

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:  
BHUBANESWAR.

PRESENT:-

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

SESSIONS TRIAL CASE NO. 5/23 OF 2003

(Arising out of GR case No. 2663 of 2000  
Committed by the S.D.J.M, Bhubaneswar)

Date of argument- 15.11.13

Date of Judgment- 28.11.13

S t a t e

Vrs.

1. Sachidananda Nayak, aged about 45 years  
S/o Kapila Charan Nayak
2. Mukta Manjari Nayak, aged about 75 years  
W/o: Kapila Charan Nayak

Both are of Vill: Argal Sasan, PS: Aul, Dist: Kendrapara

....Accused person

Advocate for the prosecution- Sri N.R. Ray, Advocate

Advocate for Accused persons Sri A.K. Chand, Advocate

Offence Under Sections:- Sec. 498 A/304 B/306/34 IPC readwith Sec.  
4 of DP Act

J U D G M E N T

Accused No.1 being the son and accused No.2 being his mother are facing the trial for offence u/s 498 A/304B/306/34 IPC readwith Sec. 4 of DP Act.

2. Prosecution was started against accused No.1 and his sister, father and mother on the basis of written FIR filed by one Ajay Kumar Padihary of Hata Sahi, PS: Rajkanika, Dist: Kendrapara. It is stated that the informant has two more brothers and four sisters including his parents in his family. His 4<sup>th</sup> sister Tilotama was married to accused No.1 on dtd. 6<sup>th</sup> June, 1996 at Aul. At the time of marriage, there was demand of dowry of furnitures, electrical items and cash of

Rs.30,000/-. All the demanded articles were supplied to the accused persons excepting some cash and a fridge and thereby, the family of the informant was to pay only Rs.20,000/- towards the dowry. In addition to the dowry articles golden ornaments were also supplied to the accused persons at the time of marriage. But, the family members of the accused tortured Tilotama both physically and mentally in order to fulfill the demand of dowry. By that time, accused no.1 who is the husband of Tilotama was working as a teacher in a school, but subsequently, he left the job and started a grocery shop at Bhubaneswar. Since then there was extreme torture on Tilotama by the family members of her husband to comply the demand of dowry. Having no other way, the father of the informant handed over cash of Rs.5000/- and requested to allow some time to pay the rest amount with the fridge. It is further contention in the FIR that the informant was staying in the house of the accused persons at Bhubaneswar before 15 days of the report and was helping the accused in his grocery shop. During his presence, he saw that his sister was tortured by her husband and mother in law. On dtd. 12.8.2000 at about 8 AM, both of them assaulted seriously to his sister in his presence. Realizing the condition of his sister, the informant came back to his house assuring the accused persons to give the rest dowry amount within 4 days, but on the same day while he was in his house, received the information that his sister Tilotama expired. Therefore, he lodged FIR before IIC, Badagada PS who registered PS case No. 146 of 2000 u/s 498 A/304 B/34 IPC readwith Sec. 3 and 4 of DP Act and directed for investigation of the case.

During the course of investigation, police visited the spot, examined witnesses, seized the dowry articles, conducted inquest over the dead body and after completion of investigation submitted charge sheet against the two accused persons for the offence u /s 498 A/304 B/306/34 IPC readwith Sec. 4 of DP Act. Hence, the trial.

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

4. The points for determination in this case are

- (i) Whether the accused persons being husband and mother in law of deceased Tilotama, in furtherance of common intention, demanded dowry and tortured her both physically and mentally in order to fulfill their demand of Rs.20,000/- ?
- (ii) Whether the accused persons, in furtherance of common intention, committed dowry death of Tilotama ?
- (iii) Whether the accused persons, in furtherance of common intention, abetted the commission of suicide of Tilotama by hanging herself by means of nylon rope ?
- (iv) Whether the accused persons demanded dowry of cash of Rs.20,000/- and a fridge to Tilotama and her parents ?

5. During the course of trial, prosecution examined as many as 6 witnesses and defence did not adduce any evidence in support of their case. P.W.1 is the immediate neighbour of the accused and was occupying a portion of the said house on rent which was in occupation of the accused and deceased. P.W.2 is also a nearby witness. P.W.3 is the informant of the case. P.W.4 is a witness regarding the marriage and demand of dowry by the accused persons. P.W.5 is the elder brother of the informant and the deceased. P.W.6 is the Investigating Officer.

6. P.W.1 in his evidence said that he is occupying one portion of the house and the other portion of the same house was in occupation of the accused and deceased. He saw in the morning of 12.8.2000, the dead body of the deceased was hanging tied with a rope from a ceiling fan inside her room. He has no knowledge regarding any quarrel between the accused and the deceased. This witness has been declared hostile and cross examined by the prosecution u/s 154 of Evidence Act. Learned prosecuting lawyer while cross examining this witness brought out from his mouth that he noticed a ligature mark on the neck of the deceased. He denied regarding his examination by police. He has not heard any disturbance between the deceased and the accused persons at any point of time. Rather, he said that they were leading a very peaceful life. Accused No.2 who is the mother in law of the deceased was not staying in the same house permanently. She was visiting her son and daughter in law at times. The witness also denied

regrading any demand of dowry by the accused persons from the deceased. P.W.2 said on the relevant day he saw assembly of many persons in front of his house and came to know that the deceased committed suicide by hanging. This witness is also declared hostile and cross examined by the prosecution. But, during his cross examination he deposed nothing against the accused persons and in support of prosecution.

7. P.W.3 is the informant, said the FIR story in his evidence. In his cross examination, P.W.3 said that his sister was blessed with a daughter after two years of marriage at Bhubaneswar. His parents were also visiting the accused and the deceased and they had a very good cordial relationship. P.W.4 is also a hostile witness and was cross examined by the prosecution and defence. In his cross examination, this witness said that during settlement of marriage, there was discussion regarding demand of dowry. P.W.5 who is the elder brother of the informant and deceased is the most important witness on behalf of the prosecution. But, he said that he cannot say how Tilotama died. Learned Addl. PP declared this witness hostile and cross examined at large, but nothing substantial has been elicited from his mouth to believe that the witness suppressed the truth and deposed falsehood in the Court. During his cross examination by the defence, he said that he was present at the time of the marriage of his sister with the accused. There was no demand of dowry by that time. His sister and the accused were leading a happy conjugal life without any disturbance from any corner. His deceased sister had not complained before him regarding any torture by the accused persons. He further said that he visited the house of his deceased sister many times, but did not notice any ill treatment to his sister. On the other hand, he said that his sister was short tempered by nature and is unable to control herself while she gets angry. He said that accused himself intimidated him over phone regarding the death of his sister. On his enquiry, he came to know that his sister committed suicide getting angry by hanging from the ceiling fan. Neither the accused nor any other member of his family is involved in commission of suicide by Tilotama. It is his further evidence that all his family members know that the accused persons are innocent having no role in the case. They are also

maintaining good relation with the family of the accused after the death of Tilotama. P.W.6 the IO supported his investigation and in his cross examination he admitted that the accused No.1 and his wife were residing in a house at Brit Colony, Badagada which is exclusively a residential area. P.W.2, Srinibas Pattnaik is the immediate neighbour of the deceased who has been examined during investigation by the police. But, no other witness from the locality has been examined in this case during investigation. The parents of the deceased also have not been examined by the IO. As regards seizure of the articles, IO admitted that although he seized the articles from the house of the accused, no cash memo has been seized to establish that the articles were purchased by the family of the deceased. On the face of such evidence available on record, let me examine if prosecution has been able to prove the offences against both the accused persons.

8. The offences u/s 498 A/304B/306 IPC and Sec. 4 of DP Act are all connected with each other and in view of the evidence available on record, I have taken up the evidence as a whole to examine if any of the offence mentioned above has been proved against the accused persons. In order to test the demand of the Section, I have perused the ingredients of the offence charged against the accused persons. Under Sec. 304 B IPC i.e. dowry death, prosecution is at the onus to prove that the death of a woman is caused by any bodily injury otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband or in connection with any demand for dowry. Admittedly, in the case Tilotama was married in the year 1996 and expired in the year 2000 which is within 7 years of her marriage. The post mortem report has been exhibited through the mouth of the IO which shows that the blood was oozing from the nostrils of the deceased which indicates that there was some injury, but the cause of injury is nowhere explained in the mouth of the witnesses. The opinion of the doctor in the post mortem report also shows that there was ligature mark ante mortem in nature on the body of the deceased. The cause of death is shown to be hanging. From the side of the prosecution an attempt has been made to show that there was demand of dowry by the accused

persons through the mouth of the informant. No other witness including the elder brother of the informant and the immediate neighbours of the deceased whispered a single word regarding any torture by the accused persons on the deceased with the demand of dowry. On the other hand, the elder brother of the deceased stated in the Court that his sister was ill tempered and committed suicide out of anger. There is no material that anybody from the house of the accused forced or abetted the deceased to commit suicide or hanged her from the ceiling fan after committing her death. In view of evidence of the elder brother of the deceased that his sister was very happy in the house of the accused and none of her in-laws family was torturing her in any way, the evidence of his younger brother who is informant of this case does not appear to be reliable or trustworthy. The cause of death of the deceased may be due to her intempered nature. The two neighbours of the deceased are no way inimical to the accused or friendly to the informant. They stated that at no point of time they have seen any disturbance of the accused with the deceased rather it is their evidence that they were maintaining their family very happily. While the elder brother of the deceased categorically stated that there was no demand of dowry at the time of marriage or after the marriage, there is no occasion to believe that either the accused persons or any of their family members were demanding dowry and in order to fulfill their demand, they were torturing the deceased. Under Sec. 306 IPC, accused persons are also not found liable as the evidence does not reveal in any manner that the accused or his family members abetted the deceased to commit suicide. Under Sec. 498 A IPC, cruelty to woman is also an essential ingredient to prove such offence. No doubt, in this case, the accused persons are husband and mother in law of the deceased. But, there is at all no material to show that the accused persons were dealing with cruelty with the deceased in any manner. Thus, on examination of evidence I find the prosecution miserably failed to prove the offences u/s 304 B/306/498 A IPC.

9. As regards offence u/s 4 of DP Act, I have already observed above that excepting the evidence of informant, there is no corroborative evidence regarding any demand of dowry. It is also doubtful to believe the evidence of P.W.1 who was a very small boy at the time of marriage of his sister. Neither the parents of

the deceased or any of his village have been examined by the prosecution in whose presence there was demand of dowry by the accused persons. The elder brother of the informant who was quite matured at the time of marriage of the deceased has categorically denied regarding any demand of dowry and torture by the accused persons. On examination of the evidence available on record, I find the prosecution also failed to prove the offences beyond all reasonable doubt.

10. In the result the accused persons are found not guilty for the offences u/s. 498 A/304 B/306/34 IPC and Sec. 4 of DP Act 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 surety be discharged.

11. The seized articles, if any be destroyed after four months of appeal period is over, if no appeal is preferred or in case of appeal the same be dealt with in accordance with the direction of the Hon'ble Appellate Court.

Pronounced in the open Court today this the 28<sup>th</sup> day of November, 2013.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

List of witnesses examined for the prosecution

P.W.1:- Bijay Kumar Behera  
P.W.2:- Srinibas Pattnaik  
P.W.3:- Ajay Kumar Padihary  
P.W.4: Santosh Behera  
P.W.5: Anjan Kumar Padihary  
P.W.6: Rabi Narayan Padhi

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: Inquest report  
Ext.1/1: Signature of P.W.1  
Ext.2: Written FIR  
Ext.2/1: Signature of P.W.3  
Ext.3: Seizure list  
Ext.3/1: Signature of P.W.4  
Ext.2/2: Endorsement and signature of IIC

Ext.3/2: Signature of P.W.6  
Ext. 4: Written report of accused  
Ext.4/1: Endorsement and signature of IIC  
Ext.1/2: Signature of P.W.6  
Ext.5: Seizure list  
Ext.5/1: Signature of P.W.6  
Ext.6: Post mortem report  
Ext.7: Seizure list  
Ext.7/1: Signature of P.W.6  
Ext.7/2: Signature of constable  
Ext.7/3: Signature of constable No. 833 S.K. Chand

List of exhibits marked for the defence

Nil

Addl. Sessions Judge, Bhubaneswar.