

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

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

CRIMINAL TRIAL NO. 55 of 2014

(Arising out of Mahila PS Case No. 264/2012, corresponding
to G.R case No.757 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) Bidyadhar Chhotray, aged about 34 years, S/o:Digambar Chhotray of village: Haridamada, P.S. Jatni, Dist: Khurda.
- 2) Subasini Chhotray, aged about 74 years, W/o: Digambar Chhotray of village: Haridamada, P.S. Jatni, Dist: Khurda.
- 3) Digambar Chhotray, aged about 80 years, S/o: Late Nityananda Chhotray of village: Haridamada, P.S. Jatni, Dist: Khurda.

....Accused

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

Advocate for Accused :Shri Rama Chandra Patra and assts.

Offence Under Sections :498-A/304-B /34 of I.P.C. & Section 4 of the
D.P.AcT.

J U D G M E N T

The aforesaid accused persons of this case have faced their trial being charged U/s. 498-A/304-B/34 of Indian Penal Code & Section 4 of the D.P.Act. (hereinafter referred as 'I.P.C.').

2. The case of the prosecution in short is that the informant Dambarudhar Harichandan who happens to be the father of the deceased lady Barsha had lodged a written report before the IIC, Jatni P.S on dtd. 2.11.2012 narrating that the deceased lady was married to accused Bidyadhar Chhotray on dtd. 6.2.2010. During the time of the marriage, the informant had given house-hold articles, cash and gold ornaments, TV, washing machine, refrigerator in compliance of the demand of the accused persons. After marriage, the deceased lady and her husband visited his house. During her visit, the deceased lady had informed her parents that her mother-in-law used to subject her to torture. On dtd. 1.11.2012 at about 11 PM, the informant had received a phone call to the fact that the deceased lady was admitted at Khurda hospital. On getting such information, he went to Khurda hospital and found that her daughter had expired. He ascertained that the deceased lady had consumed poison, for which, she died. He apprehended that the accused persons who were the husband and the inlaws of the deceased lady had committed her murder. Basing on the FIR, the IIC, Jatni P.S had registered P.S Case No-264/2012 U/s. 498-A/304-B/34 of I.P.C. & Section 4 of the D.P.Act. Accordingly, investigation was taken up by the IO. During course of investigation, the IO had visited the spot, examined the complainant and other witnesses, conducted inquest in respect of dead body of the deceased lady at District Head quarter hospital, Khurda in presence of the witnesses, sent the dead body for post-mortem examination, seized the dowry articles in presence

of the witnesses, prepared the seizure list and left the same in zima of the complainant on execution of zimanama, arrested accused Bidyadhar Chhotray on dtd.3.11.2012 and forwarded him to the court on dtd.4.11.2012. The other two accused persons had surrendered in the court. He also seized the colour photographs showing marriage in between the deceased and her husband. He seized the wearing apparels of the deceased lady and prepared the seizure list. He also received the Post mortem examination report. On completion of investigation, he submitted chargesheet against the accused persons U/s. 498-A/304-B/34 of I.P.C. & Section 4 of the D.P.Act. Hence, this case.

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

4. Points for determination in this case are:

i) Whether accused Bidyadhar Chhotray being the husband of the deceased lady and other two accused persons being the inlaws of the deceased lady had subjected the deceased lady to cruelty in their dwelling house in village Haridamada after the marriage of the deceased lady with accused Bidyadhar in furtherance of their common intention ?

ii) Whether the accused persons of this case in furtherance of their common intention had committed dowry death of the deceased lady by subjecting her to cruelty and harassment within seven years of her marriage ?

iii) Whether the accused persons had demanded dowry from the deceased lady and her parents after the marriage ceremony of the victim lady?

5. In order to prove its case prosecution has examined as many as 9 witnesses. Out of whom, P.W.1 is the informant and father of the deceased lady, the P.W.2 is the mother of the deceased lady, P.W.3 belongs to the village of the informant, the P.W.4 and the P.W.5, belongs to the village of the accused persons and who are the seizure witnesses, the P.W.6 is the priest who had participated for the solemnization of the marriage of the victim lady with the accused Bidyadhar Chhotray, the P.W.7 belongs to village: Kansapada, who is the witness to the inquest, P.W.8 is a co-villager of the accused persons. P.W.9 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 by prosecution which include the formal FIR, Zimanama, the spot map, inquest report, post mortem report, colour photographs and the receipt issued by the Director SFSL, Rasulgarh etc. On the other hand, no documentary evidence is adduced on behalf of the defence. No MO is marked in this case.

6. Out of 9 witnesses, for the matter of convenience, the evidence of P.W.1, the informant is considered first. According to P.W.1, about three years back the deceased lady Barsha got married to her husband and there was customary presentation made by him. But about one and half years back the deceased lady expired. On getting such information regarding the admission of the deceased lady at Khurda Hospital, he rushed there and found that the deceased lady had already expired. Later on he came to know that the deceased lady had consumed poison and committed suicide, for which he presented written report before the police under Ext.1. He has admitted to have received the articles seized by the police in his custody on execution of zimanama vide Ext.3. The evidence of complainant indicates that in his entire evidence he has not substantiate

anything which is alleged in the FIR. Rather his cross-examination discloses that he is not the scribe of the FIR nor he is aware of the contents of the FIR. According to him, the deceased lady was mentally retarded and that she was very obstinate and pressing to comply with her demands and due to non-compliance of the demand, she was threatening to commit suicide. He has categorically deposed that accused persons have never demanded any dowry from him at any point of time nor assaulted the deceased, nor subjected her to torture or cruelty. P.W.2 who is the mother of the victim lady had deposed that during the time of marriage of the victim lady customary presentation was made on her behalf. About one and half years back, the deceased lady got expired. The husband of the deceased had sent information over phone requesting the P.W.2 and her family members to come to Khurda Hospital since the victim lady was admitted there. Thereafter, the P.W.1 had gone to Khurda Hospital and by that time, the victim lady had expired. The P.W.2 could not say regarding the cause of death of the victim lady. The cross-examination of P.W.2 indicates that the victim lady was mentally retarded and obstinate and was pressing to comply with her demand and on non-compliance of her demand, she was threatening to commit suicide. She has further deposed that the accused persons have never assaulted the deceased lady nor demanded any dowry from them at any point of time.

The evidence of P.W.3 indicates that on the date of occurrence he had gone to Khurda hospital in the capacity of family relation of P.W.1. After his arrival, he came to know that the victim lady had expired as she committed suicide. He deposed that in his presence, the IO had conducted inquest in respect of the dead body containing his signature. His cross-examination reveals that he has never heard if the accused persons had assaulted the victim lady and subjected her to torture at any point of time.

He has also expressed his ignorance if the accused persons have ever demanded dowry from the deceased lady, or her parents. He had also admitted to have made his endorsement on Col. No-9 of Ext.5 and .

The P.W.4 who belongs to the village of the accused persons has deposed that in his presence police has seized the dowry articles from the house of accused Bidyadhar Chhotray and prepared the seizure list. He has also stated that police prepared the list of description of articles seized at the house of accused Bidyadhar consisting of 4 pages and obtained his signature so also the signature of other witnesses namely: Md. Guljar and Kuna Mahammad and Bidyadhar Chhotray in respect of all the pages. Except the fact of seizure he has not whispered regarding the complicity of the accused persons.

The P.W.5 has reiterated the evidence of P.W.4. The P.W.6 who is a priest has deposed that he had performed the duty of priest at the time of the marriage ceremony of deceased lady with accused Bidyadhar. But in course of time, he came to know that the deceased lady expired. But he expressed his ignorance as to under what circumstances she died .

The P.W.7 has deposed that at Khurda Hospital police had shown him the dead body of the deceased lady and in his presence the inquest was prepared and he has signed on the inquest report. His cross-examination indicates that after the marriage, the deceased lady was residing with her husband in a normal atmosphere and there was no quarrel in between them. He has never heard if the accused persons had demanded dowry from the deceased. He has further deposed to have signed on the inquest report as per the direction of the police without going through the contents of the same.

The P.W.8 has deposed that the accused persons are his co-villagers. It is also known to him that the deceased lady had expired. But

he has no knowledge regarding the reason of her death, nor he could explain under what circumstance she expired.

The P.W.9 who is the IO of this case has stated that after registration of the case he performed the investigation of this case. He also admitted to have examined the complainant and examined the witnesses, conducted the inquest in respect of the dead body of the deceased, examined the witnesses to the inquest and sent the dead body to the District Headquarter Hospital, Khurda for post mortem, seized the dowry articles, visited the spot, examined the neighbours of the deceased and the priest who had performed the marriage of the deceased lady with her husband, apprehended the accused Bidyadhar Chhotray and received the post mortem report, seized the wearing apparels of the deceased lady on production of same by constable D.P.Kullu, seized the command certificate and made the seizure of the ornaments of the victim lady which he had put on at the time of her death, sent the arrested accused Bidyadhar to medical for medical examination and received the medical examination report, and forwarded him to the court. Since the other accused persons had surrendered in the court and after completion of investigation he has submitted Chargesheet U/s. 498-A/304-B/34 of Indian Penal Code & Section 4 of the D.P.Act. He has left the seized ornaments i.e. a pair of silver Jhantia on execution of zimanama.

7) The Ld. Prosecutor of the State has put some leading questions to the complainant, P.W.2, P.W.4, P.W.5 and P.W.7 since they had resiled from their earlier statement and the leading questions were directed U/s.154 of Indian Evidence Act. But nothing fruitful could be obtained from their mouth in support of the prosecution case. Rather the evidence of the complainant and his wife and other independent witnesses indicate that they have not assigned the actual cause of the death of the victim lady.

Undoubtedly, the post mortem report indicates that there was presence of poisonous substance which could be detected in the dead body of the deceased. But no direct evidence is coming if the accused persons are in any manner responsible for consumption of poisonous substance by the victim lady. Moreover, there is no iota of evidence if the accused persons have demanded any dowry from the victim lady or compelled her to procure the dowry from her parents. The allegation made in the FIR by the informant has not been substantiated by the informant himself in his evidence. So, in absence of any supporting oral evidence on record, basing only on the allegation of the informant in the FIR which has not been supported by him, and basing on the evidence of the investigating officer, the case of the prosecution can't stand, without any independent corroboration. Moreover, there is lack of cogent evidence relating to the basic ingredients of offence U/s.498-A/304-B/34 of Indian Penal Code & Section 4 of the D.P.Act, nor any material is forthcoming either from the oral evidence or from any documentary evidence, to prove the complicity of the accused persons with the alleged offence.

7. In the circumstances, I feel that the case of the prosecution is extremely weak. Accordingly after going through the aforesaid evidence, both oral and documentary and taking into consideration the discussion made above, I am of opinion that prosecution has miserably failed to prove its case U/s. 498-A/304-B/34 of Indian Penal Code & Section 4 of the D.P.Act 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 is over in case of no appeal, in case of appeal 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 : Dambarudhar Harichandan
P.W.2 : Smt. Mamata Harichandan
P.W.3 : Susanta Kumar Harichandan
P.W.4 : Raghunath Behera
P.W.5 : Md. Gulzar
P.W.6 : Sarbeswar Rath
P.W.7 : Nakula Jena
P.W.8 : Rama Chandra Bidhar
P.W.9 : Pradipta kumar Sathua

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 : FIR
Ex.1/1 :Signature of P.W.1 in Ext.1
Ext.2 : List of articles
Ext.2/1 :Signature of P.W.1 on Ext.2
Ext.2/2 : Signature of Md. Gulzar on Ext.2
Ext.2/3 : Signature of Tuna Mahmud on Ext.2
Ext.2/4 : Signature of Raghunath Behera on Ext.2
Ext.3 : Zimanama

Ext.3/1 : Signature of P.W.1 on Ext.3
Ext.3/2 : Signature of Ulash Samantray on Ext.3
Ext.3/3 : Signature of Raghunath Behera on Ext.3
Ext.3/4 : Signature of Narayan Behera on Ext.3
Ext.4 :Zimanama
Ext.4/1 Signature of P.W.1 on Ext.4
Ext.5 : Inquest report
Ext.5/1 : Signature of P.W.3 on Ext.5
Ext.6 : Seizure list
Ext.6/1 : Signature of P.W.4 on Ext.6
Ext.6/2 : Signature of Tuna Mangaraj on Ext.6
Ext.6/3 : Signature of Md. Gulsar on Ext.6
Ext.6/4 : Signature of of Bidyadhar Chhotray on Ext.6
Ext.5/2 : Signature of P.W.7 on Ext.5
Ext.5/3 : Signature of P.W.9 on Ext.5
Ext.5/4 :Signature of Executive Magistrate on Ext.5
Ext.5/5 : Signature of Happy Samantaray on Ext.5
Ext.5/6 : Signature of Gopal Samantaray on Ext.5
Ext.5/7 :Signature of Rabindra Harichandan on Ext.5
Ext.5/8 : Signature of Jaiprakash Harichandan on Ext.5
Ext.7 : Command Certificate
Ext.7/1 : Signature of P.W.9 on Ext.7
Ext.8 : Seizure list
Ext.8/1 : Signature of P.W.9 on Ext.8
Ext.9 : Seizure list
Ext.9/1 : Signature of P.W.9 on Ext.9
Ext.10 : Seizure list
Ext.10/1 : Signature of P.W.9 on Ext.10

Ext.11 : Zimanama
Ext.11/1 : Signature of P.W.9 on Ext.11
Ext.6/5 : Signature of P.W.9 on Ext.6
Ext.4/2 : Signature of P.W.9 on Ext.9
Ext.2/5 : Signature of P.W.9 on Ext.2
Ext.12, Ext.13 & Ext.14 : Photographs
Ext.12/1, 13/1 & 14/1 : Signature of P.W.9 on Ext.12, 13 & 14 respectively
Ext.15 : Spot map
Ext.15/1 : Signature of P.W.9 on Ext.15
Ext.16 : Requisition certificate
Ext.16/1 : Signature of P.W.9 on Ext.16
Ext.17 : Receipt issued by the Director, SFSL, Rasulgarh.

List of Exts. Marked on behalf of the defence

Nil.

Addl. Sessions Judge, Bhubaneswar.