

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 25/2 OF 2013

(Arising out of Balipatna PS Case No. 77/2012, corresponding
to G.R case No.486 of 2012, committed by the JMFC(O),
Bhubaneswar)

Date of argument- 26.8.2014

Date of Judgment- 27.8.2014

S t a t e -

- V e r s u s -

- 1) Smt. Mamata Mallik, aged about 49 years, W/o: Tofan @
Kalandi Mallik of village: Purohitapur, P.S. Balipatna, Dist:
Khurda.
- 2) Mantu @ Pikuna Mallick, aged about 26 years, S/o: Tofan
@ Kalandi Mallik of village: Purohitapur, P.S. Balipatna,
Dist: Khurda.
- 3) Tofan @ Kalandi Mallik, aged about 53 years, S/o: Late
Bhobani Mallik of village: Purohitpur, P.S. Balipatna, Dist:
Khurda.

....Accused persons

Advocate for the prosecution :Shri R.R. Brahma, Addl. P. P

Advocate for Accused :Shri A.K.Acharya and assts.

Offence Under Sections :498-A/304-B/34 of I.P.C. & Section 4 DP Act.

J U D G M E N T

The aforesaid accused persons have faced their trial being charged U/s. 498-A/304-B/34 of Indian Penal Code (hereinafter referred as 'I.P.C.') r/w. Section 4 of Dowry Prohibition Act(herein after referred as D.P.Act).

2. The case of the prosecution as per the FIR may be summarized as follows: the informant namely: Rabi Mallick of village: Niali had appeared before the IIC, Balipatna P.S on dtd.15.7.2012, and lodged a written report informing that his daughter namely: Anita Mallick had married accused Mantu Mallick as per Hindu rites and customs on dtd. 27.6.2012. At the time of the marriage, a cash of Rs.35,000/-, gold ornaments and house-hold articles were given. Apart from that, a cash of Rs.1000/- was given for the dress materials of accused Mantu Mallick, the son-in-law of the informant. Moreover, a cash of Rs.5000/- was to be paid by the complainant towards the customary presentation of garments towards "Vara", which he failed to pay. On the 16th day of the marriage(Shola Mangala), the customary articles were carried to the house of the accused persons on behalf of the informant. On dtd. 14.7.2012, the accused persons had made a phone call to the informant instructing him to see his daughter who was indisposed of. Accordingly, he went to the house of the accused persons at 3 PM, and found that his daughter was not available. She was already shifted to Balakati Hospital. After about half an hour, his daughter returned back from hospital, and on being asked by the informant, she intimated that she was suffering from gastric. After that the informant returned back to his house, and on his way he heard from some local persons, that there was exchange of words and hulla coming from the house of the accused persons, and then the matter was subsided at the

intervention of the Bhadrak. Then at about 8 PM information was given to him by the gentries to see the victim lady. Accordingly, the informant rushed to the house of the accused persons, and came to know that the husband of the deceased lady as well as her in-laws, on demand of further cash of Rs.100000/- had administered poison to her for which she was taken to Capital Hospital, and ultimately from capital Hospital she was taken to SCB Medical College and Hospital, Cuttack, where during course of her treatment she expired. Basing on the FIR, the IIC, Balipatna P.S had registered P.S Case No-77/2012, U/s. 498-A/304-B/302/34 of I.P.C. & Section 4 of the D.P.Act, and investigation taken up. During course of investigation, the Ex-IIC, Balipatna P.S namely: Sri B.K.Sethi had visited the spot, examined the complainant and witnesses, arrested the accused persons on dtd. 16.7.2012, and forwarded them to the court, seized the dowry articles from the house of the accused persons and released the same in zima of the complainant. On his transfer, the charge of the investigation of the case was taken up by his successor who examined the complainant and other witnesses, collected the PM report and SCD from the IIC Mangalabag PS vide Mangalabag UD Case No-1019/2012, examined the priest to the marriage, and driver who had shifted the victim to Capital Hospital for treatment, and then on completion of investigation submitted chargesheet in this case against all the accused persons U/s.498-A/304-B/34 I.P.C and Section 4 D.P.Act. .

3. The plea of the defence is that of complete denial of prosecution story.

4. Points for determination in this case are:

- i) Whether after the marriage of the deceased lady, her husband Mantu Mallik and in-laws Pikuna Mallik and Kalandi Mallik who are the accused persons of this case

had subjected the deceased lady to cruelty and in furtherance of their common intention?

ii) Whether on 14.7.2012 at 8 PM at village: Purohitpur, P.S.Balipatna, the present accused persons in furtherance of their common intention had caused dowry death of the deceased lady by administering poison within seven years of her marriage, for non-fulfillment of dowry?

iii) Whether on the above noted date, time and place the accused persons had demanded dowry from the deceased lady and her parents?

5. In order to prove its case prosecution has examined as many as 14 witnesses. Out of whom P.W.1 is a co-villager of the accused persons, the P.W.2 is a witness to the seizure of the house-hold articles and also witness to the inquest, the P.W.3 and the P.W.4 are the seizure witnesses and so also the P.W.5, P.W.6 and P.W.7 belongs to the village of the accused persons, the P.W.8 is the scribe of the FIR, the P.W.9 is the priest who had solemnized the marriage ceremony in between the deceased lady with her husband, the P.W.10 is a co-villager of the accused persons and happens to be the driver, who had shifted the deceased lady to Hospital, the P.W.11 is an independent witness, the P.W.12 is the informant and the father of the deceased lady, the P.W.13 is the nephew of the informant, the P.W.14 is the IO.

On the other hand, no witnesses is examined on behalf of the accused persons. Similarly, Ext.1 to Ext.17 series are marked which include the FIR, formal FIR, inquest report, seizure list, PM examination report etc. On the other hand, no documentary evidence is adduced on behalf of the defence. No MO is marked in this case.

6. The P.W. 1 is an independent witness, who has stated that he heard

that the deceased Anita was taken to Balakati Hospital as she felt pain in her chest, and then she was shifted to Capital Hospital, and to SCB Medical, Cuttack, where she died. His cross-examination reveals that the marriage of the victim lady took place about 16 days and there was no quarrel between the deceased lady and the accused persons.

The P.W.2 had deposed that the inquest was conducted in his presence where he had put his signature on the inquest report. He has further deposed that in his presence police had seized some utensils, chair and other house-hold articles on production by Tofan Bhoi and prepared the seizure list under Ext.2 wherein he had put his signature. His cross-examination indicates that there was no dispute between the deceased lady and the accused persons. Similar type of evidence is coming from the mouth of P.W.4.

The P.W.5 has deposed that he is unable to say as to how the deceased died. In his cross-examination he has stated that he never heard that the accused persons had any dispute with the deceased.

The P.W.6 has deposed that the deceased was a heart patient, and she was removed to Balakati and then to Bhubaneswar and SCB Medical, Cuttack for her treatment, where she died. The P.W.7 has reiterated the evidence of P.W.6.

The P.W.8 who is the scribe of the FIR has deposed that on the request of the informant, he has scribed the FIR in accordance with the version of the informant, and he had read over and explained the contents of the same to the informant. The cross-examination of P.W.8 indicates that he has not made any endorsement which could reveal that he had read over and explained the contents of the FIR to the informant.

The P.W.9 is the priest who has admitted to have performed the marriage ceremony of deceased lady with her husband Mantu.

The P.W.10 has deposed that about one year back at about 9 PM while he was sleeping his house, accused Kalandi informed him that his daughter-in-law become ill, and requested him to take her to Capital Hospital, Bhubaneswar in his vehicle, which he had complied with. Thereafter, he returned back to his house. Lateron he came to know that the victim lady expired.

The P.W.11 has deposed that Anita was married to accused Mantu . AT the time of marriage ceremony, gold ring, house hold articles and cash of Rs.35,000/- were given. But on 16th day of marriage, deceased Anita had consumed 'Kaniar' seeds for which she vomited, and shifted to hospital at Cuttack, where she expired. His cross-examination indicates that after the marriage, he had visited the accused persons, and found that the deceased lady was residing in a normal cordial conjugal atmosphere in the house of the accused persons. He has admitted that he has no personal knowledge if the victim lady had consumed 'Kaniar' seed or any other thing.

The P.W.12, the informant of this case has deposed to have not remembered anything about the case. He has further admitted to have presented the FIR, Ext.3. Excepting this, he has not stated anything during his cross-examination . His cross-examination indicates that he himself has scribed the FIR. He has also stated that police has prepared his statement out of their own accord, and his statement was not reduced to writing. Some leading questions were asked to him on behalf of the prosecution U/s.154 of Indian Evidence Act. But he has not stated anything in support of the prosecution case during his entire evidence.

The P.W.13, the nephew had stated to have no knowledge about the facts of this case.

The P.W.14, who is the IO stated to have investigated into the

case, examined the witness, seized the personal property(Stridhan) and prepared the seizure list, medically examined the accused persons, prepared the memo of arrest, left the 'Stridhan' on behalf of the complainant executing zimanama, and handed over the charge of the investigation of the case to his successor Sri Bidut Panda of IIC, Balipatna P.S on dtd.3.8.2012, who has submitted the chargesheet after examining the witnesses, and obtaining the post mortem examination report, and the Supplementary case record in UD Case against the accused persons U/s.498-A/304-B/34 I.P.C and U/s.4 of D.P.Act.

7. The accused persons have denied the incriminating circumstances that appeared in the evidence U/s.313 of Cr.P.C. Considering the facts and circumstances of this case and nature of evidence, it is found that the informant and all the independent witnesses have not supported the case of the prosecution. The informant himself has not stated anything relating to the contents of the FIR. In his entire evidence, he has not stated anything as to the cause of the death of the deceased lady. He has not stated if the accused persons had ill-treated or tortured the deceased lady at any point of time. He is silent as to if the accused persons demanded any dowry or subjected the deceased girl to cruelty. The other independent witnesses who belong to the case village have stated that the victim lady was residing in the house of the accused persons in normal cordial atmosphere. They have not stated if the victim lady was subjected to cruelty on demand of dowry by the accused persons. In other words, no oral evidence is coming from the mouth of any witness that the victim lady was subjected to cruelty and torture by the accused persons on demand of dowry for which which she expired or if the accused persons have any role regarding the death of the deceased lady. Moreover, the evidence relating to the basic ingredients of offence alleged against the

accused persons have not been attracted in the mouth of any of the witnesses including that of the informant.

8. So, considering this angle, it is clear that basing only on the evidence of the Post mortem report, and the IO, the case of the prosecution can't stand independently without any corroboration. That apart when the informant himself who is the father of the deceased lady and on whose FIR, law was set into motion, and investigation was initiated has not supported the case of the prosecution in any manner, I am of the considered opinion that prosecution has miserably failed to prove its case U/s.498-A/304-B/34 of I.P.C and Section 4 of the D.P.AcT against the accused persons beyond all reasonable doubt and the accused persons are found not guilty thereunder and they are acquitted U/s.235(1) of Cr.P.C and set at liberty.

The zimanama be cancelled after four months of the appeal period, if no appeal is preferred, the same be dealt with as per the decision of the appellate court.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 27th day of August, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 : Gangadhar Mallik

P.W.2 : Kalandi Bhoi

P.W.3 : Jambeswar Jena
P.W.4 : Babuli Das
P.W.5 : Rabi Narayan Mohanty
P.W.6 : Bani Mallick
P.W.7 : Lata Mallick
P.W.8 : Bijaya Ku. Gochhayat
P.W.9 : Purna Chandra Das
P.W.10 : Prasant Kumar Bhoi
P.W.11 : Laxmidhar Mallik
P.W.12 : Rabi Mallik
P.W.13 : Biswanath Mallik
P.W.14 : Bijaya Kumar Sethi

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 : Inquest report
Ex.1/1 :Signature of P.W.2 in Ext.1
Ext.2 : Seizure list
Ext.2/1 :Signature of P.W.2 on Ext.2
Ext.2/2 : Signature of P.W.3 on Ext.2
Ext.2/3 : Signature of P.W.4 on Ext.2
Ext.3 : FIR
Ext.3/1 : Signature of the informant in Ext.3
Ext.3/2 : Signature of P.W.14 on Ext.3
Ext.3/3 : Formal FIR
Ext.4 : PM Report
Ext.5 : Spot map

Ext.5/1 : Signature of P.W.14 on Ext.2
Ext.6 : Zimanama
Ext.6/1 : Signature of P.W.14 on Ext.6
Ext.6/2 : Signature of the informant
Ext.7 : Chargesheet
Ext.7/1 : Signature of B.Panda on Ext.7

List of Exts. Marked on behalf of the defence

Nil.

Addl. Sessions Judge, Bhubaneswar.