

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

Present:

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

2nd Addl. Sessions Judge, Khurda.

S.T 7 of 2013

(Arising out of G.R. No. 947/11 corresponding to Begunia P.S.Case No. 102/11)

S T A T E

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Prosecution.

...Vrs...

1. Satyabhama Parida, aged about 53 years, W/o Kumar Parida.
2. Pitabash Parida, aged about 24 years S/o Kumar Parida
3. Kumar Parida, aged about 62 years S/o Hari Parida

All of vill. Rabola, P.S. Begunia, Dist. Khurda.

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.....Accused persons.

OFFENCE U/S. U/s. 498-A, 304-B, 406/34 I.P.C and 4 of D.P.Act

Counsel for the prosecution : Sri H.K.Swain, Addl. P.P

Counsel for the defence : Sri P. K.Mangaraj, Adv.

Date of argument : 4.8.2014

Date of Judgment: 7.8.2014

J U D G M E N T

The above named accused persons stand charged U/s. 498-A, 304-B, 406/34 I.P.C and Sec.4 of D.P.Act.

2. The deceased Sarojini Parida had married Bikram Parida about 1 and half years before lodging of the F.I.R. On 25.8.11 at about 5 p.m accused Hari

Parida the father-in-law of the deceased informed the informant Panchu Behera, the father of the deceased that Sarojini died. Immediately the informant and others reached there and saw the deceased hanging from a ceiling fan in their house tied with a saree on her neck and both her legs were touching the ground. Alleging that prior to it the father-in-law, mother-in-law, grandfather-in-law and brother-in-law of the deceased were torturing her taking benefit of the absence of her husband working in Kerla for his livelihood. The informant alleges that the accused persons who are her father-in-law, mother-in-law and brother-in-law have killed her and hanged her against the ceiling fan. Police registered the case and conducted investigation. During investigation the marriage presentations were seized by police and given in zima , so also one cotton saree tied on the neck of the deceased, one joint colour photograph of the couple were seized. On completion of investigation police has launched prosecution against the in-laws. Hence this case.

3. The plea of the accused persons is mere denial in this case.
4. The points for determination in this case are;
 - i) Whether accused persons being relative of the husband of Sarojini had subjected her to cruelty in demand of dowry in furtherance of their common intention?
 - ii) Whether the death of Sarojini was caused otherwise than under normal circumstances within 7 years of her marriage?
 - iii) Whether soon before her death she was subjected to cruelty or harassment by the accused persons as relative of her husband in connection with demand of dowry in furtherance of their common intention?
 - iv) Whether the accused persons in furtherance of their common intention committed criminal breach of trust in respect of marriage presentation given to Sarojini during marriage?

v) Whether there was demand of dowry in connection with the marriage of the deceased with Bikram ?

5. Prosecution has examined 7 witnesses in this case, out of them P.w.1 is the informant, who is father of the deceased Sarojini, P.w.2 is his son, P.w.3 is the mother of the deceased, P.w.s.4 and 5 are the local independent witnesses, P.w.6 is the Medical Officer who had conducted the autopsy over the dead body of Sarojini Parida, P.w.7 is the I.O in this case. Defence has examined none in support of its case.

6. P.w.6 the M.O testifies that on 26.8.11 he had conducted autopsy on the dead body of Sarojini and found her eye half opened, mouth half opened with tongue protruding and rigour mortice was not present on her body. A saree was tied around her neck with knot on the left side of her neck. He found no external injury except ligature mark of 4" wide on front of the neck gradually tapering to both mastoid processes with glistening appearance, Uterus was found to be pregnant of 2 months approximately and time since death was within 24 hours. The injury was ante mortem in nature and the cause of death is due to suicidal hanging. He had answered to the query raised by the I.O that the ligature mark found can be possible by saree tied around her neck. He has proved his report vide Ext.4 prepared taking help of Dr. Yoshnarani Devi. The defence has declined to examine this witness. Therefore, it can be safely concluded that the death is due to suicidal hanging. So far as subjecting the deceased to cruelty is concerned, prosecution has examined the father, mother and brother of the deceased. All of them have stated that she was maintaining happy conjugal life and suffering from ailment in her belly. Her mother says that as she could not be cured of the ailment she committed suicide. Both the father and brother of the deceased corroborated it. Prosecution has declared them hostile and has suggested that at the time of marriage cash of Rs. 32,000/- alongwith house hold articles and gold ornaments were given and there was further demand of Rs. 50,000/- and gold ring by the in-laws, but the witnesses have denied to such suggestion. Even the mother says that she has no complain

against the accused persons. P.w.4 turned hostile to prosecution case. Prosecution has suggested that there was demand of dowry by the accused persons and P.w.4 had settled it previously, but the witness denies to such suggestion. Similarly P.w.5 has also turned hostile to the case of prosecution and has denied to the suggestion that the accused persons were torturing the deceased. P.w.7 the I.O says to have registered the F.I.R vide Ext.1 and had drawn formal F.I.R vide Ext.1/2 and has conducted investigation. He has proved the inquest report vide Ext.2. Ext.2 contain that p.w.1 has made allegation against the accused persons for killing his daughter, but has stated nothing in court corroborating it. The father, mother and brother of the deceased have whispered nothing regarding torture to Sarojini Parida, rather say that she was maintaining happy conjugal life, for which charge U/s.498-A/34 I.P.C fails.

7. In the case Pradip Kumar Vrs. State of Hariyana 2009(2) Criminal Court Cases 827 (SC) Hon'ble High Court held that "Necessary ingredients of the provision of S.304-B I.P.C are:(1) The death of the woman was caused due to burns, bodily injuries or due to unnatural circumstances;(2) The death should be within seven years of marriage;(3) It is shown that soon before death, victim was subjected to cruelty or harassment by her husband or any relative of the husband;(4) The cruelty or harassment was for or in connection with any demand for dowry."

In the present case though it appears that the death is due to unnatural circumstances and within 7 years of marriage, but there is no even an iota of evidence that soon before death, the victim was subjected to cruelty or harassment by relatives of her husband and that it was for or in connection with any demand of dowry. Since there is no evidence regarding demand of dowry, charge U/s.304-B/34 I.P.C fails.

8. So far as U/s.406 I.P.C is concerned, there is no evidence in record regarding non-refund of any marriage presentation by the accused persons, hence the charge U/s.406/34 I.P.C fails.

9. When the demand of dowry fails for want of even an iota of evidence the charge U/s.4 D.P.Act also fails.

10. Bentham says witnesses are eye and ear of the court. But when the witnesses turned hostile and prosecution fails to establish the charge on surmises and conjunctures no definite conclusion can be drawn against the accused persons. Accordingly and when there is no even an iota of evidence against the accused persons to bring home the charge U/s. 498-A, 304-B, 406/34 I.P.C and 4 of D.P.Act against them, they are held not guilty U/s. 498-A, 304-B, 406/34 I.P.C and 4 of D.P.Act and are acquitted there from U/s.235(1) Cr. P.C.

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

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

2nd Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 7th day of August,2014 under my hand and seal of this court.

2nd Addl. Sessions Judge, Khurda.

List of P.w.s examined for prosecution.

P.w.1	Panchu Behera
P.w.2	Dilip Ku.Behera
P.w.3	Ahalya Behera
P.w.4	Alok Ku. Mohanty

P.w.5 Kanhu Ch. Sahu
 P.w.6 Dr. Deben Das
 P.w.7 Niranjan Das

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.1 on F.I.R
 Ext.2 Inquest report
 Ext.2/1 Signature of P.w.2 on the inquest report.
 Ext.3 Seizure list.
 Ext.3/1 Signature of P.w.1 on the seizure list.
 Ext.4 P.M report.
 Ext.4/1 Signature of P.w.6 on the report.
 Ext.1/3 Formal F.I.R
 Ext.1/4 Signature of P.w.7 on formal F.I.R
 Ext.5 Spot map.
 Ext.5/1 Signature of P.w.7 on spot map.
 Ext.2/2 Signature of P.w.7 on inquest report.
 Ext.6 Dead body challan.
 Ext.6/1 Signature of P.w.7 on dead body challan.
 Ext.7 Seizure list.
 Ext.7/1 Signature of P.w.7 on Ext.7
 Ext.8 Seizure list.
 Ext.8/1 Signature of P.w.7 on Ext.8
 Ext.3/2 Signature of P.w.7 on Ext.3

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2nd Addl. Sessions Judge, Khurda.