

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,  
Judicial Magistrate First Class,  
Banpur

Date of argument : 06.09.2014

Date of Judgment. : 16.09.2014

G.R. No. 404/2012

T.R. No. 20/2013

State

.....Prosecution.

-Versus-

1. Tulu @ Suresh Mishra aged about 36 years,  
S/o Rama Chandra Mishra
  2. Sashi Mishra, aged about 66 years, W/o Rama Chandra Mishra.
  3. Namita Mishra, aged about 43 years, W/o Prasanta Mishra.
- All are of Vill: Mangalpur, P.S: Banpur, Dist: Khurda.

..... Accused Persons.

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Offence: Under Sections 498(A)/406/34 of the I.P.C. & 4 D.P.Act.

For the Prosecution. :Sri J.Pradhan, APP.

For the Defence. :Sri S.K.Mahapatra & others.

J U D G M E N T.

01. The accused persons stand charged for the offence punishable Under Sections 498(A)/406/34 of the I.P.C. & 4 D.P.Act. of the Indian Penal Code.

02. The case of the prosecution in brief runs thus:

One Suvashree Mishra filed a complaint petition alleging therein that her marriage was solemnised with one Suresh Mishra of village Tankol as per Hindu rites and customs. At the time of marriage the accused persons demanded dowry of Rs.50,000/- in cash, one golden chain and two golden finger rings towards

dowry accordingly her father has given 50,000/-, gold ornaments, Colour T.V, washing machine, Godrej Almirah, wooden furniture, and other house hold articles After marriage the complainant lived happily in her in-laws house for a period of four months. After four months the accused persons insisted the complainant to bring a refrigerator from her father's house. When the complainant expressed the inability of her parents to fulfill their demand the accused persons tortured the informant both physically and mentally. The accused persons used to assault the complainant very often without any fault of her and did not provide sufficient food to her. Lastly on 09.10.2012 all the accused persons physically assaulted the complainant and forcibly drove her out from matrimonial home and warned her not to return again. Finding no alternative she filed the complaint petition before this court which was sent to P.S for for investigation.

Upon such report P.S. Case No.258/2012 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused persons, the I.O. submitted charge sheet against them. Hence this trial.

03. The plea of defence is one of complete denial and false implication.
04. The point for determination in this case emerges as follows:
  - (i) Whether on or before 09.10.2012 the accused persons in furtherance of their common intention subjected the informant to cruelty and tortured her both physically and mentally?
  - (ii) Whether on the same date, time and place of occurrence the accused persons in furtherance of their common intention committed breach of trust in respect of the property given by the informant's parents.

(iii) Whether on the aforesaid date, time and place of occurrence the accused persons in furtherance of their common intention demanded more dowry from the informant's parents?

05. In order to prove its case, prosecution has examined as many as 2 P.Ws in its favour where as defence has examined none. P.W.1 is the informant and P.W.2 is an independent witness to the occurrence.

06. This is a case U/s 498(A)/406/34 of the I.P.C. & 4. D.P.Act. In order to substantiate the case against the accused persons, it is necessary to scrutinize the case of prosecution. During course of trial P.W.1 deposed that due to family dispute she lodged the F.I.R. She also deposed that now the matter has been settled between them so she does not want to proceed in this case in any manner. P.W.2 deposed that now the matter has been settled between them.

Hence considering the above evidence on record and the recent development of the fact of mutual settlement of the matter I am of the opinion that prosecution has miserably failed to prove its case beyond all reasonable doubt. I am of the opinion that prosecution has miserably failed to prove its case beyond all reasonable doubt. In the result, the accused persons are found not guilty for the offence U/s.498(A)/406/34 of the I.P.C. & 4.D.P.Act and acquitted thereof U/s.248 (1) of Cr.P.C. They be set at liberty forthwith and discharged from their bail bonds.

The Zimanama if any be cancelled after expiry of four months of the appeal period if no appeal is preferred and in case of appeal as per the direction of Appellate court.

Enter the case as mistake of fact.

Judicial Magistrate First Class,  
Banpur.

This judgment is typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 16<sup>th</sup> day of September, 2014.

Judicial Magistrate First Class,  
Banpur

List of witnesses examined for Prosecution.

PW.1 Subhashree Mishra  
PW.2 Laxmidhar Samantaray

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext-1 F.I.R.  
Ext.1/1 Signature of P.W.1 on Ext.1  
Ext. 1/2 Signature of P.W.2 on Ext.1  
Ext. 1/3 Signature of P.W.3 on Ext.1

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,  
Banpur.