

CRIMINAL APPEAL NO.31 OF 1989
AND
CRIMINAL APPEAL NO.43 OF 1989

-Versus-

State of Orissa Respondent

For appellants : M/s A.K. Nanda, S. Mukharjee,
A.K. Sahoo, G.S. Rath
D.K. Mohapatra,
A.K. Mohapatra and
A.K. Das.

For Respondent : Addl. Government Advocate.

Appellants

-Versus-

State of Orissa Respondent

For Appellants : Mr. N.C. Pati.

For Respondent : Addl. Government Advocate.

PRESENT :

THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

Date of judgment : 30. 01.2009

PRADIP MOHANTY, J. Both the Criminal Appeals are directed against the judgment and order dated 25.01.1989 passed by the Sessions Judge, Sambalpur in Sessions Trial No. 116 of 1987 convicting the appellants under Sections 304-B I.P.C. and sentencing them to undergo R.I. for seven years. Appellant-Sitaram Poddar has also been convicted under Section 4 of the D.P. Act and sentenced to undergo R.I. for one year; both the sentences imposed on him to run concurrently.

2. The case of the prosecution is that the marriage of accused Kamal Kishore Poddar, who is appellant No.2 in Criminal Appeal No.43 of 1989, with the deceased Prava Devi was solemnized in June, 1985. From the day of marriage, the appellants began ill-treating her by demanding further dowry and caused mental agony to her. This fact was disclosed by the deceased in her parental house. In April 1986, the appellant Kamal Kishore took the deceased to the house of P.W.19, left her there and came away without speaking anything. At that time, there were some injuries on the body of the deceased. The deceased told that she had been assaulted by the members of her husband's family in connection with demand of further dowry. None from the family of appellants came to take her back till November, 1986. However, the matter was settled and the deceased was brought to Sambalpur. But since she did not bring the dowry articles like Air Cooler, Freeze and gold ornaments, the appellants did not hesitate to inflict burn injuries on the deceased for which she was treated by a Doctor from 30th January 1987 to 8th February, 1998 and was almost cured. On 09.02.1987, the deceased vomited blood and breathed her last at 6.55 A.M. The dead body was taken to burial ground and without observing the caste customs, kerosene was poured over the body with a view to expedite burning the body and fire was set to the deceased. Hukum Chand Patwari (P.W.25), one of the relations of the

deceased, learnt about the death of the deceased and informed the town police over telephone. P.W.25 and the police officer reached the burial ground and asked the appellants to extinguish the fire, but as they did not comply with the direction of the police, P.W.25 with the help of others extinguished the fire and recovered only 25% of the body, which was sent for post-mortem examination. During investigation, some bed-sheets, pillow covers, quilt covers and a bamboo lathi were seized from the room under the occupation of the deceased and appellant Kamal Kishore. All those articles were stained with human blood. After completion of investigation, the appellants were charge-sheeted and charge was framed under Sections 302/304-B/201 read with Section 34 I.P.C. and also Section 4 of the D.P. Act.

3. In order to prove its case, prosecution examined 34 witnesses and proved 45 exhibits. Defence examined none but proved two documents marked Exts.A and B. The learned Sessions Judge, who tried the case, vide his judgment dated 25.01.1989 convicted appellants Sitaram Poddar, Kamal Kishore Poddar, Natwarlal Poddar, Sawarmal Poddar and Sangita Poddar under Section 304-B I.P.C and sentenced them to undergo R.I. for seven years. He also convicted appellant Sitaram Poddar under Section 4 of the D.P. Act and sentenced him to undergo R.I. for one year with the direction that both the sentences are to run concurrently.
4. Learned counsel for the appellants submitted that the trial court without appreciating the evidence on record in proper perspective and without keeping in view the settled legal position, has convicted the appellants. The trial court has held in Para 10 and 11 of its judgment that there was no demand of dowry and the alleged demand of dowry is doubtful. He further submitted that Section 113-B of the Evidence Act deals with presumption of dowry death. In order to bring a case within the ambit of Section 304-B I.P.C., it is the duty of the prosecution to prove that the death of the deceased occurred otherwise than under normal circumstances within seven years of her

marriage and that she was subjected by the appellants to cruelty and harassment in connection with demand of dowry soon before her death. There should also be nexus between the death and dowry related harassment. But in the instant case, the trial court did not find the accused persons except appellant Sitaram Poddar guilty under Section 4 of the D.P. Act. Therefore, conviction under Section 304-B I.P.C. is not sustainable. He further submitted that the statement of P.Ws. 19, 21, 22, 25, 30 and 33 would show that there was absolutely no demand of dowry. Ext.15 written by the deceased and received by P.W.22 does not bear any date and there is absolutely nothing about the ill-treatment, torture, assault or demand of dowry. It only appears that the in-laws were not happy over the preparation of breads (Roties) by the deceased.

5. Mr. Pattnaik, learned Additional Government Advocate submitted that the evidence of witnesses clearly establishes the contents of the F.I.R. He submitted that the evidence of P.Ws. 16, 17, 19, 21, 22 and 25 clearly establishes physical and mental torture meted out to the bride. Such evidence stands rock solid and nothing has been elicited from the cross-examination of these witnesses to shake the same. There is also positive evidence relating to cruelty shown to the bride in connection with the dowry demand. He further submitted that the occurrence (unnatural death of bride) having taken place within seven years of the marriage, the presumption under Section 113-B of the Evidence Act applies to this case. Therefore, it is the duty of the defence to prove otherwise. In the instant case, the defence has failed to discharge its onus. In view of all these, he submitted that no illegality has been committed by the trial court in convicting the appellants under Section 304-B I.P.C. and awarding the sentence.

6. Counsel for both the parties, in support of their respective case, relied upon the decisions in ***Alamgir Sani Vrs. State of Assam***, AIR 2003 SC 2108, ***Ramesh Kumar Vrs. State***

Chhatishgarh 2001 CrI. L.J. 4724 (SC), **K. Purna S. Rao Vrs. Y. Srinivas Rao** 2003 CrI.L.J. 69 (SC), **Gananath Pattnaik Vrs. State of Orissa**, 2002 SCC (CrI) 461, and **S.M. Multani Vrs. State of Karnataka** AIR 2001 SC 921.

7. This Court examined the case laws cited by the parties. In those case, it has been decided that in order to prove a case under Section 304-B IPC, prosecution should establish the following ingredients :

- (i) that the death of a woman was caused by burns or bodily injury or occurred otherwise than under normal circumstances;
- (ii) that such death occurred within seven years of her marriage;
- (iii) that the deceased was subjected to cruelty or harassment by her husband or by any relation of her husband;
- (iv) that such cruelty or harassment was for or in connection with demand of dowry; and
- (v) that the deceased was subjected to such cruelty or harassment soon before her death.

P.W.27, the Assistant Professor, Forensic Medicine, V.S.S. Medical College, Burla, had conducted autopsy over the dead body of the deceased. He specifically stated that smell of kerosene was coming out from the body. Since the major portion of the body had been burnt, he could not notice any antemortem external injury. He also opined that the fracture of the tracheal ring can be possible by giving pressure on the front part of the neck by means of a lathi. He further opined that if sufficient pressure is applied on the chest by lathi it may lead to asphyxia and bleeding from mouth and nostril. P.W.29 is another doctor, who treated the deceased on being called by the appellants, and found the deceased on 09.02.1987 as dead and there was dark coloured blood on the bed of the deceased. From the

evidence of the above witness there is no dispute that death of the deceased had occurred otherwise than under normal circumstance.

8. P.W.19, is the elder brother of the deceased's father. He was the immediate guardian of the deceased. He stated that the deceased was given in marriage to appellant Kamala Kishore Poddar on 22.06.1985. The factum of such marriage has been proved through P.Ws.1, 6, 12, 13 and 15. Dead body challan, FIR and the evidence of P.Ws.19 and 29 clearly prove that the date of death was 09.02.1987. That means, death of the deceased occurred within seven years of her marriage.

9. P.W.19 has also stated that the deceased complained before him that all the appellants ill-treated, assaulted, tortured and neglected her and did not give her proper food and clothing during her stay in the house of appellant Sitaram Poddar. He specifically stated in his deposition that when he enquired from the deceased as to why she was assaulted and tortured, she narrated before him that the appellants demanded more dowry and they were not satisfied with the dowry that was given. P.W.21 also stated that the deceased told him that she was not given food and was being assaulted by the members of her husband's family. P.W.22, the brother of the deceased, also stated about the assault by the deceased's husband and her in-laws. To the same effect is the evidence of P.Ws.25 and 32. These P.Ws.22, 25 and 32 have not stated anything about the demand of dowry. Exts.15 and 20 and Exts.A and B have been proved by the prosecution and the defence respectively in evidence. But there is nothing about the demand of dowry in the said letters. Ext.20 was written by the informant addressing to the deceased and her husband. But in that Ext.20 nothing has been written about the dowry and about any dowry torture. P.Ws.16 and 17, the independent witnesses, stated that a month prior to the incident, when they were returning home at 9.00 P.M., they heard near the house of the appellants the shouts of a woman. P.W.29, the doctor who treated

the deceased specifically stated that on 30.01.1987, she had been to the house of the appellants to treat the deceased on being called by appellant Sawarmal. On reaching there, she found the deceased lying on a bed covering her by a quilt. Appellants Kamal Kishore and Sangita were there by the side of the deceased. She noticed burn injuries over 30% of the deceased and advised to shift the patient to hospital, but they preferred to treat the patient at home. She treated the burn injury. The deceased was running temperature at that time. She treated the deceased till 08.02.1987 and by that date the deceased was almost cured. From the above evidence, it is crystal clear that the deceased was subjected to cruelty, but there is no evidence that such cruelty or harassment was in connection with demand of dowry soon before her death. Therefore, the prosecution has not been able to prove the ingredients of section 304-B IPC against the appellants and so this Court sets aside their conviction and sentence passed under that section.

10. There are materials against appellants Sitaram Poddar and Kamal Kishore Poddar that they subjected the deceased to cruelty. Such evidence is, however lacking so far as appellants Natwarlal Poddar, Sawarmal Poddar and Sangita Poddar are concerned. Therefore, this Court convicts each of the appellants Sitaram Poddar and Kamal Kishore Poddar under section 498-A IPC and sentences them to undergo R.I. for two years and pay fine of Rs.50,000/- (Fifty thousand), in default undergo R.I. for nine months.

11. The evidence with regard to Section 4 of the D.P. Act is very clear. There was an agreement for payment of Rs.50,000/- as dowry between appellant Sitaram and the elder brother of deceased's father, i.e., P.W.19 during Tilak ceremony. Therefore, the trial court has rightly convicted appellant Sitaram under Section 4 of the D.P. Act, and this Court confirms the same.

12. To sum up, this court sets aside the order of conviction and sentence of all the appellants under Section 304-B IPC

and acquits them of the said charge. However, this Court convicts appellants Sitaram Poddar and Kamal Kishore Poddar under section 498-A IPC and sentences each of them to undergo R.I. for two years and to pay a fine of Rs.50,000/- (Fifty thousand), in default to undergo R.I. for nine months. The conviction and sentence of appellant Sitaram Poddar under section 4 of the D.P. Act are confirmed and it is directed that the substantive sentences awarded to him shall run concurrently.

13. In the result, Criminal Appeal No.31 of 1989 is allowed and Criminal Appeal No.43 of 1989 is allowed in part as indicated above.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
January 30, 2009/**Alok**