

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:
BHUBANESWAR.

PRESENT:-

Sri Ishan Kumar Das, LLB,
Addl. Sessions Judge, Bhubaneswar.

SESSIONS TRIAL CASE NO. 13/279 of 2002

(Arising out of GR case No. 2088/1997 committed
by the S.D.J.M, Bhubaneswar)

Date of argument- 02.12.14

Date of Judgment- 05.12.14

S t a t e

Vrs.

1. Radhu Das, aged about 75 years
S/o Late Balaram Das, resident of : Bilasuni
PS: Niali, Dist: Cuttack
2. Hemalata Das, aged about 60 years
W/o: Radhu Das, resident of : Bilasuni
PS: Niali, Dist: Cuttack, A/p: Unit 8
PS: Nayapalli, Bhubaneswar, Dist: Khurda
3. Mahendra Behera, aged about 50 years
S/o: Jhari Behera, At: Nachhipur
PS/Dist: Jagatsinghpur, A/p: Nayapalli
Bhubaneswar, Dist: Khurda
4. Laxmidhar Das, aged about 60 years
S/o: Nrusingha Charan Das, At: Goladari
PS: Nuagaon, Dist: Jagatsinghpur,
A/p: Nayapalli, Bhubaneswar
5. Hrusikesh Das, aged about 41 years
S/o: Radhu Das, At: Bilasuni, PS: Niali
Dist: Cuttack, A/p: Nayapalli, Bhubaneswar
6. Babaji Dahada, aged about 74 years
S/o: Late Sudam Dahada, At: Kapasi
PS: Niali, Dist: Cuttack, A/p: Unit 8
Bhubaneswar, Dist: Khurda
7. Bansidhar Das, aged about 52 years
S/o: Radhu Das, At: Bilasuni, PS: Niali, Dist: Cuttack
A/p: Unit 8, PS:Nayapalli, Bhubaneswar, Dist: Khurda

....Accused persons

Advocate for the prosecution- Sri N.R. Ray, Advocate
Advocate for Accused persons Sri M. Pradhan, Advocate
Offence Under Sections:- Sec. 498 A/304 B/302/201/34 IPC.

J U D G M E N T

All the accused persons stated to be husband of the deceased (wife) and his family relations stand charged for the offence Under Secs. 498A/304 B/302/201/34 IPC in the instant trial.

2. The initiation of prosecution against the accused persons as appears from the case record is that one Brundaban Das submitted written report before OIC, Nayapalli PS on 20.7.97 which was registered by OIC as Nayapalli PS case No. 146/97 with the above mentioned offences and investigation was taken up. As per the FIR allegation, the daughter of the informant namely, Abhilash was married to accused Hrushikesh on dtd. 8.3.94. At the time of marriage, some golden ornaments, other household articles alongwith cash of Rs.10,000/- were given to the accused persons by the informant. But, after two months of marriage again Hrushikesh and his family members demanded cash of Rs.20,000/- from Abhilash and also tortured her with the demand of such dowry. Although, Abhilash expressed the inability of her father to pay further cash, the accused persons continued to torture her both physically and mentally and even assaulted her physically 2 to 3 times. Abhilash also informed her family members and other neighbours about such demand of dowry and torture on her. After 6 months when Abhilash was pregnant of about 6 months, accused Hrushikesh brought her to the house of the informant and fled away leaving his wife at his in-laws house. FIR further reveals that after about 4 days, the informant went to the accused persons and on his query the accused persons outrightly rejected to keep Abhilash at their house unless cash of Rs.20,000/- is paid to them. After about 4 months, a girl was born to Abhilash, but none of the family members of the accused visited atleast to see the new child. The informant requested the accused persons number of times and only after one year four months, Hrushikesh visited the house of the informant and requested the informant to leave Abhilash and her daughter at his

house at Nayapalli, Bhubaneswar. On 28.2.97, the informant brought both of them and left at Nayapalli in the house of his son in law. The informant also visited two times, but he was misbehaved by Hrushikesh at Nayapalli. While the position was like this, the informant did not visit his daughter any further and on 19.7.97, one Raghu Behera informed him that Abhilash expired before 2 to 3 days. On the basis of such ill feeling with his daughter, the informant suspected that the accused persons murdered his daughter and burnt the dead body without intimating and hence, lodged the FIR for investigation of the case.

During course of investigation, police visited the spot, arrested the accused persons, examined witnesses, seized some dowry articles from the house of the accused persons and left in zima of the informant. It was also ascertained by the police that the deceased was sick and was admitted at Capital Hospital and expired during her treatment. On completion of investigation, police submitted charge sheet against all the family members of the accused and hence, the trial.

3. Plea of the defence is complete denial to the allegation and of false implication.

4. In view of such allegation and counter allegation, the points of determination in this case are as under.

(i) Whether the accused persons being husband and relatives of Avilash subjected her to cruelty at their house at Niali and Nayapalli during the period from 8.3.94 to 17.7.97 in furtherance of their common intention and thereby committed the offence u/s 498A/34 IPC ?

(ii) Whether Avilash was subjected to cruelty and harassment by her husband and relatives with the demand of dowry before her death and her death was caused by any burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and thereby committed an offence u/s 304 B/34 IPC ?

(iii) Whether on 17.7.97 at Nayapalli, the accused persons in furtherance of their common intention, committed murder of

Avilash intentionally causing her death and thereby committed an offence u/s 302/34 IPC ?

(iv) Whether on the same day of death of Avilash, the accused persons in furtherance of their common intention, burnt her dead body without intimating anybody intending to cause disappearance of evidence of the offence with intention of screening themselves from legal punishment and thereby committed an offence u/s 201/34 IPC ?

5. During the course of trial, prosecution examined 15 witnesses out of which P.W.1 is the informant. P.Ws.11 and 12 are his two sons. P.W.10 is the sister of the deceased, P.W.6 is the medical officer who gave treatment to the deceased in the hospital and submitted his report. P.W.15 is the IO, P.W.3 is the neighbour of the deceased and all other witnesses are witness to the occurrence and seizure. Defence did not prefer to adduce any evidence in support of its case. On further perusal of evidence, it appears that P.W.3,7,9,10 and 14 did not support the prosecution case and all of them are declared hostile by the prosecution and are cross examined in respect of their previous statement recorded u/s 161 Cr.P.C.

6. P.W1 who is the father of the deceased in his evidence supported the FIR allegation that at the time of marriage he paid Rs.10,000/- as dowry and thereafter, his daughter was tortured by her husband and other family members with further demand of Rs.20,000/-. His daughter Abhilash was disclosing about such demand of dowry before him number of times. His son in law was staying at Nayapalli with Abhilash and both of them were dealing with milk business. This witness adduced evidence in the month of February, 2004, but he stated that before 5 to 6 years he had been to meet his daughter at Nayapalli, but his son in law prevented him to go to his house without cash of Rs.20,000/-. He also told to take back his daughter. P.W.1 further stated that Hrushikesh left Abhilash during her pregnancy at his house where she delivered a child. After some days when his son in law agreed to take back Avilash and her child, the informant himself took them and left in the house of Hrushikeh at Nayapalli. Again after some days he heard that his daughter expired and he suspected that

the accused persons murdered her with the demand of dowry. But, during his cross examination, P.W.1 denied his knowledge if his daughter continued to stay at her in-laws house or stayed with her husband at Nayapalli. Abhilash disclosed about her torture by the accused persons 2 to 3 times before him. It is the evidence of P.W.1 that he discussed with the accused persons in relation to such demand of dowry and torture. P.W.2 is a witness to seizure of dowry articles. But, he denied his knowledge regarding the occurrence. He is a co villager of the accused persons. P.W.3 in his evidence admitted that Hrushikesh was sick and was admitted in the hospital where she expired. This witness is a neighbour of the accused at Nayapalli and his evidence is of much importance as the IO of the case admitted that this witness is the immediate neighbour of the accused. As the witness did not support the prosecution case, he was declared hostile and has been cross examined by prosecution by confronting him with his earlier statement recorded u/s 161 Cr.P.C. But, he denied to have stated anything to police.

7. P.W.4 is also a relation of the informant. He also did not open his mouth regarding any demand of dowry and torture. He only stated that he heard that Abhilash expired and accordingly, signed on a paper at the instance of police. P.W.5 is a witness to the cremation of dead body in the cremation ground. He deposed that on a Thursday at about 12 noon he handed over the key of the cremation ground to Hari Mohanty for cremation of dead body and accordingly, as per the village committee decision the dead body was cremated in the ground. P.W.6, the medical officer said on 16.7.97 he was medicine specialist at Capital Hospital, Bhubaneswar. On the same day, the deceased was admitted in the hospital as she was suffering from cerebral malaria and jaundice. He also gave treatment to the patient, but the patient could not survive and expired. Accordingly, he submitted report vide Ext.3. P.W.7,8 and 9 are also hostile witnesses and prosecution also cross examined them but nothing substantial has been elicited from their mouth. P.W.10 is the sister of the deceased, but she also explained her inability about any knowledge regarding the case. P.Ws.11 and 12 are the brothers of the deceased and they admitted in their evidence that both of them are staying at Rourkela and having their business since the year 1964. Very

rarely they visit their house at Uradagobindapur. They have no direct or indirect knowledge regarding the case and only after the death of their sister, they came to the village and heard about the fact from their father. P.Ws.13 and 14 are also relations of the informant, but they could not depose anything regarding any demand of dowry or torture by the accused persons causing the death of the deceased. P.W.15, the IO supported his investigation and said that during investigation he visited the spot and after examination of witnesses he was satisfied with the case for which he submitted charge sheet.

8. During the course of argument, learned defence counsel has argued that only on the allegation of the informant in the FIR that the accused persons murdered the deceased either by setting fire on her body or by assaulting her without any corroborative material on record during investigation charge sheet has been submitted u/s 302/34 IPC. The informant only suspected that his daughter was killed by the accused persons as the accused persons did not inform him about her death even after cremating the dead body. But, no evidence is adduced even by the informant himself that his daughter was murdered by the accused persons. It is true that the evidence of P.W.1 discloses that his daughter was subjected to physical and mental torture by her in laws family members and such evidence is to be tested through the mouth of other witnesses. But, in fact there is no evidence from the mouth of any other witness that any of the accused persons murdered the deceased on the relevant day. On the other hand, the evidence of P.W.3 who is also a relation of the informant deposed that Abhilash was sick and was taken to hospital for her treatment and thereafter, she expired. In addition to such evidence, the evidence of P.W.6, the M.O discloses that on 16.7.97, the deceased was admitted in the hospital vide indoor ticket No. 8272 dtd. 16.7.97 in bed no. 39. She was suffering from cerebral malaria with jaundice. The doctor himself was giving treatment to the deceased and noticed that the condition of the patient was serious and ultimately she expired due to her illness. He exhibited his report marked Ext.3 alongwith the admission ticket marked as Ext.4. Ext.5 is the document wherein casualty section of the hospital declared Avilash to be dead. Learned defence counsel has argued that if at all any physical

or mental torture on the deceased was the result of her death, she could have given dying declaration atleast before the doctor before her death or the doctor could have noticed the injuries on her body at the time of her admission. Therefore, in my view on examination of evidence on record I feel under no stretch of imagination, it can be said that the daughter of the informant was murdered by the accused persons for which they will be liable for the offence u/s 302/34 IPC.

9. Now, let me examine the evidence if prosecution has been able to prove the offence u/s 304 (B) IPC against the accused persons. The provision u/s 304 B IPC is specially enacted when a woman dies within seven years of her marriage in a suspected condition with some bodily injury and she was tortured with demand of dowry before her death. As per the FIR submitted by the informant his daughter was married on 8.3.94 and she expired in the year 1997. There is no evidence in the mouth of the medical officer that by the time Abhilash was admitted in the hospital, there was any injury on her body to give presumption that she was physically assaulted by the accused persons or tortured in any manner. On the other hand, the doctor gave his opinion that the cause of death is due to her illness suffering from brain malaria with jaundice. Evidence on record reveals that the deceased and her husband were living at Nayapalli while the rest of the family members were residing in the village at Bilasuni under Niali PS. Excepting the evidence of the informant, no other witness examined by the prosecution deposed in the Court regarding any ill treatment by the accused persons to the deceased. The evidence of the informant is also not in the form of primary evidence as at no point of time, he saw any injury on the body of his daughter or ill treatment by the accused persons to his daughter. His only evidence is that after the marriage of his daughter she disclosed before him 2 to 3 times that the accused persons were demanding cash of Rs.20,000/- after the marriage and they were torturing her with the demand of such dowry. On further scrutiny of his evidence, it appears that he was not having any information of his daughter at her in laws house as he failed to say in his cross examination as to how much time the deceased was staying at her marital house at Niali and how much time she stayed with her husband at Nayapalli. It is again astonishing that

P.W.1 did not disclose before anybody about demand of such dowry either before his two sons who were residing at Rourkela or before his other daughter or other neighbours. The sister of the deceased who is expected to know the condition of his younger sister at her in laws house also denied her knowledge about such demand of dowry or torture. Under Sec. 304 B IPC, it is the duty of prosecution to prove that the deceased woman faced her death due to burns or bodily injury which occurred otherwise than under normal circumstances within seven years of her marriage. It is also to be proved that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection to the demand of dowry. Although, it is not stated in his evidence, P.W.1 in his FIR mentioned that he left his daughter Abhilash at Nayapalli in custody of her husband on dtd. 28.2.97. In the month of July, Abhilash expired in the hospital. There is no evidence on record that during her five months stay with her husband she was subjected to torture in any manner by her husband or there is any evidence that the deceased was having any injury due to burn or assault which will lead to believe that her death was due to demand of dowry and torture by her husband. That apart, when there is positive evidence in the mouth of the doctor that the death of deceased was due to cerebral malaria with jaundice and moreover, she was admitted in the hospital, under no stretch of imagination it can be said that such death is otherwise dowry death caused by the accused persons. Hence, I feel prosecution has miserably failed to prove the offence u/s 304 B IPC against any of the accused persons.

10. I have examined the evidence on record in relation to the offence u/s 498 A IPC. Excepting some indication of dowry torture in the evidence of the informant, no other witness has supported the FIR allegation that Abhilash was subjected to dowry demand of Rs.20,000/- after her marriage and was tortured by the family members of her husband. The brothers and sisters of the deceased examined in the Court did not open their mouth in support of such allegation and while the brothers only presented the allegation of the informant, the sister of the deceased did not support the case at all. The neighbourer who is expected to know the condition of the deceased regarding the dowry torture also did not

support the FIR allegation. Even P.W.1, the informant himself did not say that at any point of time, the accused persons abused his daughter or demanded cash in his presence or assaulted her with such demand. The only solitary statement of the informant that accused persons demanded Rs.20,000/- after marriage of his daughter is not sufficient to hold that the deceased was subjected to physical or mental torture in any manner by the accused persons. Most of the witnesses who are also relations of the informant did not say anything in support of FIR allegation and they have been declared hostile by the prosecution. Learned Addl. PP excepting confronting them with their previous statement before police has not taken any pain to believe that either the witnesses are suppressing the truth or are deposing falsehood at the instance of accused persons. The seizure of household articles by the IO during investigation is no way beneficial to believe the prosecution case. Nowhere the informant stated that due to demand by the accused persons those articles were given as dowry at the time of marriage, rather it appears that such household articles were given to the deceased at the time of her marriage as a custom. During the course of argument, learned counsel submitted that although during cross examination P.W.1 said that his daughter disclosed before him 2 to 3 times regarding demand of dowry by the accused persons, at no point of time, the informant either reported to police or took the help of his relations in order to settle the dispute. It is also argued that any altercation of word due to trivial matters between the spouse at times is coloured as dowry demand and in the instant case such an attempt has been made by the father of the deceased which is not at all believable in view of the evidence available on record. On the other hand, learned Addl. PP argued that many rustic girls are facing similar situations with the demand of dowry at their in laws house and it is not expected to report the matter before police or to the relatives as it will not solve the situation. But, the fact remains that the family members of the deceased being brother and sisters did not say in their evidence that Abhilash was tortured with demand of dowry at any point of time. The only material in the mouth of P.W.1 that Abhilash was left with him at his house by her husband at the time of her pregnancy is not sufficient enough to believe that she was tortured

with the demand of dowry. On the other hand, it is very well stated in the mouth of P.W.1 that after one year, her husband was regularly visiting to her and also requested the informant to take back Abhilash and her daughter to Nayapalli. After examining the evidence on record, I do not find any material to believe that the accused persons were demanding dowry from Abhilash and subjected her to cruelty with such demand. Hence, I feel the offence u/s 498 A IPC is not well proved against the accused persons in any manner.

11. It is alleged in the FIR that the accused persons burnt the dead body of Abhilash without intimating the informant or his family members after committing her murder. I have already observed above that prosecution failed to prove that the accused persons murdered Abhilash, rather it is well proved through the mouth of the doctor that prior to her death Abhilash was suffering from cerebral malaria with jaundice and was admitted at Capital Hospital where she succumbed to her illness. Learned defence counsel argued that the accused persons burnt the dead body of Abhilash without intimating anybody is also not proved through the evidence of prosecution witnesses. P.W.5 is a labourer who was residing near the house of the husband of the deceased. In his evidence, he said that one Hari Mohanty one day came to him and requested him to hand over the key of the cremation ground for cremation of a woman. He also reported the fact to the President and Secretary of the village Committee and the cremation ground. This witness also himself opened the gate of cremation ground and was present at the ground. Such evidence of a prosecution witness is sufficient to believe that the dead body of Abhilash was not burnt in the cremation ground by the accused persons in a clandestine manner in order to damage any evidence. Record reveals that both the family members were not pulling well with each other which may be the probable reason for suspecting many things. It is argued that when Abhilash expired in the hospital due to her illness, setting fire to her dead body for disappearance of evidence of offence does not arise at all. The dead body was cremated in a public place in presence of many people and the custodians of the cremation ground were sufficiently informed about the death of the deceased and her cremation. I find no reason why the accused persons will

suppress the truth when Abhilash expired in the hospital after some days of treatment due to her illness. Accordingly, I feel offence u/s 201 IPC is not well proved against the accused persons.

12. In the result as per the above discussion the accused persons are found not guilty for the offences u/s 498A/304B/302/201/34 IPC and they are acquitted therefrom in accordance with provision u/s.235 (1) of Code Criminal Procedure. They be set at liberty forthwith. Their bail-bonds be cancelled and sureties be discharged.

13. The seized dowry articles are left in zima of the informant. The zimanama be cancelled and the articles be retained in custody of zimadar and in case of appeal the same be dealt with in accordance with the direction of the Appellate Court.

Pronounced in the open Court today this the 5th day of December, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

List of witnesses examined for the prosecution

- P.W.1:- Brundaban Das
- P.W.2:- Arakhita Das
- P.W.3:- Bichitrananda Behera
- P.W.4: Krushna Chandra Behera
- P.W.5: Aparti Jena
- P.W.6: Dr. Ashok Kumar Harichandan
- P.W.7: Sania Chacheri
- P.W.8: Babaji Charan Chacheri
- P.W.9: Pradip Barala
- P.W.10: Manjula Das
- P.W.11: Raju Das
- P.W.12: Niranjana Das
- P.W.13: Rabindra Das
- P.W.14: Umakanta Das
- P.W.15: Birsa Barla

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

- Ext.1: FIR
- Ext.1/1: Signature of P.W.1
- Ext.2: Signature of P.W.2

Ext.2/1: Signature of P.W.4
Ext.3: Report of the doctor
Ext.3/1: Signature of P.W.6
Ext.4: Addressee ticket
Ext.4/1: Signature of P.W.6
Ext.4/2: Entry made by Dr. B. Mishra
Ext.4/3: Signature of Dr. B. Mishra
Ext.5: The sheet wherein the patient dead
Ext.5/1: Signature of P.W.6
Ext.1/2: Signature of P.W.14
Ext.1/3: Endorsement of IIC
Ext.2/2: Signature of P.W.15
Ext.6: Seizure list
Ext.6/1: Signature of P.W.15
List of exhibits marked for the defence
Nil

Addl. Sessions Judge, Bhubaneswar.