

**IN THE COURT OF 2ND ADDL.SESIONS JUDGE, KHURDA.**

Present:

Sri A.K.Sahoo, LL.M.,

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

**S.T. 02 of 2014**

( Arising out of G.R.Case No. 903/ 13 corresponding to Jankia P.S.Case  
No. 141/13 )

**S T A T E**

.....

Prosecution.

...Vrs...

1. Tinia @ Trinath Moharana, aged about.27 yrs  
S/o Baikuntha Moharana, vill. Gadikilo, P.S. Jankia, Dist. Khurda.
2. Rama @ Ramakanta Panda, aged about. 38 years.  
S/o Late Ratan Kumar Panda, vill. Tankola, P.S. Jankia, Dist. Khurda.
3. Baikuntha Moharana aged about..64yrs, S/o Baikunthnath Moharana
4. Pramila Moharana, aged about 60 yrs W/o Baikuntha Behera
5. Chhai @ Chhaila Moharana, aged about.22yrsD/o Baikuntha Moharana
6. Kali @ Kalika Moharana, aged about 20 years,D/oBaikuntha Moharana
7. Sukanti Moharana ,aged about 30yrs W/o Rabindra Moharana  
All of vill. Tankola, P.S. Jankia, Dist. Khurda.  
Sl. No. 3 and 6 are vill. Godikilo, P.S. Jankia, Dist. Khurda.

.....Accused persons.

**OFFENCE U/S. U/s. 498(A), 376/ 511, 506, 406, 304(B), 328, 342/ 34 I.P.C  
and 4 D.P.Act.**

Counsel for the prosecution : Sri A.K.Pattnaik, Addl. P.P

Counsel for the defence : Sri Pravat Ku. Das & A.Pattnaik, Advs.

Date of argument : 30.7.2014

Date of Judgment: 31.7.2014

### **J U D G M E N T**

The accused Rama @ Ramakanta Panda stands charged U/s. 342, 354-B, 328, 506 and 376/511 I.P.C while all other accused persons being in-laws of the informant stand charged U/s. 498-A, 406, 506/34 I.P.C and 4 of D.P.Act.

2. On dtd. 12.6.13 Sanjukta Moharana W/o Trinath Moharana lodged written report at Jankia P.S alleging against her in-laws as well as one Rama @ Ramakanta Panda for doing witchcraft in the locality. The F.I.R story in brevity is that in the year 2010 the informant had married Trinath Moharana as per their caste and custom and the marriage presentation were given during the marriage, but after the marriage her in-laws including her husband demanded more dowry and in demand of it, all of them rebuked her every day and assaulted and also sent her back to her mothers house. Earlier there was a complain before police at Sikko police out post and the same was settled. Still the victim complain that she is staying in her mothers house with her 2 years old female child and starving.

She alleges that on 1.6.13 her in-laws took her to accused Rama @ Ramakanta Panda suspecting that she is suffering from any witchcraft act and accused Rama Panda kept her confined in a lonely room, shutting the door from inside, denuded her, made to sat her on his lap, took liquor, kissed her and brought out some roots from her belly area and moved his hands and private part on her body causing alarm to her. Further the accused threatened her telling not to disclose it, other wise her child would vomit blood and die. When she complained about it, her in-law did not allow her inside their house and tortured her. On such allegation police registered the case and conducted investigation.

During investigation the wearing apparels of the accused Rama Panda and the victim were seized, body samples and fluids were collected for chemical examination, marriage presentation given to the victim were seized. Thereafter, police obtained medical reports and seizure of the station diary entry from 25.6.11 to 9.10.13 and given the same in zima, the I.O submitted charge-sheet against the accused persons, hence this case.

3. The plea of the accused persons is mere denial.
4. The points for determination in this case are;
  - i) Whether accused persons had subjected the victim to cruelty in demand of dowry in furtherance of their common intention ?
  - ii) Whether the accused persons in furtherance of their common intention had misappropriated the dowry articles like cash of Rs. 35,000/-, gold ornaments and other house articles and had committed criminal breach of trust thereby ?
  - iii) Whether the accused persons in furtherance of their common intention had threatened the informant and others causing alarm to them?
  - iv) Whether the accused persons had demanded dowry from the victim and her parents in connection with her marriage ?
  - v) Whether accused Ramakanta Panda had wrongfully confined the victim ?
  - vi) Whether accused Ramakanta Panda had disrobed the victim ?
  - vii) Whether accused Ramakanta Panda had attempted to commit rape to the victim ?
  - viii) Whether Ramakanta Panda had administered any stupefying drug with intention to cause hurt to her?

ix) Whether accused Ramakanta Panda with other accused had threatened the victim causing alarm to her ?

5. Prosecution has examined as many as 5 witnesses in this case and thereby considering the compromise of the dispute between the parties, so also staying of the victim in her matrimonial house closed its case. Out of the P.w.s p.w.2 is the brother of victim, p.w.3 is her mother and p.w.4 is the victim herself, p.w.5 is an independent witness.

6. P.w.2 the brother of victim stated marriage of victim with Trinath Moharana and that at the time of marriage cash of Rs. 35,000/-, gold chain, gold ring and other household articles were given. Further he says that his sister maintain happy conjugal life in her matrimonial house for one month, thereafter her mother-in-law, brother-in-law and other accused persons tortured her in demand of cash, threatening for second marriage of her husband. The admitted fact remains that the victim is blessed with one daughter. P.w.2 alleges that the victim was severely assaulted by her in-laws with iron rod, for which they had complained at Sikko police out post and the matter was compromised. P.w.3 the mother of victim also says about the marriage and giving of Rs.30,000/- and gold ornaments and other house hold articles. Defence has challenged it on the ground that since the marriage was performed in Tolakanya form in the house of accused persons, no marriage presentation was given. But in view of testimony of P.w.s. 2,3 and 4 giving marriage presentations in the form of cash and gold ornaments and house hold articles is to be believed. P.w.3 says that after one and half years of marriage P.w.4 gave birth to a female child and during her pregnancy her in-laws was assaulting her and driven her out of their house, for which she had given birth to her female child in her house and the accused persons did not attend it. P.w.4 the victim stated nothing in court implicating accused Ramakanta Panda with the alleged offences U/s.342, 354-B and 328, 506 or 376/511 I.P.C. She only stated that her in-laws had taken her to accused Ramakanta Panda and he had performed some

rituals and had only put his hand on her shoulder. Therefore, for performing of puja at a distance of the in-laws no definite conclusion can be drawn against accused Ramakanta Panda to hold that the ingredients of the charge against him has been proved. Rather the evidence emerging from the material in record including the F.I.R that suspecting that the victim is suffering from any ailments due to witchcraft, they had taken her to accused Ramakanta Panda. Such kind of situation happens in villages. Therefore, from it no evil intention of the in-laws can be drawn. It appears for the behaviour of the victim the in-laws were not happy. The victim P.w.4 has claimed that there was demand of cash and for non-payment of it, her in-laws were leaving her at her mother's house and thereafter her husband was coming to take her back. Such kind of situations happened four times. Thereafter when there is no definite material regarding demand of cash or money it appears that there was some dispute for other reason. Assault or torture to P.w.4 has not been proved. Rather it appears that the accused persons were trying cure of the victim from her ailment. During trial of the case both parties compromised their dispute and the victim remained in their house maintaining happy conjugal life, thereafter during cross-examination she stated that there was difference of opinion, for which she was staying at her father's house, but now living with her husband and in-laws at her matrimonial house maintaining happy conjugal life, for which she does not want to further proceeding of the case. She has proved the F.I.R lodged by her vide Ext.1, but has not corroborated it in particular regarding the allegations against the accused persons. P.w.5 has stated nothing corroborating the case of prosecution.

7. From such facts of the case, it is crystal clear that i.e not a case of demand of dowry or dowry torture, but there was some difference of opinion between the members of the family and the informant had lodged the F.I.R. General allegations of torture by the in-laws is not sufficient to bring home the charge U/s.498-A I.P.C. For the difference of opinion or dissension or high

expectation by the spouse, often such kind of dispute arises in the society. In the case Sanjiv Kumar Vrs. State of Haryana and other 2012 (3) Criminal Court cases 407 Punjab & Haryana High Court held that there must be specific allegations/ overt acts and prima facie material to indicate that dowry articles were actually entrusted and misappropriated in a case u/s.498-A, 406 I.P.C. The in-laws and other relations can not in all cases be held to be involved in the demand of dowry. When such acquisition is made , the overt acts attributed to such persons, other than husband are required to be prima facie established. Therefore by mere conjunctures or implications, such relations can not be held to be involved for the offences relating to demand of dowry. 'The facts of the present case indicates that the prosecution has failed to prove the cruelty subjected to the victim or misappropriation of marriage presentations. Further the matter has been settled between them and the victim has no allegation against the accused persons.

9. Having regard to such finding in such case when the ingredients of the charge U/s. 498(A), 406, 506/34 I.P.C and 4 D.P.Act. is not proved beyond hilt against the accused persons being husband and relatives of the informant, they are held not guilty to the charge, at the same time accused Ramakanta Panda held not guilty U/s. 342, 354-B, 328, 376/511, and 506/34 I.P.C and all the accused persons are acquitted there from U/s.235(1) Cr. P.C

They be set at liberty and discharged from their bail bonds.

The seized articles if any be destroyed and the zimanama be cancelled 4 months after appeal period is over if no appeal is preferred, and as per the order of appellate court if an appeal is preferred.

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 31<sup>st</sup> day of July, 2014 under my hand and seal of this court

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

List of P.ws examined for prosecution.

P.w.1            Rabi Nayak  
P.w.2            Jagannath Moharana  
P.w.3            Smt.Satyabhama Moharana  
P.w.4            Sanjukta Moharana.  
P.w.5            Pranath Behera.

List of Dws examined for defence.

N i l.

List of exhibits marked for prosecution.

Ext.1            F.I.R  
Ext.1/1          Signature of p.w.4 on ext.1  
Ext.2            Statement recorded U/s.164 Cr. P.C  
Ext.2/1          Signature of P.w.4 on Ext.2.

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2<sup>nd</sup> Addl. Sessions Judge, Khurda.