

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 29th Nov. '14.

Crl. Tr. No. 39 of 2013.

(Arising out of G.R. Case No.2906 of 2012, corresponding to Mahila P.S. Case No.356, dated 14.08.2012 committed by the learned S.D.J.M., Bhubaneswar.)

S T A T E

-Versus-

1. Hrudananda Behera, aged about 37 years,
S/o. Gangadhar Behera.
 2. Gangadhar Behera, aged about 64 years,
S/o. Late Hrushikesh Behera.
 3. Surendra Behera, aged about 51 years,
S/o. Jagabandhu Behera.
 4. Sumitra Behera, aged about 41 years,
W/o. Surendra Behera.
 5. Nayana Behera, aged about 53 years,
W/o. Gangadhar Behera.
- Nos.1, 2 & 5 are of Vill. – Chhotapada,
P.S. – Rasol, Dist. – Dhenkanal.
Nos.3 & 4 are of Vill. – Biswanathpur,
P.S. – Jagatpur, Dist. – Cuttack.

... **Accused Persons.**

Counsel :

For prosecution -- Shri B.B. Mohanty (P.P. in charge).

For defence — Shri D.P. Parija & Associates.

Under Sections 498A/304B/302/34, IPC read with section 4 of the Dowry Prohibition Act.

Date of conclusion of argument : 24.11.2014.

Date of judgment : 29.11.2014.

J U D G M E N T

The captioned accused persons stand charged under sections 498A/304B/302/34 of the Indian Penal Code read with section 4 of the Dowry Prohibition Act.

2. The factual matrix leading to the case of the prosecution is that on 29.06.2012 deceased Madhusmita was married to accused Hrudananda according to Hindu rites and customs. Accused Hrudananda is serving as a Stenographer in the office of Post Master General, Bhubaneswar and he has been provided with a Government accommodation. It is alleged, inter alia, that before marriage there was demand of dowry of Rs.50,000/- by the accused persons from the father of the deceased and the dowry amount was also paid to the accused persons. Upto Saptamangala (7th day of marriage), accused Hrudananda and deceased remained in the former's Government quarters and, thereafter, they went to their village at Chhotapada. There, the deceased was subjected to torture by the accused persons and they demanded further dowry of Rs.1,00,000/- from her; but the deceased protested by stating

that television, fridge, ornaments, utensils and cash of Rs.1,00,000/- have already been paid and refused to fulfil their demand. Further torture was meted out to her. On 12.08.2012, deceased and accused Hrudananda came to latter's Government quarters at Bhubaneswar. On 13.08.2012 at about 10 A.M., the deceased sent a message on mobile phone to her younger sister requesting to send their maternal uncle, otherwise the accused persons would kill her. After receiving the message, the younger sister of the deceased rang to the deceased, but her mobile phone was found in the mode of "switched off". Thereafter, the younger sister of the deceased informed the matter to her maternal uncle, who rushed to the Government quarters of accused Hrudananda and found that the deceased has been murdered and hanged in the ceiling fan. Information was sent to the father of the deceased, who came from Koraput and lodged FIR. Before lodging such FIR, it is the case of the prosecution, accused Hrudananda had informed the police about the death of his deceased-wife. So, the I.I.C., Kharavelanagar Police Station registered a U.D. Case and started inquiry. During such inquiry, inquest over the dead body of the deceased was made and the dead body was sent for post mortem examination. During inquiry, a suicidal note found from the cot in the bed

room and the wearing ornaments of the deceased were seized. After investigation initiated by Mahila Police Station, police took up further investigation, seized all the records of U.D. Case, received post mortem examination report, visited the spot and examined the witnesses. Police seized one iron hook, piece of cloth, joint photograph of deceased and accused Hrudananda and their marriage invitation card. Police also seized the dowry articles and left the same in zima. After due investigation, charge-sheet was submitted by police. Hence, the case of prosecution.

3. Plea of the accused persons is squarely denial to the charges levelled against them, as available from their statements recorded under section 313 of the Cr. P.C. and the suggestions given to prosecution witnesses. It is the further plea of the accused persons that after death of the deceased, her parents claimed the amount that has been spent in the marriage and on refusal to pay the same by the accused persons, this false case has been filed to take revenge against them.

4. The main points for consideration are :

- (i) Whether the accused persons, in furtherance of common intention, subjected Madhusmita Behera @ Mama to cruelty on the unlawful demand ?
- (ii) Whether the accused persons, in furtherance of

common intention, caused dowry death of Madhusmita within seven years of her marriage ?

- (iii) Whether the accused persons, in furtherance of common intention, committed murder of Madhusmita ?
- (iv) Whether the accused persons demanded further dowry directly or indirectly from the father of Madhusmita ?

5. Prosecution, in order to bring home the charge against the accused, has examined altogether twelve witnesses, out of whom P.W.1 is the maternal uncle of deceased Madhusmita; P.W.2 is her another uncle; P.W.3 is the cousin brother the deceased; P.W.4 is also the uncle of the deceased; P.W.5 is the father of the deceased and informant in this case; P.W.6 is the younger sister of the deceased; P.W.7 is the mother of the deceased; P.W.8 is the doctor, who conducted post mortem examination of the deceased; P.W.9 is the brother of the deceased; P.W.10 is the preliminary Investigating Officer, who made inquiry into U.D. Case No.20 of 2012; and P.Ws.11 & 12 are the Investigating Officers. Defence has examined one witness to disprove the case of prosecution and he is none other than accused Hrudananda Behera, the husband of the deceased.

6. There is no eye witness to the death of the deceased. So, the case of dowry death or murder, as the case

may be, is solely based on circumstantial evidence. For assessment of circumstantial evidence, the principles on the subject is no more *res integra*. In the case of circumstantial evidence, certain facts are to be proved from which the existence of a given fact can be inferred i.e. (a) chain of evidence must be so far complete as not to leave the reasonable ground consistent with the innocence of the accused; and (b) as to show that within all human probability, the act must have been done by the accused. Their Lordships of the Hon'ble Supreme Court in the case of ***Govinda Reddy Vs. State of Mysore (AIR 1960 SC 29)*** and in the case of ***Swami Shraddhananda Vs. State of Karnatak (AIR 2007 SC 253)*** have observed that facts or circumstances alleged must be proved by satisfactory evidence.

7. With due respect to the above decisions, I find that each and every circumstance connecting the link has to be established and proved so that they can form the chain of circumstance pointing out unerringly to the guilt of the accused. That apart, the chain of circumstances must be proved and there should not be missing link in the case. It is not essential that everyone of the link must appear on the surface of evidence, as some of the links must be inferred from the proved facts. Bearing in mind about appreciation of

evidence based on circumstantial evidence, let me find out if at all the prosecution has been able to establish the charge against the accused.

8. It is well settled law that a conviction can be maintained basing on the evidence of a single witness if it is cogent, consistent and above reproach. The evidence should be weighed and not to be counted. Their Lordships of the Hon'ble Apex Court in the case of ***Bhagga Vs. State of Madhya Pradesh (AIR 2008 SC 175)*** have been pleased to observe that mere relationship does not make anyone interested. Relying upon such decision, I find that the evidence of the relatives cannot be dubbed to be that of belonging to interested witnesses and cannot be outrightly rejected because of their relationship with the deceased, but their evidence must be scrutinized with great care and caution to find out the ring of truth.

9. It is revealed from the evidence of P.W.10 that on being informed by accused Hrudananda Behera, the I.I.C. of Kharavelanagar Police Station started a U.D. Case No.20 of 2012 and directed her to take up inquiry. She visited the spot i.e. Qrs. No.166, Postal Colony, Unit-IV, Bhubaneswar. The house was bolted from inside. She could see through the window that a lady was hanging from the ceiling. In presence of

A.C.P. & Executive Magistrate, she broke open the door and found Madhusmita hanging from a ceiling fan with a saree having noose on the neck. She further revealed that the dead body was removed and inquest was held thereon. She proved the inquest held on the dead body vide Ext.8. P.Ws.2 & 4 are witnesses to the inquest of the dead body of deceased Madhusmita. On going through the inquest report, it appears that there was no external injury on the body of the deceased and her dead body was released after cutting the ligature and kept on the cot. It is revealed from the evidence of P.W.10 that she sent the dead body for post mortem examination. There is no proper cross-examination to this part of evidence of P.W.10. So, it is revealed from the evidence of P.W.10 that after inquiry, she sent the dead body for post mortem examination.

10. P.W.8, who is the doctor, has revealed that he along with Dr. Mamata Mohanty conducted post mortem examination on 14.08.2012 over the dead body of Madhusmita and their observations are as follows :

External Injuries :

- (i) There was no external mark of injury over the body except ligature mark on the neck.
- (ii) Saliva mark was present on the right cheek.
- (iii) Tongue was protruded.

Description of ligature mark :

Colour was dark brown. The width was maximum 3 cm below right ear lobe obliquely placed, interrupted only on left side with a gap of 6 cm between a point 2 cm below left ear lobe to a point 8 cm below the occiput. The ligature pattern corresponds with the texture of the ligature. The area of the neck involved - the mark of ligature extended from 8 cm below occipital prominence to 7 cm below right mastoid process to 5 cm below right ear, 2 cm below right angle of mandible to 5 cm below chin to the left angle of mandible to 2 cm below the left ear. Gap was 6 cm with no mark. Neck circumference was 32 cm and the head circumference was 56 cm.

He further opined that the ligature is a light pink cotton saree and it was applied with a knot around the neck. According to him, the ligature was strong enough to bear the weight and jerk of the deceased. On dissection, their observations are as follows :

Internal Findings :

- (i) On opening the brain cavity, multiple petechiae present on the brain subject and membrane, otherwise the organ was normal.
- (ii) Lungs were congested, edematous and on section bloody serum present. Heart right chamber was empty and left chamber was full of blood.
- (iii) Liver, spleen and kidney were intact and congested.
- (iv) In the neck area, the tissues under the ligature mark was dry white and glistening. The trachea

was congested with petechiae in larynx and epiglottis. The hyoid bone and tracheal rings were intact.

According to P.W.8, time of death of the deceased is 22 to 26 hours from the time of post mortem examination. Regarding **cause of death**, the doctor opined in the following manner :

- (i) Asphyxia due to compression of air passage, possible due to hanging.
- (ii) The findings are ante-mortem in nature. As there was no sign of dragging, the hanging is possible, not homicidal and there was no sign of violence or injuries, defensive or offensive. Clothings were intact.
- (iii) The viscera was sent to exclude foul play and opinion was reserved.

P.W.8 has proved the post mortem report vide Ext.13, his signature vide Ext.13/1 and the signature of Dr. Mamata Mohanty vide Ext.13/2. In cross-examination, he stated that the cause of death of the deceased was due to asphyxia causing cardiac failure and syncop in ordinary course of nature. Thus, the evidence of P.W.8 is very clear and transparent to prove that the death of the deceased was suicidal but not homicidal in nature.

11. It is revealed from the evidence of prosecution

witnesses, Exts.13 & 14 duly proved by them that on 29.06.2012, marriage of deceased Madhusmita was solemnised with accused Hrudananda Behera and there is no denial to such fact by the accused persons either during cross-examination to the witnesses examined from the side of prosecution or in their statements recorded under section 313 of the Cr. P.C. It is also revealed from the evidence of P.Ws. that accused Gangadhar Behera, Sumitra Behera, Nayana Behera & Surendra Behera are father, mother, sister and brother-in-law (sister's husband) of accused Hrudananda. So, besides accused Hrudananda, other accused persons are in-laws of deceased Madhusmita. Such fact is not denied by the accused persons either in cross-examination to P.Ws. or in their statements made under section 313 of the Cr. P.C.

12. It is found from the above discussion that deceased Madhusmita died on 13.08.2012. So, it is proved by prosecution that the death of Madhusmita occurred within seven years of her marriage.

DEMAND OF DOWRY :

13. With regard to demand of dowry, P.W.1 stated that in the marriage there was demand of dowry from the side of bridegroom and, prior to the marriage, dowry of Rs.50,000/- in cash was paid. He further stated that during marriage, at the

marriage altar, further demand of dowry was made and it was insisted to pay or else the bridegroom would return. Request was made with folded hands to the family members of the bridegroom to perform the marriage and balance amount would be paid later on. He further stated that after the marriage, the accused persons were demanding dowry of Rs.1,00,000/- and furniture like sofa set, etc. In cross-examination, he admitted that he was not present when there was demand of dowry for the marriage and he has not seen the part payment of dowry. He has only heard the same from his sister's husband. Moreover, in para-7, denying the suggestion of defence, he has stated to have mentioned before police that dowry of Rs.50,000/- was given prior to the marriage and he has stated before police further that at the marriage altar, there was demand of fulfilment of further dowry and that the family members of the bridegroom told that they would take back the bridegroom in case of non-fulfilment of further dowry and they requested them with folded hands for the performance of marriage assuring to pay further dowry later. P.W.11, who is the Investigating Officer, denied such statement of P.W.1 before him. So, the payment of dowry of Rs.50,000/- and the demand for fulfilment of further dowry by the accused persons from the victim and her father after the marriage are

subsequent development in the evidence of P.W.1. It is true that every omission does not amount to contradiction, but major omissions merit consideration when it is the evidence of P.W.1 that he was absent at the time of demand of dowry and part payment thereof and he has made development of his evidence with the insertion of such facts by contradicting his earlier statement, his evidence is not creditworthy to prove the demand of dowry and payment of the same before, during or after the marriage.

14. So far as demand of dowry is concerned, P.W.4 revealed that at the time of marriage, there was demand of cash of Rs.1,00,000/-, sofa set and dining table and as the same was not complied with on the day of marriage, the accused persons made accused Hrudananda to move from the altar for non-compliance of demand. However, on their intervention, assurance and request, marriage was held. In para-10 of cross-examination, denying the suggestion of defence he stated to have stated such facts before police. P.W.11 in para-15 denied about such statement of P.W.4 before her, but he stated that the accused persons demanded a dining set, sofa set and cash of Rs.1,00,000/- and accused Hrudananda was made to get up from the altar by the accused persons and on their intervention marriage was solemnised.

Thus, it is found that he has developed the case by making addition the demand of Rs.1,00,000/-, dining set and sofa set as dowry. So, the evidence of P.W.4, who is the maternal uncle of the deceased, being exaggerated one requires corroboration.

15. P.W.5, who is the father of the deceased, revealed at para-1 that at the time of proposal, accused Surendra, who is the brother-in-law of accused Hrudananda, maintained that they have no dowry demand; but later on, accused Hrudananda told him that they have such demand. He further revealed that while the date of marriage was fixed, later accused Surendra called him to his house and asked him to pay dowry of Rs.1,00,000/- in spite of his assurance that he would bear all their cost towards marriage procession and other expenses. Again he has stated that accused Gangadhar demanded dowry of Rs.3,00,000/- and accused Surendra asked him to provide cash for purchasing dress materials for their family members. It is further revealed that he paid Rs.50,000/- to accused Gangadhar in shape of cash and an equal amount of Rs.50,000/- to accused Hrudananda in shape of cheque for his dress materials. He further revealed that on the date of marriage, the wife of accused Surendra created disturbance in the marriage altar and tried to take back the bridegroom therefrom for non-fulfilment of dowry demand in shape of cash

of Rs.3,00,000/-. It is found from his evidence that he lodged F.I.R. vide Ext.11. As per the F.I.R., after the marriage, the deceased informed P.W.5 that the accused persons demanded cash of Rs.1,00,000/-, a television, fridge, washing machine and ornaments worth Rs.5,00,000/- to which his daughter had objected. Of course, there is nothing mentioned in the F.I.R. about demand of dowry prior to the marriage, nor there is mention in the F.I.R. as to demand of cash of Rs.3,00,000/- by the accused persons. Nothing is also mentioned in the F.I.R. as to the disturbance created at the altar during marriage and insistence for payment of dowry. So, the evidence of P.W.5 during trial and his narration in the F.I.R. are quite contradicting with each other about demand of dowry amount before marriage or at the time of marriage. Moreover, in cross-examination in para-7, he admitted that he has not stated before police that after Nirbandha (betrothal ceremony), accused Surendra demanded cash of Rs.1,00,000/-; accused Gangadhar demanded dowry in shape of cash of Rs.3,00,000/-; that accused Surendra asked him to provide cash for purchasing dress materials for their family members; that when he told him that he has already purchased dress materials; that he paid Rs.50,000/- to accused Gangadhar in cash and Rs.50,000/- to accused Hrudananda in shape of cheque for his

dress materials; and that the wife of accused Surendra created disturbances in the marriage altar and tried to take back the bridegroom therefrom due to non-compliance of dowry demand. P.W.5 denied to have stated before the Investigating Officer that he issued a cheque of Rs.50/- to accused Hrudananda. At the same time, P.W.11, who is the Investigating Officer, stated in para-22 that P.W.5 has stated before her that he issued a cheque of Rs.50/- to accused Hrudananda. Thus, there is contradiction in the evidence of P.W.5 with that of his earlier statement as to the amount of demand made by the accused persons and payment of cash of Rs.50,000/- to accused Gangadhar and cheque amounting to Rs.50,000/- to accused Hrudananda. Even if P.W.5 is the father of the deceased, his evidence should have been more straight and transparent to prove the demand of dowry and payment of the same to the accused persons. So, the evidence of P.W.5 is inconsistent and untrustworthy to prove demand of dowry and payment thereof.

16. P.W.6 revealed that marriage proposal was given without any demand. But, at the time of Nirbandha, Rs.50,000/- was demanded and pursuant to such demand, her father gave Rs.50,000/- to accused Gangadhar. She further stated that two days prior to the marriage, they had again

demanded Rs.50,000/- and her father issued a cheque of Rs.50,000/- in the name of accused Hrudananda. She further revealed that on the date of marriage, they demanded Rs.1,00,000/- and accused Sumitra asked accused Hrudananda to get up from the marriage if Rs.1,00,000/- is not paid; but due to intervention by the relatives, marriage was solemnised. In cross-examination, she revealed that she learnt from her father about the talk of dowry demand. So, she has no personal knowledge about demand of dowry by the accused persons. But, she has stated in cross-examination that Rs.50,000/- was given towards Bandana pursuant to the demand. It will not be out of place to mention here that Rs.50,000/- was given towards Bandana (honour), but not as demand of dowry. She further revealed that she has not seen the pass book of her father if the cheque was deposited and transferred to the account of accused Hrudananda. If the pass book has not been verified, it is not known wherefrom she got the knowledge about payment of Rs.50,000/- in shape of cheque. Moreover, in para-8 of her cross-examination, denying the suggestion of defence, she stated such fact about demand of dowry and payment thereof, as stated in examination-in-chief. P.W.11 in para-17 revealed that P.W.6 has not specifically stated before her that the father of accused Hrudananda demanded

Rs.50,000/- and her father gave Rs.50,000/- to accused Gangadhar. Moreover, she has not stated before her specifically that Rs.50,000/- was given in shape of cheque pursuant to the demand, but she has stated that accused Hrudananda and her brother-in-law accused Surendra asked for Rs.50,000/- and it was paid through cheque by her father. P.W.6 has not stated before her that on the date of marriage, accused persons demanded Rs.1,00,000/- and accused Sumitra asked accused Hrudananda to get up from the altar if Rs.1,00,000/- is not paid and the marriage was solemnised on the intervention of their relatives. Thus, P.W.6 is found to have contradicted her earlier statement about demand of dowry and payment of the same by her father to accused Gangadhar and Hrudananda and demand of dowry at the marriage altar. So, the evidence of P.W.6 is equally not cogent, clear, consistent and trustworthy to prove the demand of dowry and payment of the same. Moreover, the evidence of P.W.6 contradicts the evidence of P.W.5 as to fresh demand of Rs.3,00,000/- by the accused persons inasmuch as P.W.5 revealed that there was demand of Rs.3,00,000/- whereas the evidence of P.W.6 shows that there was demand of Rs.50,000/-, subsequently further Rs.50,000/- and Rs.1,00,000/- later on. Hence, the evidence of P.W.6 cannot

be relied on solely.

17. P.W.7, who is the mother of the deceased, revealed that when the proposal was given, the accused persons told that they have no demand. But, on the day of Nirbandha, they demanded Rs.50,000/- in shape of cash for which the said sum was paid on the very day in the temple where Nirbandha ceremony was organized. Further, they demanded Rs.50,000/- two days prior to the marriage and the said demand was also fulfilled by issuing a cheque in favour of accused Hrudananda. She further revealed that on the day of marriage, they created problem in the altar putting a demand of Rs.1,00,000/- and accused Hrudananda was asked to leave the altar unless demand is fulfilled. But, on their request, the accused persons completed the formality of marriage. In para-4 of her cross-examination, she could not say what talk was held inside the temple during Nirbandha. But, her husband handed over cash of Rs.50,000/- to accused Gangadhar in the temple. She could not say how much money her husband had brought with him at the time of Nirbandha. If she does not know about the talk during Nirbandha, it is not conceived that she has the knowledge about demand of dowry on the day of Nirbandha. Similarly, when she has no knowledge how much money her husband had brought and she could not tell the denominations

of Rs.50,000/-, it is not known how she could reveal that cash of Rs.50,000/- was given by her husband to accused Gangadhar. Moreover, in para-5 of her cross-examination, denying the suggestion of defence she stated to have stated before police that her husband handed over cash of Rs.50,000/- to accused Gangadhar as dowry. In the same para, denying the suggestion of defence she stated to have stated before police that the accused persons created problems in the marriage ceremony and asked accused Hrudananda to leave the marriage altar unless demand of Rs.1,00,000/- is complied with. In para-19, P.W.11 stated that P.W.7 has not stated before her that her husband handed over cash of Rs.50,000/- as dowry to accused Gangadhar. Moreover, P.W.7 has not stated before her specifically that accused Hrudananda will leave the alter unless Rs.1,00,000/- is complied with. So, she has contradicted her earlier statement with regard to demand of dowry and payment of the same. Not only this, but also in cross-examination, she admitted that she was not present while the cheque of Rs.50,000/- was paid to accused Hrudananda. So, her statement is not clear, cogent, consistent and above reproach to be relied upon solely to prove that cheque amounting to Rs.50,000/- was paid to accused Hrudananda and payment of Rs.80,000/- to accused

Gangadhar by her husband in pursuance of demand of dowry.

18. P.W.9 revealed that on the day of Nirbandha, Rs.50,000/- was demanded and the amount was paid by his father. On the day of marriage, when rituals of marriage were going on at the altar, the sister of accused Hrudananda asked Hrudananda to come out of the altar on account of non-compliance of dowry demand, but his father also paid Rs.50,000/- in shape of cheque. In cross-examination at para-6, he denied the suggestion of defence to have not stated such fact to police. P.W.11 at para-20 stated that P.W.9 has not stated before her that due to demand of dowry, accused's side made disturbance in the marriage ceremony. Further, in cross-examination, P.W.9 has admitted that his father delivered Rs.50,000/-, a gold ring and dress to accused Hrudananda towards Bandana on the day of Nirbandha. But, P.W.5 stated to have given Rs.50,000/- to accused Gangadhar. Now, it is not consistent from his evidence as to whom cash of Rs.50,000/- was given. Apart from this, he has admitted that for the marriage he had taken seven days' leave i.e. five days before marriage and two days after marriage. He used to work as an Engineer at Sunabeda. So, his evidence is not consistent and cogent as to demand of dowry prior to marriage and payment of the same. Besides that, he has not stated about

demand of Rs.3,00,000/- whereas P.W.5 has stated so. Thus, the evidence of P.W.9, who is none else than the brother of the deceased, is inconsistent and untrustworthy to prove the demand of dowry by the accused persons and payment of the same to them.

19. From the above discussion, I find that prosecution has not adduced consistent, clear, trustworthy and positive evidence as to exactly when demand was made by the accused persons, what amount of dowry was demanded and the manner of payment of dowry to the accused persons by P.W.5. This fact is not proved by prosecution beyond all shadow of doubts. Moreover, there is nothing found from the evidence of P.Ws.11 & 12 that they tried to seize the pass book of P.W.5 or any cheque issued by him or the pass book of the accused persons to find out whether cheque of Rs.50,000/- has been credited to the account of accused Hrudananda.

CRUELTY :

20. It is revealed from examination-in-chief of P.W.1 that accused Hrudananda's parents were residing in the Government quarters of their son (Hrudananda) and at times other accused persons were visiting accused Hrudananda. He further stated that after marriage, all the family members of accused Hrudananda tortured his niece for the purpose of

fulfilment of their demand of dowry of Rs.1,00,000/- and furniture like sofa set, etc. He also stated that his niece used to tell about the torture to her parents and also to him over telephone. His niece was also telling that she was being rebuked by the family members and was also assaulted. In cross-examination, he has admitted that he had never visited the house of the accused persons at Bhubaneswar before he came on getting information from his younger niece when he found Madhusmita dead. When he has not visited the Government quarters of accused Hrudananda earlier, it is not clear as to how he came to know that the parents of accused Hrudananda were living with him and other accused persons, who are his brother-in-law and sister, were visiting his quarters at times. Moreover, he has admitted at para-7 of his cross-examination that Madhusmita had never talked with him over telephone. When the deceased had never talked with him over telephone, the question of informing him about the torture meted out to her by the accused persons on demand of dowry of Rs.1,00,000/- and furniture melts into insignificance being belied one. In cross-examination, denying the suggestion of defence, he deposed to have stated before police that the accused persons were assaulting the deceased; but P.W.11 has denied about such statement of P.W.1 before her. Thus, he has

contradicted his earlier statement about the assault made to the deceased by the accused persons. Consequently, the evidence of P.W.1 is not clear, cogent and above reproach to be relied on to prove that the deceased was tortured by her in-laws including her husband demanding further dowry of Rs.1,00,000/- and furniture.

21. P.Ws.2 & 3 have not stated about any torture, either physical or mental, meted out to the deceased on demand of dowry. P.W.4 revealed that after marriage, deceased came to the quarters of accused Hrudananda and stayed with him and on the day of Saptamangala deceased and accused Hrudananda were invited to the house of deceased's father; but the deceased informed that unless demand of dowry was complied with, accused persons would not allow her to go to her parents' house and she was likely to be tortured and killed. He further revealed that his niece had been to the house of accused Hrudananda where she was subjected to torture. She informed him as well as her father about the torture over phone. In para-10 of his cross-examination, he has categorically stated that he did not visit the village of accused Hrudananda when his niece was staying there. He further admitted in the same para that he had neither met nor talked with the deceased during her stay in the village of accused

Hrudananda. He further stated that the father of Madhusmita exchanged talks with him during her stay in the village of accused Hrudananda. It was further revealed by him that he has no direct knowledge about the alleged cruelty extended to the deceased during her stay in Chhotapada. He was informed by his brother-in-law over phone about the torture to the deceased in village Chhotapada. Not only this, but also his brother-in-law (P.W.5) has not stated that he has informed P.W.4 about the torture meted out to the deceased by the accused persons on demand of dowry. Thus, the evidence of P.W.4, who is none other than the maternal uncle of the deceased, has been well shaken in cross-examination and he has not proved the cruelty meted out to the deceased by the accused persons on demand of dowry by cogent evidence.

22. P.W.5, who is the father of the deceased, stated that after marriage, his daughter came to the quarters allotted to accused Hrudananda and stayed there with her parents-in-law and other in-laws and accused Surendra's wife and all of them extended cruelty for not bringing dowry. He further revealed that on the day of Saptamangala, the deceased was assaulted by accused Hrudananda for which he asked accused Hrudananda as to why he assaulted his daughter and whatever dispute was there, all the grievances should be brought to his

knowledge so as to enable him to resolve them. He further stated that accused Nayana Behera, the mother-in-law of the deceased, talked with him over phone and asked as to why they did not give sofa set and dining set in the marriage. He further revealed that when he extended 'Jyain Nimantrana' (invitation to son-in-law) to invite his daughter and son-in-law to his house, the accused persons did not allow his daughter to come to his house and she was also not allowed to visit his house during observation of Khudurukuni festival in spite of his request. He stated that she was applied with witchcraft and accused Gangadhar was forcing his daughter to take some "Cheramuli" medicine. He stated to have lodged F.I.R. vide Ext.11. On going through the F.I.R., it is found that he has not revealed about the assault inflicted by accused Hrudananda to his daughter on the day of Saptamangala and his asking to accused Hrudananda as to why he assaulted her. It is revealed from the F.I.R. that when the accused persons demanded Rs.1,00,000/- and threatened to kill the deceased, she protested stating that her father had already given Rs.1,00,000/- and all other furniture, utensils, etc. but cannot give further dowry of Rs.1,00,000/-. This fact, as mentioned in the F.I.R., has not been reflected in the evidence of P.W.5. Moreover, the F.I.R. does not disclose that accused Nayana

asked over telephone to bring sofa set and dining set. Thus, there is contradiction between the evidence of P.W.5 and the F.I.R. as to the manner of assault and the manner of cruelty meted out by the accused persons to his daughter on demand of dowry. That apart, in para-7 at page-6 of his cross-examination, P.W.5 has admitted that he has no direct knowledge what happened to his daughter in her in-laws' village at Chhotapada and he learnt the happenings in the village from his daughter over phone. Moreover, he has no direct knowledge what happened in postal colony quarters, but he got information from his daughter over phone. The evidence of P.Ws.11 & 12, who are the Investigating Officers, do not disclose that they have seized the phone number and transcribed the talk between them to prove such information communicated over phone. The statement of the deceased to her father (P.W.5) over phone cannot inspire confidence because section 32 of the Indian Evidence Act does not recognize such statement for the reason that nothing is forthcoming when and where this telephone call was made to find out that the same was made in relation to the commission of suicide by the deceased. As a matter of fact, the evidence of P.W.5 is also jotted with suspicion because he has admitted in para-7 of his cross-examination that in spite of getting

information about the cruelty to his daughter and application of witchcraft on her, he did not prefer to visit his daughter, either to village Chhotapada or to the quarters at postal colony, except his visit on Saptamangala. He has admitted that he did not send anyone to the house of the accused persons after knowing about the torture on his daughter. Had there been assault or torture to his daughter, it is not known why he did not take it seriously and send his relatives to pacify the matter. So, the evidence of P.W.5 is not cogent, clear, consistent and above reproach to prove that the accused persons subjected the deceased to cruelty, either mentally or physically, on demand of dowry.

23. P.W.6 revealed that after marriage, her sister stayed in the quarters of accused Hrudananda at Bhubaneswar. According to her, Madhusmita was subjected to cruelty for non-compliance of demand of Rs.1,00,000/-, sofa set and dining set. Madhusmita was brought to their house on the day of Astamangala (8th day of marriage) and, on that occasion, she narrated about the torture to her and others. She also narrated that she was beaten up on the seventh day for not bringing cash of Rs.1,00,000/-, sofa set and dining set. She also told P.W.6 that accused Hrudananda told her that she would not visit his house till demand was fulfilled. She further revealed

that on Astamangala day, the deceased was left in her husband's house and, thereafter, Madhusmita was taken to their village. She further revealed that Madhusmita was taken to Hatakeswar Baba for application of witchcraft, where she was given some Mantura water to drink; but she refused to drink the same for which her father-in-law denied her entry into the kitchen to cook food. In cross-examination, she revealed that in 2012, she was pursuing B.Tech course in A.B.I. College, Cuttack; but, at that time, she was staying in hostel as well as in the house of her uncle at Pithapur. She admitted in para-6 of her cross-examination that she remained absent for three days from her college to attend the marriage ceremony of her sister. Particularly, it was revealed by her that she came to their house on 27th to attend the marriage ceremony. When she remained present in their village only for three days after coming on 27th, it is not clear as to how she met Madhusmita in the village on seventh day of the marriage. She also revealed in cross-examination in para-8 that she has no knowledge about the date on which her sister was taken to their village; but she was taken within fifteen days of Astamangala. She stated in para-8 of her cross-examination that no member of their family had visited the house of the accused persons so also to the quarters of accused

Hrudananda after knowing about the torture on her sister. This is a very mysterious circumstance that when it came to the fore that torture was meted out to her sister, it is incumbent upon their family members to take it seriously to find out the exact reasons behind such torture and the workable solutions therefor. Moreover, during cross-examination in para-8, denying the suggestion of defence she deposed to have stated before police that Madhusmita was subjected to torture for non-compliance of demand of Rs.1,00,000/-, sofa set and dining set; that Madhusmita told her that accused Hrudananda told her that unless she brought cash of Rs.1,00,000/-, sofa set and dining set, she should not return to his house; that Madhusmita was taken to Hatakeswar Baba for application of witchcraft where she was given some Mantura water to drink; and that when she refused to drink the said water, her father-in-law denied her to enter into the kitchen room and cook food. P.W.11 in her cross-examination at para-17 has denied about such statement of P.W.6. It is found from the evidence of P.W.11 that P.W.6 has stated before her that Madhusmita was subjected to mental torture for non-fulfilment of demand. So, the evidence of P.W.6 in this regard is a development being couched with exaggeration. Apart from this, P.W.5, who is the father of the deceased, has categorically stated that after

Saptamangala, the deceased was taken to her in-laws' house at Chhotapada. The fact of visit of the deceased to the house of P.W.6 on the day of Saptamangala and her stay till Astamangala is found contradicted with the evidence of P.W.5. When the evidence of P.W.6 is not clear, cogent and consistent to find out the visit of the deceased to their house on the day of Saptamanala, the narration of the deceased about the torture and demand of dowry by the accused persons to her is far from truth. Hence, the evidence of P.W.6 is not trustworthy to be relied upon to prove the cruelty meted out by the accused persons on the demand of dowry.

24. P.W.7, who is the mother of the deceased, revealed that Madhusmita was invited to their house on the day of Astamangala and, on that occasion, she narrated before them that she was given a slap by accused Hrudananda for dowry of Rs.1,00,000/-, dining set and sofa set. She further stated that the deceased was subjected to mental and physical torture for not bringing the dowry. After performance of Astamangala, Madhusmita was left in her husband's house on the same day. She further stated that during her stay in their village, Madhusmita was taken to Hatakeswar Baba for application of witchcraft on her and there she was given Mantura water to drink and she was given ultimatum that

unless she drank the water, she would not be allowed to cook food. In cross-examination, she stated that she learnt about such demand from her daughter and she had no talk with the family members of the accused persons about such demand and cruelty extended to her daughter and they did not pay visit either to the quarters of accused Hrudananda or to village Chhotapada after learning that her daughter was being tortured for dowry. If at all there was torture, as seriously told by the deceased to her on her visit to their house, it is not known why they remained silent and did not take any steps against the accused persons for such demand of dowry and torture meted out to the deceased. In cross-examination, denying the suggestion of defence, she deposed to have stated before police that her daughter was taken to Hatakeswar Baba for application of witchcraft and that she was given Mantura water to drink and on her refusal she was given ultimatum that if did not drink the same, she would not be allowed to cook food. P.W.11 at para-19 denied about such statement of P.W.7 before her, but she has stated before P.W.11 that the deceased was given some water of worship, but doubting the same she did not take for which they did not allow her to go to the kitchen and cook food. Thus, the evidence of P.W.7 remains to the extent that she was not allowed to the kitchen

to cook food for the reason that she did not take the worshipped water. In this regard also, she stated that she got such information from her daughter over telephone. But, no such telephonic transcription has been seized by police. Even if assuming that she was not allowed to cook for not taking some holy water, that cannot tantamount to cruelty. Moreover, the evidence of P.W.7 is contradicting the evidence of P.W.5, who is her husband, inasmuch as P.W.5 did not state about the visit of the deceased to his house on Saptamangala, whereas P.W.7 stated so. Thus, such contradictory statement of P.W.7 comes to the arena of doubt as to how the deceased could reveal about the torture to P.W.7 when there was no such visit to their house. On the whole, I find that the evidence of P.W.7, who is the mother of the deceased, is not clear, consistent and trustworthy to prove that the deceased was subjected to torture by the accused persons demanding dowry.

25. P.W.9, who is the brother of the deceased, revealed that after marriage his sister came to the quarters of accused Hrudananda and stayed there and the accused persons refused to come to their house on Saptamangala, but on being persuaded by his father accused Hrudananda sent the deceased to their house on Astamangala and on that occasion she disclosed that the accused's side were demanding cash of

Rs.1,00,000/-, sofa set and dining set and further disclosed that she was assaulted by accused Hrudananda on the day of Saptamangala. He further stated that the deceased returned to the quarters of accused Hrudananda on the evening of Astamangala. It was stated by him that few days thereafter, the deceased was taken to their village where she was applied witchcraft and asked to drink some Mantura water; but she did not agree to drink the same for which her father-in-law threatened her with ultimatum that he would not take food from her hand. In para-5 of his cross-examination, he stated that he joined as Asst. Engineer in HAL, Sunabeda on 20.01.2007 and he took leave for seven days for the marriage. He admitted to have come to the village five days before marriage and left for Sunabeda two days after the marriage. He revealed that next he came to Bhubaneswar on 14.08.2012. He stated to have learnt from his father and deceased sister about the incident after the marriage. It is not revealed from his evidence as to how he came to know from his sister about the torture and demand of dowry by the accused persons when he was absent from the village on Astamangala. Thus, he has no direct knowledge as to the torture meted out to his sister on demand of dowry. Moreover, P.W.5 has never stated to have narrated the fact of torture meted out to the deceased by the

accused persons on demand of dowry to P.W.9. In the absence of such statement of P.W.5, the evidence of P.W.9 is inadmissible being hearsay on this score. Moreover, denying the suggestion of defence, he deposed to have stated to police that his father extended invitation over phone; and that on the day of Astamangala his sister disclosed about the demand of dowry in shape of cash of Rs.1,00,000/-; but P.W.11 denied about such statement made before her by P.W.9. Thus, the evidence of P.W.9 is equally crippled to prove legally that his deceased sister was subjected to torture by the accused persons demanding dowry.

26. From the aforesaid discussions, it is found that prosecution witnesses being relatives of the deceased have not adduced clear, cogent, consistent and transparent evidence to prove that the deceased was subjected to mental and physical torture after the marriage on demand of dowry of Rs.1,00,000/- and furniture. It is very strange to find out that P.W.11 has not directed her investigation by visiting Chhotapada, the village of the accused persons, to find out dowry demand, physical and mental torture to the deceased, although she has visited the Government quarters of accused Hrudananda for the purpose of investigation. She also admitted to have not gone to village Khairpur, which is deceased's

father's native village. She admitted to have examined the neighbours of the Government quarters of accused Hrudananda, but none of them have been examined by prosecution to lend corroboration to the evidence of witnesses examined from the side of prosecution. When there is no independent witness examined by the prosecution to lend corroboration about the torture meted out to the deceased on the demand of dowry and the evidence of relatives examined as prosecution witnesses do not inspire confidence, it must be held that prosecution has failed to establish by consistent, clear and cogent evidence that after marriage the deceased was subjected to cruelty.

**CRUELTY AND HARASSMENT
SOON BEFORE DEATH :**

27. Their Lordships of the Hon'ble Apex Court in the case of ***Suresh Kumar Vs. State of Haryana*** [AIR 2014 SC (Criminal) 243] have been pleased to observe at para-31 that :

“31. More recently the ingredients of Section 304-B of the IPC have been abbreviated in *Bakshish Ram v. State of Punjab*, (2013) 4 SCC 131 : (AIR 2013 SC 1484 : 2013 AIR SCW 1914) in the following words :

- (a) that a married woman had died otherwise than under normal circumstances;
 - (b) such death was within seven years of her marriage;
- and
- (c) the prosecution has established that there was

cruelty and harassment in connection with demand for dowry soon before her death.”

With due respect to the said decision, I find in the instant case that the death of the deceased has occurred within seven years of marriage and the death was suicidal one, which is surely to be taken as death otherwise than under normal circumstances; but the prosecution is yet to prove that there was cruelty and harassment in connection with demand of dowry soon before death of the deceased.

28. In the foregoing paragraphs, it has been discussed that prosecution has not been able to prove about demand of dowry and torture meted out to the deceased by the accused persons beyond all shadow of doubts. Now, let me find out if any cruelty or harassment was meted out to the deceased soon before her taking extreme step to commit suicide. There is no direct evidence adduced by the prosecution. It is revealed from the evidence of P.W.1 that about six to seven months back, his other niece, who is the sister of deceased Madhusmita, telephoned to him and informed that her elder sister was not picking up the phone and so she wanted him to go and see as to what had happened. He further revealed that he and his two brothers rushed to Bhubaneswar and went to the Government quarters where she was residing with accused

Hrudananda and others and saw through the window of the house that his niece was hanging from the ceiling fan being tied with a saree on her neck. They found accused Hrudananda present there. Then, police came and doors of the room were broken. Police brought out the dead body by untying the knot, after which inquest was held thereover. During examination-in-chief, prosecution showed a letter marked 'X' where he identified his signature vide Ext.6. Such letter was confronted to him, who denied that the letter has been written by his niece Madhusmita as he is acquainted with her handwriting and signature. But, neither the prosecution nor the witnesses clarified as to how his signature came there. He was cross-examined at length. In para-8 of his cross-examination, he clarified that when he arrived at the quarters of accused Hrudananda, its main door was closed and it was bolted from inside. He has also admitted that Madhusmita's nick name is "Mama" and "Babu" is the nick name of accused Hrudananda. He further clarified that he signed on a piece of paper marked 'X' for identification and, at that time, it was blank. It is not clear even now that when the letter contains the nick names of deceased Madhusmita and accused Hrudananda, why he signed on the said paper marked 'X' when it was blank. Thus, it appears that P.W.1 has suppressed material facts. However,

the evidence of P.W.1 is clear that while he reached the quarters, its door was closed being bolted from inside and the deceased was found hanging from the ceiling fan and at the intervention of police her dead body was brought to the floor after which inquest was held. He has not spelt out as to the circumstances leading to her commission of suicide.

29. It is only stated by P.W.2 that on 12.08.2012 Madhusmita and others returned to the quarters at postal colony and the younger sister of the deceased telephoned to the house of accused Hrudananda to talk to her sister; but accused Hrudananda picked up the phone and responded saying that the deceased was busy in cooking as he was about to proceed to his office and requested his sister-in-law to give call later on. He further stated that Madhusmita sent message to her younger sister requesting to send Mamu (maternal uncle) to bring her back to her parents' house. He further revealed that Suchismita, the younger sister of the deceased, saw the message at about 1 P.M. and informed them. He and his younger brother came to the quarters at postal colony and found people assembled there. They found the deceased hanging from the ceiling fan with a saree around her neck and her feet touching the bed on cot. They immediately informed the parents of the deceased about deceased's suicide. In

cross-examination, he stated that he came to the quarters of the deceased on 13.08.2012 at around 3 P.M. In cross-examination at para-6, he admitted that he was not present when Suchismita talked with Hrudananda over phone. He could not say the number of phone from which Madhusmita sent message so also the phone number to which message was sent. He admitted that he has not seen the said message. So, he has no personal knowledge about the conversation between accused Hrudananda and Suchismita, the younger sister of the deceased. Moreover, when he has not seen the message, it cannot be said that he has got any direct knowledge about sending the message by Madhusmita requesting her younger sister to send Mamu to bring her back. So, the evidence of P.W.2, after proper scrutiny, is found to be correct that on being informed by Suchismita he and his brother came to the quarters of accused Hrudananda at postal colony and saw the deceased hanging herself and they informed her parents that the deceased has committed suicide by hanging.

30. P.W.3 revealed that after getting information about the commission of suicide by the deceased, he went to the hospital. He stated to have signed on a paper vide Ext.10; but he did not disclose anything as to the cruelty meted out to the deceased soon before her death. P.W.4 revealed that on

12.08.2012, the deceased returned to her husband's quarters and on the same day her telephone was found switched off. Suspecting foul play, when they came to the quarters of accused Hrudananda, they found police and gathering of public. They also found the deceased died after hanging herself from the ceiling fan. In para-11 of his cross-examination, he has admitted that on 13.08.2012 he did not receive any phone call that the mobile phone of his niece had been switched off; but his brother orally informed him. He could not say from whose phone his brother received the said information. His brother Bijay (P.W.2) has not stated to have informed P.W.4 about switching off of the mobile phone of Madhusmita. So, the evidence of P.W.4 in this aspect is inadmissible in evidence being hearsay. Moreover, his evidence only shows that he had been to the Government quarters of accused Hrudananda and found that the deceased has committed suicide.

31. It is revealed from the evidence of P.W.5 that on the date of occurrence at about 1 P.M., he got information that his daughter was in the quarters being bolted from inside and she was not opening the door. He asked his brother-in-law and other relatives to proceed to the house of his daughter. It is further revealed that after their arrival, they found that his daughter was killed and hanged on the ceiling fan. On 13th, he

came from his work place, reached Bhubaneswar and lodged F.I.R. vide Ext.11. In this regard, he has been cross-examined at length. During cross-examination, he admitted that the cremation of his daughter took place at Khan Nagar, Cuttack when her death occurred at Bhubaneswar and their village is 22 K.Ms. away from Bhubaneswar. It is not understood why the cremation was held at Khan Nagar, Cuttack. In this connection, suggestion was given to this witness that since his daughter wrote in letter mark 'X' that her cremation should be held at Khan Nagar, Cuttack, they performed the same there as per her last desire in the suicidal note to which he denied. He also did not disclose the contents of the letter mark 'X'. Thus, after scrutiny of his evidence, it does not appear of his knowledge about the torture meted out to his daughter Madhusmita soon before her death and he came to the quarters of accused Hrudananda after death of the deceased and her dead body was cremated at Khan Nagar, Cuttack.

32. P.W.6 revealed that on 12th her sister was brought to her quarters at Bhubaneswar. She further stated that on 13.08.2012 she received a message in her mobile phone which she noticed in the afternoon. Madhusmita sent a message to her requesting to send their uncle to her house immediately, as she was apprehending to be killed by the accused persons.

Then, she gave a phone call to the deceased, but her mobile phone was found switched off. Thereafter, she informed her uncle (Mamu) requesting to rush to the house of the accused and also informed her mother about the message received by her. It is further revealed that her maternal uncle Jayadev Behera after reaching Bhubaneswar telephoned her informing that her sister was killed and hanged. So, the evidence of P.W.6 about getting information of her sister's death is inadmissible being hearsay. About the message, she has clarified in para-7 of her cross-examination, which reads "SIMU, JAYAMAMUKU PATHA SIGHRA NAHELE EMNE MOTE MARIDEBE". The message was sent in Oriya language. She further stated that she has shown the message to police; but they did not seize the mobile and transcript the message. P.Ws.11 & 12 have not stated to have seized such message, which is a vital clue leading to cause of death. Moreover, P.W.6 has not produced such message before the Court having stored the same in the mobile. In the absence of such seizure of message or production of the same in the Court, the evidence of P.W.6 cannot be considered transparent to find out that the deceased had sent the message. Apart from this, when there is already evidence, as discussed above, that the deceased committed suicide having bolted the door from inside

the room, doubt arises about such message because threatening to life at the instance of the accused persons is remote when she herself committed suicide. The evidence of P.W.6 does not disclose that she had been to the spot or has any direct knowledge about the torture meted out to the deceased soon before her death.

33. P.W.7 revealed that on 12th, Madhusmita returned to her husband's quarters and she intimated her about her arrival at Bhubaneswar. She further stated that on 13th her daughter Sasmita received a message where she requested to send Mamu immediately to her house otherwise she was likely to be killed. So, her brother Jaya was informed who rushed to the quarters of accused Hrudananda. He informed that Madhusmita was killed and hanged by the accused persons. In cross-examination, she revealed that on 13th August, when she was at Sunabeda, she learnt about the message sent by Madhusmita to her younger daughter Sasmita. But, she has not stated how she got information that Madhusmita sent message to her younger daughter. She further stated that she has not read the message received by Sasmita. It was revealed by her that she was being informed by her brother about the murder of the deceased over telephone. When she has told to have not read the message and does not disclose the source of

information about the message sent by Madhusmita to Sasmita, her evidence is equally hearsay on the message of the deceased for which this part of the evidence remains inadmissible. But, the fact remains that she was informed about the death of the deceased. Apart from this, it is very clear that on 12th she got information from the deceased that she has returned from the village to her quarters on 12th August, 2012. Had there been any sort of torture or circumstances compelling the deceased to commit suicide, she would have disclosed on 12th itself. Thus, the evidence of P.W.7 does not prove by legal and cogent evidence with regard to the torture meted out to the deceased soon before her death at the instance of the accused persons.

34. Similarly, P.W.9, who is the brother of the deceased, revealed that on 13th August, his younger sister received a message from the deceased like this : “SIMU, JAYA MAMUKU JALDI PATHA, NAHELE EMANE MOTE MARIDEBE”. Thereafter, when they gave call to the mobile phone of the deceased, it was found switched off. Then, their maternal uncle rushed to the quarters of accused Hrudananda and informed that the deceased was killed and hanged from the ceiling fan. In cross-examination in para-5, he has stated that on 14.08.2012 he came to Bhubaneswar. When he returned on

14th August, 2012, it is not clear from his evidence as to from whom he got the information about the message of his deceased sister sent to P.W.6 on 13th. On the other hand, his evidence is also not admissible being hearsay. Thus, he has failed to prove the torture meted out to his sister soon before her death.

35. From the aforesaid marathon discussion, it is found that the prosecution witnesses, who are close relatives of the deceased, have not adduced consistent, clear and credible evidence to prove the circumstances or the facts showing the conduct of the accused persons towards the deceased to prove their overt act soon before her death leading to the commission of suicide by the deceased. The evidence of P.W.10 can be taken into consideration who revealed that on the written report of accused Hrudananda, U.D. Case No.20 of 2012 was registered and she made inquiry into the case. She visited the spot i.e. Qrs. No.166, Postal Colony, Unit-IV, Bhubaneswar and found the house bolted from inside and she could see through the crack of the window that a lady was hanging from the ceiling. She clearly stated that in the presence of A.C.P., Executive Magistrate and others, the door of the house was broken open and after breaking open the door, they found that Madhusmita was hanging from the ceiling

fan with a saree. She also stated to have seized a suicidal note written on a piece of paper, which was lying on the cot, and prepared seizure list vide Ext.3. She also made seizure of a Nokia made mobile phone. On going through Ext.3, it appears that the suicidal note written in Oriya having addressed 'Babu' with sender's name Mama at the bottom was seized from the cot on which the body of the deceased was hanging. Moreover, Ext.3 shows that a Nokia mobile phone having SIM No.8763986191 (BSNL) was also seized. It also contain the signature of P.W.1. When such letter was seized containing the signature of P.W.1, in his statement P.W.1 has replied that he has signed on a blank paper vide Ext.6. In fact, prosecution has not proved such letter. In cross-examination, the letter was produced through P.W.10 vide Ext.A. She replied that she has handed over the suicidal note and the mobile phone to the Investigating Officer who investigated the case after registration of F.I.R. P.W.11 admitted to have taken up the investigation of this case. In cross-examination, P.W.11 admitted to have seen the suicidal note vide Ext.A of the deceased, but she has not confronted the same to the witnesses, the reasons best known to her. Only she has clarified that since she was not confirmed about the suicidal note alleged to have been written by the deceased, she has not

shown the same to the witnesses and she has not made investigation on such suicidal note. This is a flaw in the investigation because it is the duty of the investigating agency to unearth the truth and she has to at least ensure and satisfy herself by the materials that it was not written by the deceased. P.W.12, who is another Investigating Officer, also revealed that during investigation she tried to find out the handwriting script of the deceased from her father; but her father gave in writing that he does not possess any Oriya handwriting script of the deceased and he would produce the same whenever it would be available. She has seized that written statement of her father vide Ext.9. She has proved the written statement of her father vide Ext.15. She also stated to have seized another letter of the concerned school where the deceased was studying. She has produced the said letter which is mark 'Y'. On going through Ext.9, it is found that those documents were seized and Ext.15 shows that on 29.11.2012 P.W.5 gave in writing that he would produce the materials, if any, written by his deceased daughter. Mark 'Y' document shows the report of the Principal, Vyomayana Samstha Vidyalaya, Sunabeda that the deceased was their student from LKG to Class-X and she had Oriya as subject from Class-V to Class-VIII, but could not produce any evidence in support of

her study materials written in Oriya language. Thus, it is clear that she had studied Oriya, but it is strange that P.W.5 could not produce any material written in Oriya by the deceased. Moreover, P.W.7, who is the sister of the deceased, has stated that the message in Oriya was sent by Madhusmita to her on 13th August, 2012. If she was not aware of Oriya language, then how the message came in Oriya. So, the investigating agency appears to have suppressed the proving of the contents of suicidal note vide Ext.A purported to have been written by the deceased. This letter is the real crux of the matter, but unfortunately the prosecution has not taken proper steps to prove the contents of the letter, for the reasons best known to them. Apart from this, the mobile phone, which was seized from the cot of the deceased, could not be proved in the Court to establish the contents of calls and transcription thereof. In this regard, P.Ws.11 & 12 have stated to have seized the same, but admitted to have not directed investigation on the use of such mobile phone, as revealed from P.W.12 at para-9 of her cross-examination. On going through Ext.A, it is clearly mentioned that the same has been addressed to 'Babu', which is the nick name of accused Hrudananda and the sender is Mama, which is the nick name of the deceased as per the evidence of prosecution witnesses. It shows that the deceased

was in a very unhappy and depressed state. She has expressed that instead of wasting the life of accused Hrudananda, she would end her life. She herself has owned the responsibility for her death and none else is liable for the same. She has clearly stated in the letter that she had no bitter feelings against accused Hrudananda or anybody else and let God keep him well in peace. She has also written that for her everybody was unhappy for which she took the extreme step to end her life. She has consoled her husband to take care of himself in the future and do not be unhappy for her. Finally, she took excuse and wrote in the last line that she should be cremated at the cremation ground near Kali Mandir, Khan Nagar, Cuttack. So, the letter although speaks many things, but unfortunately could not be proved by the prosecution in a proper manner. However, the contents of the letter have been proved by defence witness, who is the husband of the deceased. The prosecution has not produced such letter with the obvious reasons that the allegation against the accused persons cannot be proved according to the F.I.R. of P.W.5 because the letter of the deceased just before her death does not point the finger of suspicion / accusation at anybody, but the deceased herself owns the responsibility of the commission of suicide. Then, question comes why she committed suicide. In this regard,

conduct of the accused persons. On the contrary, she must not be happy with her in-laws' family or could not adjust herself with the new family to whom she was acquainted for the last two months only. P.W.11 admits that a diary has been seized vide Ext.10/a from the Government quarters of accused Hrudananda, but that has not been proved by prosecution. There is thus lacuna in the investigation to prove the case of prosecution. On the whole, I find that the prosecution has failed to establish that Madhusmita committed suicide after cruelty was meted out to her by the accused persons soon before her death. Hence, the last ingredient of section 304B, IPC is also not established by the prosecution. When the prosecution has failed to prove the initial burden of establishing the charge against the accused persons, the evidence of defence needs no discussion. But, in this case, D.W.1, who is none other than accused Hrudananda, the husband of the deceased, has come forward to explain the innocence of the accused persons. Let me find out if at all defence can be able to open the Pandora box to make link to the case of prosecution, although not required but for the interest of justice can be deliberated.

37. Defence has adduced the evidence of a single witness to prove the innocence of the accused persons. D.W.1

has stated that on 13.08.2012 itself his wife told him to take her to her parents' house, but he denied on the ground that he would take her on 14th evening as 15th was a holiday and left for office. After return from office during lunch hour, he found that the door was closed and it could not be opened in spite of his knocking the same. Finally, he found through the window crack that the body of his wife was hanging from the ceiling fan. He went to Police Station and informed the matter, which fact finds corroboration from the evidence of P.W.10. Police opened the door after their arrival and released the dead body of the deceased. He also proved the letter of his deceased wife vide Ext.A having stated that he is well acquainted with her signature and handwriting. Of course, no document is filed by him to indicate how he is acquainted with her signature and handwriting. When he is the husband and had stayed with her for about two months after marriage, it is quite but reasonable to believe from their relationship as husband and wife that he has got acquaintance with the handwriting and signature of his wife and his opinion in this regard is relevant under the Evidence Act. Thus, he has proved the letter vide Ext.A. This is reinforced by the factum of seizure of the letter from the cot over which the body of the deceased was hanging and the door of the house was bolted from inside. Hence, such evidence of

D.W.1 coupled with his statement recorded under section 313 of the Cr. P.C. amply proves that due to denial of D.W.1 to visit the parents' house of the deceased on 13th itself, she has taken the extreme step of suicide, which cannot be treated as cruelty. In this regard, learned counsel for accused persons has relied upon the decision reported in the case of ***Mangat Ram Vs. State of Haryana*** (supra), where Their Lordships have been pleased to observe as follows :

“To attract Section 498-A, the prosecution has to establish the wilful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. The failure to take one's wife to his place of posting, would not amount to a wilful conduct of such a nature which is likely to drive a woman to commit suicide. A married woman left at the parental home by the husband would not by itself amount to a wilful conduct to fall within the expression of 'cruelty', especially when the husband is having such a job for which he has to be away at the place of his posting. Also a wife left in a village life “in the company of rustic persons”, borrowing language used by the trial Court, would not amount to wilful conduct of such a nature to fall within the expression of 'cruelty'. Thus, both the trial Court as well as the High Court have completely misunderstood the scope of Section 498-A, IPC read with its Explanation, and therefore, no offence under Section 498-A has been made out against the accused-appellant.”

38. With due respect to the said decision, I find that failure to take one's wife to any place for the reason cannot amount to cruelty as is likely to drive the wife to commit

suicide. In the instant case, it has come out and proved from defence versions that due to not acceding to the request of the deceased by accused Hrudananda and the fact that she failed to visit her father's place, as revealed from the statement of P.W.5, she must have committed suicide. But, in view of the discussions above, that cannot be a ground of cruelty to drive her to commit suicide when her husband promised to take her to her parents' house one day thereafter. Of course, defence is not required to prove its case beyond all shadow of doubts like the prosecution. Defence is to prove the case by preponderance of probability. Since the evidence of D.W.1 coupled with Ext.A strongly give probability that the deceased has committed suicide for not keeping her request, the defence has proved its innocence.

39. In view of the above analysis, it is found that no evidence on the ingredients of committing culpable homicide by the accused persons has been led for which the commission of offence under section 302, IPC is not proved. It is clear from the aforesaid discussion that the ingredients of the other offences have not been proved against the accused persons. When there is no direct and circumstantial evidence led by the prosecution and defence has come up with the plea which does not disclose the cruelty under law to drive the deceased to

commit suicide, doubt raises in the mind as to the complicity of the accused persons in the commission of the offences. Therefore, the accused persons have to be extended the benefit of doubt. Consequently, the accused persons are entitled for acquittal being given benefit of doubt.

40. Having regard to the aforesaid analysis, I find that the prosecution has miserably failed to prove the offences for which the accused persons have been charged beyond all shadow of doubts and, accordingly, I find them not guilty under sections 498A/304B/302/34 of the Indian Penal Code read with section 4 of the Dowry Prohibition Act. Resultantly, the accused persons are acquitted of the said charges as per the provisions under section 235(1) of the Cr. P.C. They be discharged from the bail-bonds furnished by them.

The seized articles be destroyed and the zimanama be cancelled four months after expiry of the appeal period if no appeal is preferred; in the event of appeal, the same be disposed of in accordance with the direction of the Appellate Court.

**Sessions Judge, Khurda
at Bhubaneswar.**

29.11.2014.

Dictated, corrected by me and pronounced this day the 29th November, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.
29.11.2014.**

List of witnesses examined for prosecution.

P.W.1	--	Bishnu Charan Behera,
P.W.2	--	Bijay Kumar Behera,
P.W.3	--	Ajit Kumar Behera,
P.W.4	--	Jayadev Behera,
P.W.5	--	Prasanna Kumar Behera,
P.W.6	--	Susmita Behera,
P.W.7	--	Puspalata Behera,
P.W.8	--	Dr. Millan Mitra,
P.W.9	--	Samarjeet Kumar Behera,
P.W.10	--	Sandhyarani Mohanty,
P.W.11	--	Iti Das, &
P.W.12	--	Kalyani Behera.

List of witnesses examined for defence.

D.W.1	--	Hrudananda Behera.
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List of documents admitted in evidence for prosecution.

Ext.1	--	Seizure list,
Ext.1/1	--	Signature of P.W.1 in Ext.1,
Exts.2 & 3	--	Seizure lists,
Exts.2/1 & 3/1	--	Signatures of P.W.1 in Exts.2 & 3,
Ext.4	--	Joint photograph of accused Hrudananda & Madhusmita,
Ext.5	--	Invitation card,
Ext.6	--	Signature of P.W.1 in the documents mark 'X',
Ext.7	--	Zimanama,
Ext.7/1	--	Signature of P.W.1 in Ext.7,
Ext.8	--	Inquest report,
Ext.8/1	--	Signature of P.W.2 in Ext.8,
Ext.9	--	Seizure list,

Ext.9/1	--	Signature of P.W.2 in Ext.9,
Ext.10	--	Signature of P.W.3 in seizure list,
Ext.8/2	--	Signature of P.W.4 in Ext.8,
Ext.11	--	F.I.R.,
Ext.11/1	--	Signature of P.W.5 in Ext.11,
Ext.2/2	--	Signature of P.W.5 in Ext.2,
Ext.12	--	Zimanama,
Ext.12/1	--	Signature of P.W.5 in Ext.12,
Ext.2/3	--	Signature of P.W.6 in Ext.2,
Ext.13	--	P.M. Report,
Ext.13/1	--	Signature of P.W.8 in Ext.13,
Ext.1/2	--	Signature of P.W.9 in Ext.1,
Ext.8/3	--	Signature of P.W.10 in Ext.8,
Ext.3/2	--	Signature of P.W.10 in Ext.3,
Ext.11/2	--	Endorsement of P.W.11 in Ext.11,
Ext.14	--	Spot Map,
Ext.14/1	--	Signature of P.W.11 in Ext.14,
Ext.1/3	--	Signature of P.W.11 in Ext.1,
Ext.2/4	--	Signature of P.W.11 in Ext.2,
Ext.10/a	--	Seizure list,
Ext.10/b	--	Signature of P.W.11 in Ext.10/a,
Ext.15	--	Written statement of Prasanna Kumar Behera,
Mark 'X'	--	Letter of Madhusmita &
Mark 'Y'	--	Letter of the School.

List of documents admitted in evidence for defence.

Ext.A	--	Suicidal Note, &
Ext.B	--	Signature of Prahallad Swain in Ext.3.

List of M.Os. marked for prosecution & defence as well.

Nil.

Sessions Judge, Khurda
at Bhubaneswar.
29.11.2014.

