arranging money for treatment of the victim lady, and thereafter they again returned back to the hospital but the deceased was under treatment. After their arrival at the hospital they were informed that deceased had succumbed to death, and the husband of the deceased was apprehended by the police. He has also stated that the inquest was conducted by the police at Vivekananda Hospital. He admitted to have endorsed on the inquest report to have found a ligature mark on the neck of the deceased. He has put his signature on the inquest report and so also the informant. His cross-examination indicates that police has directed him to put signature on the inquest report, and excepting that the I.O had not put any other question.

7. P.W. 8 who is the informant of this case, and basing on whose report the criminal law was set into motion has deposed that accused Jyotiranjana was the husband of his daughter Chinmayee, and accused Santilata is the mother in law of the deceased lady, and accused Babula is the maternal uncle of the deceased lady. The occurrence took place one and 1/2 years back. On the occurrence night the deceased became ill for which she was shifted to medical for her treatment. During the course of treatment, she expired in the medical for which she has presented a written report before the

police vide Ext.4. The inquest was conducted by the police in his presence wherein he has put his signature on the inquest report. He has also admitted to have received 45 numbers of articles from the I.O. Which were presented to the deceased lady at the time of her marriage by executing ziminama under Ext.5. The informant was subjected to leading questions U/s.154, I. E. Act but he has denied the questions put to him and further denied to have deliberately suppressed the truth. During his cross-examination, it indicates that he has put his signature on the inquest report, which was a blank format, and contained no writing on it. He has categorically admitted during his cross-examination that the deceased lady has never complained before him if she was subjected to any kind of torture or cruelty on demand of dowry by the accused persons, or by their family members. At the time of marriage, he had voluntarily presented the articles for the personal use of his daughter. The deceased lady and her husband resided near his house at Chilipokhari. He has also admitted that accused Santilata was residing at a separate place at Khurda and accused Babula, the maternal uncle of the deceased at his house at Dhenkanala. On the date of occurrence, he has admitted to have not visited his daughter in her house. But on receiving a phone call from a person to the effect that his daughter was seriously ill and hospitalized, he went to Capital Hospital,

Bhubaneswar. As per the advice of the doctor, he had shifted the deceased lady to Vivekananda Hospital.

8. P.W. 9 the M.O who has conducted the post mortem examination of the dead body of the deceased and found parallel bruise blackish in colour present obliquely over the left side neck, $\frac{1}{2}$ cm below the left ear and bruise blackish in colour over the left side of the neck above the thyroid cartilage, horizontally place of size 4 cm x 2 cm, and three number of parallel bruises black in colour of size 3 cm x 1 cm intervening healthy skin obliquely placed over the right side of the neck. The injuries were ante mortem in nature and time since death at the time of P.M examination was 12/24 hours approximately. The cause of death is opined due to asphyxia by strangulation/throttling. The Ext.7 is the P.M examination report. The medical officer has admitted during cross-examination that in case of causing of throttling in respect of the victim. While conscious he/she may resist physically, and there may be external injury in respect of the deceased lady, and also in respect of the body of the assailant.

10. P.W.10 is the I.O of this case who has stated to have visited the spot, examined the witnesses, seized incriminating materials including the dowry articles and the list of dowry articles, prepared the seizure list, released the dowry articles in zima of the informant on execution of proper zimanama, sent the dead body for

post mortem examination, received post mortem examination and after completion of investigation and after recording statement of the witnesses U/s./161, Cr.P.C, she had arrested the accused persons and forwarded them to the Court, and on completion of investigation submitted charge sheet against the accused persons U/s.498-A/302/304-B/34, IPC / 4 D. P. Act.

11. The accused persons have denied the incriminating circumstances that appeared in the evidence against them during their examination U/s.313, Cr. P. C. In order to prove the case, prosecution must come with cogent, clear and direct evidence. But in this case all the independent witnesses have not supported the case of the prosecution. The informant who had set the law into motion has not supported the case of the prosecution in any manner. According to him, the victim lady did not complain of any ill-treatment or torture by the accused persons on demand of dowry. Even independent witnesses who were residing near the house of the victim lady have not stated if the victim lady had complain regarding the torture meted to her by the accused persons on demand of dowry. The seizure witnesses have simply stated to have put their signature on a paper. Only basing on the evidence of I.O and the M.O, the case of the prosecution appears to be extremely vulnerable, since not a single cogent evidence relating to the commission of the aforesaid crime is brought to

record against the accused persons. Even the informant has not supported the contents of the F.I.R. In absence of any independent or any cogent evidence, it can not be said that the prosecution has proved the charges that are leveled against the accused persons. Hence, after going through the evidence on record, both oral and documentary and as I am satisfied that the evidence available in the case record has not supported the case of the prosecution in any manner for which prosecution has miserably failed to prove it's case U/s. 498-A/302/304-B/ 34, IPC, r/w. Sec.4 D. P. Act against the accused persons beyond all reasonable doubt, and they are found not guilty thereunder, and acquitted as per provision U/s.235(1),Cr. P. C and they be set at liberty forthwith.

12. The zimanama be canceled, three months after the appeal period is over, if no appeal is preferred, if preferred subject to the order of the Appellate Court.

The seized saree and broken bangles be destroyed, three months after the appeal period is over, if no appeal is preferred, if preferred subject to the order of the appellate Court.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 30th day of November, 2013 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1	Smt. China Behera
P.W.2	Renubala Panda
P.W.3	Sudeshna Maharana
P.W.4	Biranchi Behera
P.W.5	Smt. Ranjita Panda
P.W.6	Smt. Jhunu Senapati
P.W.7	Suresh Panda
P.W.8	Abhimanyu Patra
P.W.9	Dr. Kavita Nayak
P.W.10	Sasmita Das.

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1	F.I.R
Ex.1/1	Signature of P.W. 2 on Ext.1
Ext.2	Signature of P.W.4
Ext.3	Signature of P.W.6 on seizure list.
Ext.2/1	Signature of P.W.7 on inquest report
Ext.2/2	Inquest report
Ext.2/3	Signature of the P.W.8 on in quest report
Ext.2/4	Signature of P.W.8 on inquest report
Ext.4	Written report of P.W.8
Ext.4/1	Signature of P.W.8 on Ext.4
Ext.5	Zimanama
Ext.5/1	Signature of P.W.8

Ext.6	List of dowry articles
Ext.6/1	Signature of P.W.8
Ext.6/2	Signature of China Behera
Ext.6/3	Signature of Bhubani Rout
Ext.6/4	Signature of Santosh Mallick
Ext.6/5	Signature of Suresh Panda
Ext.6/6	Signature of Pravakar Jena
Ext.6/7	Signature of Gagan Barik
Ext.7	P. M. Report
Ext.7/1	Signature of P.W. 9 on Ext.7
Ext.7/2	Signature of Dr. Gobardhan Behera on Ext.7
Ext.4/2	Endorsement and signature of IIC, Mahila P.S
Ext.4/3	Formal FIR
Ext.2/5	Signature of P.W.10 on inquest report
Ext.2/6	Signature of ACP, B.P. Mishraa
Ext.8	spot map
Ext.8/1	Signature of I.O.
Ext.9	Spot visit report
Ext.9/1	Signature of P.W.10
Ext.9/2	Signature of P.K. Patraa
Ext.9/3	Signature of S.K.Swain
Ext.9/4	Signature of P.K. Senapati
Ext.9/5	Signature of B.D.Bhoi
Ext.10	Dead body challan
Ext.10/1	Signature of P.W.10
Ext.10/2	Signature of constable Rita Jena
Ext.3/1	Seizure list

Ext.3/2 Signature of P.W.10 on seizure list
Ext.12 Seizure list
Ext.12/1 Signature of P.W.10
Ext.12/2 Signature of Shantilata Sahoo
Ext.13 Seizure list
Ext.13/1 Signature of P.W.10
Ext.14 Query report
Ext.14/1 Signature of P.W.10
Ext.15 Query report
Ext.5/2 Signature of P.W.10 on Ext.5

List of Exts. Marked on behalf of the defence

Nil.

List of M.Os marked on behalf of the prosecution

Nil

List of M.Os marked on behalf of the defence

Ext.A Reference certificate
Ext.B Admission form

Addl. Sessions Judge, Bhubaneswar.

