

**ORISSA HIGH COURT,
CUTTACK**

JAIL CRIMINAL APPEAL NO.12 OF 2004

From the judgment dated 29.11.2003 passed by Shri Prahallad Mishra, Additional Sessions Judge (F.T.C.), Bolangir, in Sessions Case No.139-B/2 of 2002-03.

Premraj Barik

.....

Appellant

Versus

State of Orissa

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Respondent

For Appellant : Mr. B.K. Panda.

For Respondent : Addl. Standing Counsel

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 13.08.2008

PRADIP MOHANTY, J. This Criminal Appeal from jail is directed against the judgment and order dated 29.11.2003 passed by the learned Additional Sessions Judge (F.T.C.), Bolangir in Sessions Case No.139-B/2 of 2002-03 convicting the appellant under Section 304-B and 498-A IPC and sentencing him to undergo rigorous imprisonment for seven years for the offence under Section 304-B IPC and rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for three months, for the offence under Section 498-A IPC with a direction to run the substantive sentences concurrently.

2. Case of the prosecution in a nutshell is that the informant had given his daughter Janaki in marriage to accused-appellant Premraj Barik on 19.04.1999 according to caste customs. He had given one Hero Honda Motorcycle besides other things to the accused at the time of marriage. But the accused sold away the said Motorcycle and tortured Janaki physically and mentally. So, the informant brought her to his house. Accused came to the informant's house and in presence of Bhadrals he took his wife. On 21.05.2002, accused attempted to kill Janaki by pouring kerosene on her body. At about midnight of that day, the accused and one Linga Barik assaulted Janaki and administered poison to her. When she became unconscious, she was admitted in the hospital. The informant learnt about the incident, came to the hospital on 22.05.2002 and found his daughter lying unconscious. Ultimately, she died on 23.05.2002. On being reported, police took up investigation and submitted charge sheet against the accused-appellant.

3. The plea of the accused-appellant was complete denial of the allegation.

4. In order to prove its case, prosecution examined as many as 11 witnesses including the doctor and proved ten documents in evidence. The defence examined none in support of its plea.

5. The learned Addl. Sessions Judge, who tried the case, by his judgment dated 29.11.2003 convicted the appellant under Section 304-B and 498-A IPC and sentenced him as already stated.

6. The appellant assails the impugned judgment mainly on the following grounds:

- (i) There is no material with regard to demand of dowry.
- (ii) There is no evidence that appellant tortured the deceased soon before her death.

- (iii) No definite opinion has been given by the doctor regarding the cause of death.

7. Mr. Mishra, learned Addl. Standing Counsel submits that the evidence is very clear and cogent. Admittedly, the marriage was solemnized on 19.04.1999. Deceased succumbed to the injury on 23.05.2002. So, death was within seven years of marriage. The death of the deceased occurred otherwise than under normal circumstances. There are materials on record that the deceased was subjected to cruelty by her husband in connection with demand of dowry.

8. Perused the L.C.R. In order to establish a case under Section 304-B IPC, prosecution is required to prove that the death of the woman was caused by bodily injury or burns or otherwise than under normal circumstances within seven years of her marriage; the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband soon before her death; and such cruelty or harassment was in connection with demand of dowry.

In this case, there is no evidence that at the time of marriage any dowry was demanded by the accused or his relations. There is also no evidence that after marriage, there was any such demand. P.W.4, the father of the deceased, had voluntarily given some articles including a Motorcycle. Therefore, the trial court has rightly come to the conclusion that the offence under Section 4 D.P. Act has not been established against the accused-appellant. There is no material with regard to cruelty, torture or harassment meted out to the deceased in connection with demand of dowry soon before her death. P.Ws.1 and 6, the neighbours have stated that on 21.05.2002 they had gone to the house of the deceased and saw Janaki crying. She told in presence of the accused that accused had brutally assaulted her and poured kerosene on her person. They advised the accused to remain peacefully with Janaki. P.W.4, the informant and the father of the

deceased, also deposed about the torture to the deceased. He specifically stated that due to torture and cruelty shown to the deceased, he brought her to his house where she remained for two months. Thereafter accused came and wanted to take the deceased. A punch was convened and the matter was settled. A written compromise was obtained on which both the accused and the deceased put their signature. P.W.9, the doctor, specifically opined that no cause of death was ascertained with reference to the post-mortem report. By scanning the evidence, there is no specific evidence to the effect that soon before her death the deceased was tortured due to non-fulfilment of demand of dowry. Therefore, on consideration of the evidence and the ratio decided by the apex Court in ***Shamnsaheb M. Multtani v. State of Karnataka***, AIR 2001 SC 921, this Court acquits the accused of the charge under Section 304-B IPC. However, there is ample material against the appellant with regard to torture. Therefore, this Court confirms the conviction of the appellant under Section 498-A IPC and sentences him to undergo rigorous imprisonment for three years and to pay a fine of Rs.3000/- (three thousand) in default to undergo rigorous imprisonment for six months.

9. In the result, the Jail Criminal Appeal is allowed in part. The order of conviction and sentence of the appellant under section 304-B IPC is set aside. However, his conviction under section 498-A IPC is confirmed and he is sentenced to undergo R.I. for three years and pay a fine of Rs.3,000/- (three thousand), in default undergo R.I. for six months.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
 August 13, 2008/ *Samal*